

**MASSACHUSETTS GENERAL PERMIT AUTHORIZING WASTEWATER TREATMENT FACILITIES (WWTFs) TO
DISCHARGE POLLUTANTS TO SURFACE WATERS**

In compliance with the provisions of the Massachusetts Clean Waters Act, as amended (M.G.L. Chap. 21, §§ 26 - 53) and the implementing regulations at 314 CMR 3.00 and 4.00, any facility authorized by the United States Environmental Protection Agency (EPA), Region 1, under the 2022 NPDES General Permit No. MAG590000, the Wastewater Treatment Facility General Permit, is authorized to discharge from the facility as located at the location listed in and the receiving water identified in its Permit Authorization from EPA.

in accordance with the following effluent limitations, monitoring requirements and additional conditions:

1. This permit shall become effective on November 1, 2022.
2. This permit shall expire five years after the effective date.
3. This permit incorporates by reference Part I Applicability and Coverage of the WWTF GP, Part IIA Effluent Limitations and Monitoring Requirements, Part IIB Other Requirements, Part IIC Unauthorized Discharges, Part IID Notification Requirements, Part IIE Additional Requirements for Facilities Discharging to Marine Waters, Part III Additional Limitations, Conditions, and Requirements, Part IIIA Operation and Maintenance of the Sewer System, Part IIIB Alternate Power Source, Part IIIC Industrial Users, Part IIID Industrial Pretreatment Programs, Part IIIE Sludge Conditions, Part IIIF Schedules of Compliance, Part IIIG Additional Requirements for Facilities Discharging to Long Island Sound Watershed, the Blackstone River Watershed, the Taunton River Watershed, as well as the Plymouth WWTP and Fairhaven WPCF, Part IIIH Submittal of Facility-Specific Information, Part IV Obtaining Authorization to Discharge, Part V Monitoring, Record-Keeping and Reporting Requirements, Part VII Administrative Requirements, and Part VIII Standard Conditions, as set forth in the 2022 NPDES General Permit No. MAG590000, issued by the United States Environmental Protection Agency (EPA), Region 1, issued September 29, 2022 (the 2022 NPDES General Permit) and attached hereto by reference as Appendix A and available on EPA's website at <https://www.epa.gov/npdes-permits/massachusetts-mpdes-permits#fgp>; provided, however:
 - a. that the notification required by Part IIB.7. shall also be provided to MassDEP;
 - b. that the reporting required by Part IIC.1. shall be in accordance with 314 CMR 3.19(20)(e) (24 hour reporting);
 - c. that a copy of the requests, reports, and information required by Part V.5. to be submitted to EPA shall also be submitted to MassDEP electronically to massdep.npdes@mass.gov;
 - d. that, if there is a conflict between the definitions in 314 CMR 3.02 and/or 314 CMR 4.00 and the definitions in Part IVC., the definitions in 314 CMR 3.02 and/or 314 CMR 4.00 shall control, as applicable;
 - e. that the notification required by 3.a. above shall be provided as follows:

Laura Schiffman, Acting NPDES Section Chief
 Division of Watershed Management
 Department of Environmental Protection
 1 Winter Street – 5th Floor
 Boston, MA 02108

4. This permit incorporates by reference the Standard Permit Conditions set forth in 314 CMR 3.19.
5. The permittee shall commence annual monitoring of all Significant Industrial Users^{1,2} discharging into the POTW consistent with the 2022 Federal NPDES General Permit. Monitoring shall be in accordance with the table below. Notwithstanding any other provision of the 2022 Federal NPDES General Permit to the contrary, monitoring results shall be reported to MassDEP electronically at massdep.npdes@mass.gov, or as otherwise specified, within 30 days after they are received.

