



April 26, 2022

*Via email*

Ken Moraff, Director  
Water Division, U.S. EPA Region 1  
5 Post Office Square, Suite 1100  
Boston, MA 02109  
Submitted to Duspiva.Michele@epa.gov

**Re: Comments on Draft NPDES General Permit for Medium Wastewater Treatment Facilities, Permit No. MAG590000**

Dear Director Moraff:

Charles River Watershed Association (“CRWA”) submits the following comments on the Draft National Pollutant Discharge Elimination System (“NPDES”) General Permit for the Discharge of Wastewater from Medium Sized Wastewater Treatment Facilities (“WWTFs”) in the Commonwealth of Massachusetts (Permit No. MAG590000) (hereinafter, the “Draft General Permit”). CRWA has also joined comments filed by the Massachusetts Rivers Alliance (“Mass Rivers”). This letter provides additional comment regarding considerations specific to the Charles River watershed and the two covered facilities located therein, the Medfield and Milford WWTFs.

**The Draft General Permit is Unlawful and Impractical**

As an initial matter, we emphasize the significant legal flaw with EPA’s proposed approach described in detail in Mass Rivers’ comments: EPA’s regulations at 40 C.F.R. § 122.28(a)(2)(ii) allow for general permits that regulate one or more categories or subcategories of “treatment works treating domestic sewage” if they all, among other things, “[r]equire the same effluent limitations.” (emphasis added). As even a cursory perusal of the Draft General Permit and the draft authorization letters demonstrates, the facilities to be covered under the Draft General Permit have effluent limitations that are not only not the same, but in fact vary widely. This is because of (among other things) the various dilution factors, receiving water conditions, and past permit conditions for each of the facilities proposed for coverage. It is telling that the Draft General Permit itself does not include effluent limits and monitoring requirements for the facilities to be covered, nor could it, since they are all different. The actual limits that will apply to individual facilities are included in the authorization letters, resulting in authorization letters that look a lot like individual permits.

Indeed, the Draft General Permit does not seem to really be a general permit at all; rather, it is 44 individual permits packaged as a general permit. However, unlike an individual permit, where all pertinent information is included in the permit itself and accompanied by a facility-

specific fact sheet, one must now read both the general permit and the facility-specific authorization letter to determine applicable permit terms and conditions, and there is no facility-specific fact sheet explaining how the relevant terms and conditions were developed and why any changes were made. As a result, a complete review of this and future draft general permits is and will be a daunting and overwhelming task requiring review of what are essentially 44 individual permits with associated calculations, as well as a comparison to the current individual permits to ensure that all of the limits and conditions have been correctly considered and carried forward where appropriate.

It is also unclear how this approach is beneficial to EPA in the long term. The agency has expended significant time and effort developing individual authorization letters for each facility that is proposed for coverage under the General Permit. EPA has not explained why a general permit with lengthy and detailed individual authorization letters is preferable to issuing individual permits based on the same information and analysis.

### **Additional Problems with the Proposed Permitting Approach**

Without fact sheets for individual facilities, little if any detail is provided regarding the origin of and basis for the effluent limits in the authorization letters associated with the Draft General Permit. For example, the draft authorization letters for the Medfield and Milford WWTFs include the phosphorus limits from each facility's current permit, but the Draft General Permit fact sheet has no specific statement indicating that these limits are derived from a total maximum daily load ("TMDL") (specifically, the TMDL for Nutrients in the Upper/Middle Charles River (May 2011)); the fact sheet merely states that all TMDL-based limits were carried forward in the Draft General Permit. A future permit writer will therefore not have information about the original basis for the effluent limits and as this information is lost over time, the permit may become more vulnerable to backsliding. This also makes it much more difficult for the public to understand the basis for the effluent limits, inhibiting meaningful public comment.

We echo Mass Rivers' concerns about whether there will be adequate public notice and comment on the authorization letters and notices of intent that will be required under the Draft General Permit; there is not a clear process set forth to provide for public participation before coverage is granted by EPA. Careful public review and comment often leads to the correction of errors in draft authorizations and permits, something that will be lost without robust public participation. This is even more concerning given that EPA has required notices of intent to be submitted within 30 days of the effective date of the General Permit and has given itself discretion to unilaterally determine that a facility is covered by the General Permit even absent submission of a notice of intent. These are significant changes to the current permitting regime that adversely impact the ability of organizations like CRWA and the public to review, understand, and provide input on permit terms and conditions, thereby undermining public participation.

