



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1
5 Post Office Square
BOSTON, MA 02109-3912

April 17, 2019

Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Re: Lower Charles River/Charles Basin and Alewife Brook/Mystic River Water
Quality Standard Variances for Certain CSO Discharges

Dear Commissioner Suuberg:

This letter responds to the Massachusetts Department of Environmental Protection's ("MassDEP") October 31, 2018 submission of water quality standard variances, along with pertinent fact sheets and a response to public comments, to the Environmental Protection Agency ("EPA") for review. The variances would cover certain waterways affected by combined sewer overflow ("CSO") discharges. Specifically, the variances apply to CSO discharges by the Massachusetts Water Resources Authority ("MWRA"), the City of Somerville, and the City of Cambridge into the Alewife Brook/Upper Mystic River; and CSO discharges by the MWRA, the City of Cambridge, and Boston Water & Sewer Commission to the Lower Charles River/Charles Basin.

MassDEP issued these variances for a term of three years on August 31, 2016 with effective date of September 1, 2016. On April 26, 2017, MassDEP's Deputy General Counsel certified the variances as having been duly adopted pursuant to Commonwealth law. By today's letter, EPA approves these variances through the end of the variance term on August 31, 2019.

EPA reviews variances under Section 303 of Clean Water Act ("CWA"), which addresses EPA consideration of, and action on, state water quality standards. A variance typically is a short-term revision to an otherwise applicable water quality standard. See 63 Fed. Reg. 36742, 36759 (July 7, 1998). EPA generally will only approve a state's variance where there is a demonstration that one of the factors that would justify removal of a designated use or establishment of a subcategory of use has been satisfied, specifically the factors published at 40 C.F.R. 131.10(g). Id. Upon expiration of the variance, the underlying numerical criteria have full regulatory effect. Id.

As background, these waterways are impacted by, in part, CSO discharges by the entities noted above. In 1997, the MWRA developed a Long Term Control Plan ("LTCP"), the Final CSO Facilities Plan, to address these discharges and the bacteria exceedances that

result from those discharges. This LTCP covered, in part, the Alewife Brook/Upper Mystic River and the Lower Charles River/Charles Basin. On March 14, 2006, after work had begun under this LTCP, the EPA approved variances for these waterways and approved the triennial reissuances of those variances through 2020.¹ The EPA's letter also put several conditions on the approvals, specifically requiring that the variances be reissued every three years would be reviewed to determine if there is new information since the last variance extension that would warrant a change in the terms of the variances; that variances continue to require the MWRA to comply with Court Order plans and the LTCP; and that there be a finding that no information has been presented leading to the conclusion that the CSO discharges are causing impacts of a different character, or outside the range of impacts that can be expected, which would warrant adjustment of the variance conditions.

To ensure that those conditions are satisfied, EPA also reviews and takes a separate approval action on each triennial reissuance of the variances for MWRA through 2020. EPA for instance, reviewed triennial variance reissuances most recently in 2014 and determined in a July 10, 2014 approval that variances were warranted for these waters and that the conditions set in the agency's 2006 approval (pertaining largely to LTCP work) had been satisfied.

Under the variances, CSO discharges from permitted outfalls are not required to meet effluent limits based on the Massachusetts Class B bacteria criteria during events when flow in the collection system exceeds the collection system conveyance capacity as a result of precipitation or snow melt. As noted above, these variances require continued implementation of the LTCP control measures and do not in any way delay the pace of implementation of that plan.

Numerous analyses have been completed since the late 1980s evaluating alternatives for eliminating combined overflows from the collection system tributary to the Deer Island Treatment Plant. Among these are the 1997 CSO Facilities Plan and Environmental Impact Report; the 2001 Notice of Project Change for the Long Term Control Plan for Alewife Brook; the July 1, 2003 MWRA Final Variance Report for the Alewife Brook /Upper Mystic River; and the January 2004 Cottage Farm CSO Facility Assessment Report. Based on these analyses, MassDEP determined that proceeding at this time with controls necessary for full attainment of the applicable Class B bacteria criteria and associated recreational use would result in substantial and widespread economic and social impact as those terms are used in 40 C.F.R. 131.10(g)(6). As a result, MassDEP concluded that issuance of this three-year variance was warranted.

¹ In 2015, the EPA updated the federal water quality standards regulations at 40 CFR Part 131, including §131.14, Water Quality Standards Variances. Because EPA originally approved the variance extensions through 2020 subject to the conditions set forth in the approval, EPA continues to review the triennial variance extensions under the regulations in effect in 2006. However, any new variances beyond or different from those contemplated in EPA's 2006 approval must be consistent with EPA's 2015 regulations.

For EPA's independent evaluation of this conclusion, the agency reviewed MassDEP's October 31, 2018 complete submission, and projected control costs and current sewer rate and household income information for the appropriate areas. EPA also concludes that it is not feasible to fully attain the Class B bacteria criteria and associated recreational use within the three-year term of the variances without causing widespread economic and social impact.

Therefore, EPA has determined that the variances satisfy relevant CWA and regulatory requirements. In addition, EPA has concluded that the variances are consistent with the conditions set forth in EPA's 2006 variance approval, referenced above.

For the reasons herein, and pursuant to Section 303(c)(3) of the Clean Water Act (CWA) and 40 C.F.R. 131.21, EPA approves these variances for the MWRA, the City of Somerville, the City of Cambridge, and Boston Water & Sewer Commission, which temporarily revise the water quality criteria for bacteria by rendering them inapplicable to the identified permittees for CSO discharges into the identified receiving waters during specified wet weather events.

We look forward to continued cooperation with Massachusetts in the development, review, and approval of water quality standards pursuant to our responsibilities under the Clean Water Act. If you have any questions, please contact Jeanne Voorhees (617-918-1686) or Michael Wagner (617-918-1735).

Sincerely,



Ken Moraff, Director
Office of Ecosystem Protection

cc: Kevin Brander, MassDEP
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