Parameter	Units	Measurement Frequency	Sample Type
Perfluorohexanesulfonic acid (PFHxS)	ng/L	Annual	24-hour Composite
Perfluoroheptanoic acid (PFHpA)	ng/L	Annual	24-hour Composite
Perfluorononanoic acid (PFNA)	ng/L	Annual	24-hour Composite
Perfluorooctanesulfonic acid (PFOS)	ng/L	Annual	24-hour Composite
Perfluorooctanoic acid (PFOA)	ng/L	Annual	24-hour Composite
Perfluorodecanoic acid (PFDA)	ng/L	Annual	24-hour Composite

6. All facilities seeking coverage under this General Permit must submit to MassDEP a copy of their Notice of Intent (NOI) submitted to EPA for coverage under the 2022 Federal NPDES General Permit, which shall serve as the NOI for coverage under this General Permit. Instructions for submittal will be provided here: <https://www.mass.gov/how-to/wm-15-npdes-general-permit-notice-of-intent>. All permittees granted coverage under this General Permit will be notified by MassDEP and listed on MassDEP's website. For each permittee granted coverage by MassDEP, this General Permit incorporates by reference any limitations, conditions, and requirements contained within the individual Permit Authorization issued by EPA to that permittee.

If the permittee is one of the following facilities, then the co-permittee(s) noted below, with their respective mailing addresses, is/are co-permittee(s) for Part IIC., Unauthorized Discharges, and Part IIIA Operation and Maintenance of the Sewer System, as set forth in the 2022 Federal NPDES Permit unless otherwise noted below:

¹ Significant Industrial User (SIU) is defined at 40 CFR part 403: All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subpart N; **and** any other industrial user that: discharges an average of 25,000 GPD or more of process wastewater to the POTW, contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW, or designated as such by the POTW on the basis that the industrial users has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement.

² This requirement applies to all Significant Industrial Users and not just those within the sectors identified by EPA in the NPDES permit.

Permittee	Co-Permittee(s)
Easthampton Wastewater Treatment Facility	Town of Southamptn Select Board 210 College Highway, Suite 7 Southampton, MA 01073
Gardner Wastewater Treatment Facility	Town of Ashburnham Water and Sewer, Dept of Public Works 17 Central St / Rte 101 Ashburnham, MA 01430
Hull Water Pollution Control Facility	Town of Hingham Sewer Commission 25 Bare Cove Park Drive Hingham, MA 02043
Marshfield Wastewater Treatment Facility	Town of Duxbury Water and Sewer Department 878 Tremont Street Duxbury, MA 02332
MFN Regional Water Pollution Control Facility	Town of Foxborough Water and Sewer Department 70 Elm Street Foxborough, MA 02035
	Town of Mansfield Department of Public Works 6 Park Row, 2 nd Floor Mansfield, MA 02048
	Town of Norton Water and Sewer Commission 70 East Main St Norton, MA 02766
MWRA Clinton Wastewater Treatment Plant	Town of Clinton Department of Public Works 242 Church Street Clinton, MA 01510
	Town of Lancaster Department of Public Works 392 Mill Street Extension Lancaster, MA 01523
Pepperell Wastewater Treatment Plant	Groton Sewer Commission Town Hall 173 Main Street Groton, MA 01450
South Hadley Wastewater Treatment Plant	Town of Granby Granby Highway Department 250 State Street Granby, MA 01033

These sections include conditions regarding the operation and maintenance of the collection systems owned and operated by the municipality or district.

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the terms and conditions of Part IIC., Part IIIA, and Part V. of the 2022 Federal NPDES permit. The Permittees and co-permittees are severally liable under Part IIC., Part IIIA, and Part V for their own activities and required reporting with respect to the portions of the collection system that they own or operate. They are not liable for violations of Part IIC., Part IIIA, and Part V. committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for any reporting that is required of other Permittees under Part IIC., Part IIIA, and Part V.

Signed this 30th day of September, 2022

A handwritten signature in black ink, appearing to read 'Lealdon Langley', is written over a horizontal line.

Lealdon Langley, Director
Division of Watershed Management
Department of Environmental Protection

RESPONSE TO COMMENTS**MA Permit No. MAG590000****GENERAL PERMIT FOR MEDIUM WASTEWATER TREATMENT FACILITIES IN MASSACHUSETTS**

The Massachusetts Department of Environmental Protection (MassDEP or the “Department”) is issuing a General Surface Water Discharge (SWD) Permit for Medium Wastewater Treatment Facilities. The permit is being issued under the Massachusetts Clean Waters Act, as amended (M.G.L. Chap. 21, §§ 26 - 53) and the implementing regulations at 314 CMR 3.00 and 4.00.