We have additional concerns regarding data collection for conducting future reasonable potential analyses. On page 15 of the Draft General Permit fact sheet, EPA states that it used the "best available data" in establishing effluent limits and that this included, among other things, data from "permit applications." We assume EPA is referring to prior individual permit applications filed by the permittee, which would have included chemical analysis of a large number of

pollutants. *See* 40 C.F.R. § 122.21(j)(4)(iv)(A) and § 122.21, Appendix J. It is vital that EPA gather this information in order to ascertain whether any new pollutants are being discharged by the facility with reasonable potential to cause or contribute to exceedances of water quality standards. However, since facilities covered under a general permit do not have to submit individual permit applications, *see* 40 C.F.R. § 122.21(a)(1), and the general permit does not specify any sampling requirements for retaining coverage under the permit upon expiration, *see* Draft General Permit Part VI B, we are concerned that this vital information gathering may not be done in the future.

Relatedly, the fact sheet states that EPA did not do reasonable potential calculations for facilities that are covered by individual permits issued in 2019 or later (including the Milford WWTF discussed below). EPA's stated reasoning is that there is not enough new data to justify a new review. This is not a particularly compelling reason; there could have been some radical change in effluent or receiving water composition that could now potentially go undetected for an additional five years when the facility receives coverage under the General Permit. EPA is essentially giving these facilities an extended permit term under their current limits without acknowledging that this is what is being done.

For several pollutants, EPA has included two sets of limits in the Draft General Permit: one set applicable if new proposed state water quality criteria are approved prior to issuance of the General Permit and another if they are not approved prior to issuance of the General Permit. It is unclear what authority EPA is relying on in issuing a permit under the Clean Water Act that includes state water quality standards which have not been approved by EPA and are not in effect for Clean Water Act purposes. Specifically, we question what will happen if EPA does not ultimately approve the proposed state criteria or Endangered Species Act consultation results in revisions to the criteria to protect listed species.

There are other problems with this approach as well. For aluminum, if the new proposed state water quality criteria are not approved prior to issuance of the General Permit, the Draft General Permit includes a three-year schedule of compliance if the permittee is not attaining the new, more stringent limit. For each facility, the proposed schedule of compliance is the same, despite regulations at 40 C.F.R. § 122.47(a)(1) that require schedules in permits to require compliance "as soon as possible." It seems unlikely that every permittee would need exactly the same amount of time to attain compliance "as soon as possible." Further, the fact sheet states that the permittee may request an extension of the schedule through permit modification if the limit has not been attained by the end of the compliance schedule, and may also request a permit modification of the limit if the facility is not attaining the limit when the new criteria are approved. *See* Fact Sheet at 13. This approach disincentivizes improvements in discharges. We also note that the fact sheet states that for any new or more stringent water quality-based limit where EPA determines that the facility cannot immediately achieve compliance, EPA will include a two-year schedule of compliance. *See* Fact Sheet at 13. This generic two-year schedule also appears to be inconsistent with regulations at 40 C.F.R. § 122.47(a)(1).

### **Specific Concerns Regarding Permitting for the Medfield and Milford WWTFs**

We are concerned that sampling and monitoring frequencies have been reduced—in some cases significantly—in the draft authorization letters for the Medfield and Milford WWTFs, as compared to the requirements in the existing individual permits for these facilities. The NPDES

Permit Writers’ Manual states that “[t]he permit writer should establish monitoring frequencies sufficient to characterize the effluent quality and to detect events of noncompliance, considering the need for data and, as appropriate, the potential cost to the permittee.” U.S. EPA Permit Writers’ Manual (Sept. 2010) at 8-5. Monitoring frequencies are established to ensure that the monitoring obtained is representative of the discharge and are generally more frequent with more stringent effluent limits and variable discharges. The Permit Writers’ Manual sets forth specific factors that should be considered when establishing appropriate monitoring frequencies.

Importantly, the Permit Writers’ Manual states that “[m]onitoring frequency should be *determined on a case-by-case basis*, and decisions for setting monitoring frequency should be *described in the fact sheet*.” *Id.* at 8-5 (emphasis added); *see also* 40 C.F.R. 122.44(i)(2) (“requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge”). Neither has happened here. EPA appears to be applying standard monitoring frequencies across facilities, despite having previously determined that different monitoring frequencies were necessary. And since there are no facility-specific fact sheets, no explanation for these changes or how the proposed monitoring frequencies were set, including whether any of the required factors were considered, is given. Running directly afoul of the Permit Writers’ Manual and deviating from past practice, without explanation for either, is seemingly the definition of arbitrary and capricious.