In accordance with the provisions of 314 CMR 2.09, MassDEP is obligated to prepare a response to comments received on the draft SWD Permit No. MAG590000 (the “Draft Permit”). The Response to Comments explains and supports MassDEP’s determinations that form the basis of the final permit (the “Final Permit”). From February 8, 2021 through April 26, 2021, MassDEP solicited public comments on the Draft Permit for the reissuance of a general permit to discharge wastewater from medium wastewater treatment facilities.

During the public comment period for the draft NPDES permit (February 8, 2021 through April 26, 2021), EPA received comments from the following:

1. Town of Wareham, dated March 9, 2022
2. Town of Marshfield, dated March 30, 2022
3. MFN Regional Wastewater District, dated March 30, 2022
4. Town of Bridgewater, dated April 4, 2022
5. City of Greenfield, dated April 8, 2022
6. Town of Sturbridge, dated April 18, 2022
7. Town of Uxbridge, dated April 19, 2022
8. Town of Maynard, dated April 20, 2022
9. Town of Adams, dated April 20, 2022
10. Spencer Sewer Commission, dated April 21, 2022
11. Town of Milford, dated April 21, 2022
12. City of Gardner, dated April 22, 2022
13. MWRA, dated April 25, 2022
14. Hull Sewer Department, dated April 25, 2022
15. City of Easthampton, dated April 25, 2022
16. Town of Scituate, dated April 19, 2022
17. Town of Sturbridge, dated April 25, 2022
18. Town of Northbridge, dated April 25, 2022
19. Town of Belchertown, dated April 26, 2022
20. Town of Pepperell, dated April 26, 2022
21. Town of Ware, dated April 26, 2022, with an additional comment dated April 27, 2022
22. Town of Fairhaven, dated April 26, 2022
23. Town of Grafton Board of Sewer Commissioners, dated April 26, 2022
24. Town of Concord, dated April 26, 2022
25. Town of Scituate, dated April 26, 2022
26. Town of Southampton, dated February 10, 2022

27. Wastewater Advisory Committee to the MWRA, dated March 29, 2022
28. MWRA Advisory Board, dated April 25, 2022
29. Upper Blackstone Clean Water, dated April 26, 2022
30. Massachusetts Water Environment Association, dated April 26, 2022
31. National Association of Clean Water Agencies, dated April 26, 2022
32. Massachusetts Coalition for Water Resources Stewardship, dated April 26, 2022
33. Massachusetts Rivers Alliance, dated April 26, 2022
34. OARS, dated April 21, 2022
35. Taunton River Watershed Alliance, dated April 22, 2022
36. Connecticut River Conservancy, dated April 25, 2022
37. Charles River Watershed Association, dated April 26, 2022
38. North and South Rivers Watersheds Association, dated April 26, 2022
39. Buzzards Bay Coalition, dated April 26, 2022
40. Hoosic River Watershed Association, dated March 29, 2022
41. IDEXX Laboratories, Inc., dated April 14, 2022
42. Curt McCormick, dated April 11, 2022.

During the public comment period for the draft SWD Permit, MassDEP received identical comments as those submitted to EPA from:

43. Town of Wareham, dated March 9, 2022
44. MWRA, dated April 25, 2022
45. City of Easthampton, dated April 25, 2022
46. Town of Concord, dated April 26, 2022
47. Town of Scituate, dated April 26, 2022
48. Upper Blackstone Clean Water, dated April 26, 2022
49. Massachusetts Coalition for Water Resources Stewardship, dated April 26, 2022
50. Connecticut River Conservancy, dated April 25, 2022
51. North and South Rivers Watersheds Association, dated April 26, 2022
52. Buzzards Bay Coalition, dated April 26, 2022

In addition, during the public comment period for the draft SWD Permit, MassDEP received what it considers identical comments as those submitted to EPA from:

53. Hoosic River Watershed Association, dated March 29, 2022.

MassDEP has reviewed EPA's Response to Comments, issued concurrent with the final NPDES permit on September 29, 2022, and concurs with their responses and the associated adjustments made to the final NPDES permit. MassDEP hereby incorporates by reference EPA's Response to Comments into this Response.

During the public comment period for the draft SWD Permit, MassDEP received comments from:

54. Massachusetts Rivers Alliance, dated April 26, 2022
55. OARS, dated April 21, 2022.

MassDEP's knowledge of the facility has benefited from the various comments and additional information submitted during the public comment period, but the information and arguments presented did not raise any substantial new questions concerning the Permit that warranted MassDEP exercising the discretion to reopen the public comment period. MassDEP does, however, make certain clarifications in response to comments. Any improvements and changes are explained in this document and reflected in the Final Permit. Below, MassDEP provides a summary of the changes made in the Final Permit. The analyses underlying these changes are contained in the responses to individual comments that follow.

A copy of the Final Permit and this Response to Comments document will be posted on the MassDEP website: <https://www.mass.gov/orgs/massachusetts-department-of-environmental-protection>.

A copy of the Final Permit may be also obtained by writing or calling Claire Golden, MassDEP, Surface Water Discharge Permitting Program, 205 B Lowell Street, Wilmington, MA 01887; telephone: 617-997-8874; email: claire.golden@mass.gov. Currently, MassDEP is working in a hybrid mode. As such, interested parties are strongly encouraged to email or telephone Claire Golden if they wish to obtain a copy of the Final Permit.

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I. Summary of Changes to the Final Permit and Final Water Quality Certification

1. No changes were made to the Final Permit.
2. Some language in the Final Water Quality Certification was changed for clarification purposes only and did not alter the intent or conditions of the Certification.

II. Responses to Comments

Comments are reproduced below as received; they have not been edited, corrected or otherwise modified.

A. Comments from Julia Blatt, Executive Director, Massachusetts Rivers Alliance, dated April 26, 2022

Comment 1

On behalf of Massachusetts Rivers Alliance, we write to express our concerns with the above-referenced draft 5-year General Permit covering specific Wastewater Treatment Facilities (WWTFs) in Massachusetts with medium-sized discharges (1-5 mgd). These comments incorporate by reference our comment letter to EPA Region 1 (attached) on the parallel EPA draft general permit, which has terms that are incorporated by reference in the MassDEP draft permit. The majority of our comments on the EPA draft apply to the MassDEP draft as well.

In addition to reviewing MassDEP's draft General Permit, we and our member organizations reviewed EPA's draft General Permit, the permit's Fact Sheet, the draft Authorization Letters, and the relevant underlying current permits from MassDEP and EPA for the 44 medium-size WWTFs to be covered under this permit, all of which discharge to waterways in the Commonwealth. In addition to the comments in our letter to EPA which apply to the MassDEP draft, we outline below concerns specific to the MassDEP draft general permit referenced above.

Founded in 2007, The Massachusetts Rivers Alliance ("Mass Rivers") is a 501(c)3 nonprofit organization whose mission is to protect and restore the Commonwealth's rivers and streams, and to increase climate resilience for all communities. Mass Rivers currently has 80 member organizations, several of which operate in watersheds where one or more of the 44 facilities eligible for coverage under the draft General Permit discharge treated sewage. Many of these affected groups have

expressed serious concerns about MassDEP and EPA's decision to propose this Permit, and have joined Mass Rivers in submitting public comment.

With an estimated 8,229 river miles, 1,200 named rivers, 588,486 acres of wetlands and 1,519 miles of coastline, water touches every resident of the Commonwealth and draws millions of visitors each year. The recent pandemic highlighted the importance of these resources for safe and enjoyable recreation. Healthy ecosystems are necessary for mitigating floods, maintaining water quality and quantity, recycling nutrients, and providing habitat for plants and animals. These systems are already under tremendous pressure to adapt to the impacts of climate change and survive the myriad human impacts threatening them. It is up to our state and federal agencies, such as MassDEP and EPA, to effectively implement the environmental regulations designed to protect them.