And the problems do not end there. With respect to reductions in monitoring frequency, the Permit Writers’ Manual, referencing 1996 EPA-issued Interim Guidance for Performance-Based Reductions of NPDES Permit Monitoring Frequencies, states that

NPDES reporting and monitoring requirements may be reduced on the basis of a demonstration of excellent historical performance. Facilities can demonstrate that historical performance by meeting a set of compliance and enforcement criteria and by demonstrating their ability to consistently discharge pollutants below the levels necessary to meet their existing NPDES permit limitations. Reductions are determined parameter-by-parameter, on the basis of the existing monitoring frequency and the percentage below the limitation at which the parameter is being discharged. The reductions are incorporated when the permit is reissued. To remain eligible for the reductions, permittees are expected to maintain the parameter performance levels and good compliance on which the reductions were based.

*Id.* at 8-6. None of this analysis has been provided for the reductions in monitoring requirements EPA is proposing. A complete list of the monitoring requirement reductions proposed for the Medfield and Milford WWTFs is included in the chart below.

<b>Facility</b>	<b>Parameter</b>	<b>Change</b>
Medfield WWTF	BOD	Monitoring frequency reduced from 3/week to 1/week
Medfield WWTF	TSS	Monitoring frequency reduced from 3/week to 1/week

Medfield WWTF	pH	Monitoring frequency reduced from 1/day to 5/week
Medfield WWTF	Ammonia Nitrogen (June 1 through Oct. 31)	Monitoring frequency reduced from 2/week to 2/month
Medfield WWTF	<i>Escherichia coli</i>	Sampling frequency reduced from 2/week to 1/week
Medfield WWTF	Lead	Sampling frequency reduced from 1/month to 4/year
Medfield WWTF	cadmium	Sampling frequency reduced from 1/month to 4/year
Medfield WWTF	Phosphorus (April 1 through Oct. 31)	Monitoring frequency reduced from 2/week to 2/month
Medfield WWTF	Phosphorus (Nov. 1 through March 31)	Sampling frequency reduced from 1/week to 2/month
Medfield WWTF	Orthophosphate	No longer included
Milford WWTF	BOD	Monitoring frequency reduced from 3/week to 1/week
Milford WWTF	TSS	Monitoring frequency reduced from 3/week to 1/week
Milford WWTF	pH	Monitoring frequency reduced from 1/day to 5/week
Milford WWTF	<i>Escherichia coli</i>	Sampling frequency reduced from 2/week to 1/week
Milford WWTF	Ammonia Nitrogen (May 1 through May 31)	Monitoring frequency dropped from 2/week to 2/month
Milford WWTF	Ammonia Nitrogen (June 1 through October 31)	Monitoring frequency reduced from 2/week to 2/month
Milford WWTF	Ammonia Nitrogen (November 1 through April 30)	1/month monitoring not included in draft authorization letter
Milford WWTF	Phosphorus (April 1-October 31)	Monitoring frequency reduced from 2/week to 2/month
Milford WWTF	Phosphorus (November 1-March 31)	Monitoring reduced from 1/week to 2/month

We also note that for the Medfield WWTF, the C-NOEC effluent limitation in the draft authorization letter is 32%, as compared to 18% in the facility's current individual permit. This change appears to be due to a recalculation of the 7Q10. The fact sheet for the facility's current individual permit has a detailed derivation of the 7Q10 that results in a 7Q10 of 6.73 MGD. The Draft General Permit uses a 7Q10 of 3.19 MGD, which is not explained in the corresponding fact sheet. The new 7Q10 changes the dilution factor from 5.43 to 3.1. As discussed above, the lack of facility-specific fact sheets to explain the limits and underlying assumptions in the Draft General Permit makes it difficult to understand the basis for the effluent limits and prevents a reviewer from determining if the new flow is correct or an error. Moreover, all of the Water Management Act permits for wells in the upper Charles River are expected to be reviewed this year. There may be proposed increases in withdrawals which could affect the 7Q10 calculations currently used. It is

not clear how these potential changes would be incorporated into the permit limits and calculations, especially given that the potential changes will be site-specific and depend on where a particular withdrawal point is located relative to the discharge/return flow point from the WWTF.

Given these significant issues, CRWA echoes the request by Mass Rivers that EPA reconsider its course of action and withdraw the proposed Draft General Permit. Should EPA nevertheless decide to move forward with the General Permit approach, we also reiterate Mass Rivers' request for public hearings on this proposed change to the permitting regime. We appreciate your consideration of these comments and requests.

Sincerely,



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