This year is the 50th anniversary of the Clean Water Act, arguably the most important environmental legislation the US has ever passed. Since this landmark law was passed in 1972, we as a nation have been trying to reduce and ultimately cease the dumping of contaminants into our waterways. EPA established the National Pollutant Discharge Elimination System (NPDES) to regulate those discharges that could not yet be eliminated, and track progress toward that ultimate goal. Half a century later, we have made tremendous improvement in local water quality, but we have still not achieved the basic goal of ensuring our rivers and streams are indeed clean. EPA has permitted over 48,000 industrial facilities under NPDES - allowing them to continue polluting throughout the country. In Massachusetts, MassDEP currently has 476 parallel state permits, allowing facilities to continue allowing pollutants to be dumped into our precious waterways.

Nutrient overload from wastewater discharge is a significant problem for rivers in Massachusetts. Excess nutrients cause toxic cyanobacteria (also known as blue green algae) outbreaks which impair habitat, inhibit recreation, and in some cases threaten public drinking water supplies. Climate change-induced impacts such as increased water temperatures, more frequent droughts and severe droughts, and sea level rise are exacerbating the cyanobacteria problem and also lead to harmful algal blooms and increased eutrophication in our waterways. The NPDES permitting process is the primary vehicle for regulated parties, the general public, and environmental advocates alike to inform how local waterways are managed. Local stakeholders are typically the most knowledgeable about the specific concerns and solutions within their watershed, and serve as an important resource for federal and state regulators developing effective permits. It is imperative that MassDEP and EPA follow a community engaged and science-based approach to issuing WWTF permits, so as to progressively reduce and ultimately eliminate excess nutrients and other pollutants being discharged from these facilities.

Response 1

MassDEP acknowledges this comment.

Comment 2

We recognize the main goal of the general permit approach is to reduce the significant permitting backlog, which has resulted in substantial delays in permit reissuance. We share this concern: of the 44 facilities included in this draft permit, 27 are operating under expired and/or administratively continued permits, some of which are nearly a decade past due (see Detail Table 1, Attachment A). Yet

we have serious doubts as to whether the draft General Permit will indeed improve permitting and compliance over the long term. In addition to the timely issuance of permits, the proposed General Permit has such serious technical flaws that it fails to protect water quality in our receiving waters. The draft General Permit also fails to comply with multiple established TMDLs in 13 of the receiving watersheds, which require adaptive management. It is virtually impossible to implement effective adaptive management when such a long time occurs between permit issuances. Finally, MassDEP simply lacks the regulatory authority to issue this kind of general permit.

Response 2

The General Permit and the draft authorizations prepared by EPA provide the same degree of environmental protection as individual permits would with the added benefit of more timely renewals. Mass Rivers Alliance has not explained the serious flaws it refers to in this comment.

The permit limitations for each facility were calculated individually by taking into account receiving water quality and Massachusetts Surface Water Quality Standards and TMDLs (where appropriate). Use of a general permit ensures more timely issuance of permit renewals, thereby facilitating adaptive management required under the TMDLs and resulting in permits reflecting current receiving water conditions since individual permits are rarely, if ever, modified mid-permit.

Please refer to Response 4 relative to MassDEP's regulatory authority to issue this kind of general permit.

Comment 3

Mass Rivers strongly urges MassDEP to abandon pursuance of the General Permit, and instead continue issuing individual permits for the 44 covered WWTFs, which should incorporate the effluent limitations contained in EPA's Draft Authorization Table: <https://www.epa.gov/npdes-permits/region-1-draft-medium-wastewater-treatment-facilities-general-permit-massachusetts> EPA Region 1 included in the Draft Authorization Table the required elements of the NPDES permit renewals for these facilities, simplifying the individual permit reissuance process for MassDEP. Individual permits are more simple than the proposed bifurcated General Permit and Notice of Authorization process - for both the public and regulated facilities to understand, comply with, and track progress. The complex General Permit document, even supported by an Authorization Letter (described in the EPA website Draft Authorization Table) is unnecessarily confusing for all interested parties.

Response 3

Mass Rivers' comment implies that should MassDEP abandon having these facilities eligible for coverage under a general permit that EPA would follow suit. That is not accurate.

MassDEP is not authorized to issue NPDES permits, either individual or general. MassDEP, since the cessation of joint permitting with EPA, has issued an accompanying Surface Water Discharge (SWD) Permit in accordance with 314 CMR 3.00 for every NPDES permit issued. The type of

MassDEP's SWD Permit reflects the type of NPDES permit issued by EPA, whether it be individual or general.

Mass Rivers alleges that MassDEP's issuance of individual permits will simplify the process when that is not the case at all. Under Mass River's scenario, facilities eligible for coverage under the NPDES general permit would receive authorizations from EPA and a separate and distinct, lengthy MassDEP-issued individual permit with the same permit limitations and conditions as contained in the authorizations and NPDES General Permit.

Comment 4

Massachusetts lacks authority to grant this kind of permit:

MassDEP's General Permit regulation at 314 CMR 3.06 does not grant authority for MassDEP to issue a surface water discharge General Permit containing differing effluent discharge limits tailored to multiple specific WWTFs, as is being sought here by EPA and MassDEP for the 44 covered facilities.

The Surface Water Discharge Regulation covers General Permit regulations at 314 CMR 3.06, complementing EPA's General Permit regulation for NPDES permits at 40 CFR 122.28, states:

"The Department may issue a general permit that regulates one or more categories of surface water discharges and covers multiple dischargers who have properly applied for coverage under the general permit. The Department may issue a general permit jointly with EPA or on its own." 314 CMR 3.06(1).

"A general permit may be written to regulate one or more categories or subcategories of discharges or disposal practices or facilities, including within areas that correspond to geographic or political boundaries such as municipal or state political boundaries, sewer districts or sewer authorities, urbanized areas as designated by the federal Bureau of the Census, or any other appropriate division or combination of boundaries as determined by the Department." 314 CMR 3.06(2).

MassDEP's General Permit regulation for surface water discharges are designed to be completely in alignment with EPA's regulation, because discharges into federally regulated waters must be issued at the same time as EPA's NPDES permits (either jointly or separately).

According to EPA regulation 40 CFR 122.28(a)(2)(i)(C), "all" wastewater treatment facilities included in a General Permit must "require the same effluent limitations" (emphasis added). While MassDEP's regulations omit this specification, it is reasonable to assume that MassDEP would follow EPA's regulations in this instance, as it does in all other matters concerning General Permits. MassDEP's website, however, clarifies the application of this regulation with regard to submitting an NOI under a general permit:

"A general permit is not tailored to a specific facility but rather written to cover multiple dischargers with similar operations and types of discharges. Once issued, dischargers may request coverage, consistent

with the permit eligibility and authorization provisions. Dischargers covered under general permits know their applicable requirements before obtaining coverage under that permit.” (emphasis added).

It is reasonable to conclude that MassDEP has intended that WWTFs covered by general permits must all have the same discharge limits, in accordance with EPA regulations. MassDEP’s overall alignment with EPA’s General Permit regulations, this website clarification, and the absence of any specific language to the contrary in its General Permit regulation, leave no justifiable contrary interpretation of MassDEP’s General Permit regulation. **Therefore, MassDEP cannot issue this surface water discharge general permit under its own General Permit regulation due to the large number of differing effluent discharge limits tailored to specific facilities.**

The only permissible General Permit for WWTFs under MassDEP’s own regulation is one that does not contain tailored limits for specific facilities. Thus, the only way MassDEP can go forward here with a final General Permit under its own regulation is to remove all the facilities with specially tailored effluent discharge limits, leaving only those that have the “same” discharge limits.

Pursuant to MassDEP’s regulation at 314 CMR 306(2) allowing the agency to “exclude specified sources or areas from coverage,” Mass Rivers Alliance requests that the 26 WWTFs with TMDLs, and any others with specific discharge limits, currently included in this draft state General Permit be excluded from its coverage. Mass Rivers Alliance hereby incorporates by reference the explanation and documentation supporting this exclusion as stated in Mass Rivers’ comments on EPA’s draft General Permit for medium size WWTFs (Attachment B). These facilities are clearly more appropriately regulated under their existing individual permits.

Response 4

Nothing within the MassDEP Surface Water Discharge Permitting regulations, 314 CMR 3.00, states that all facilities covered by a particular general permit must have identical permit limitations and although MassDEP’s regulations closely reflect the requirements of EPA’s regulations, they should not be construed to be identical to nor to integrate the EPA regulations within 314 CMR 3.00. A number of general permits, such as the Dewatering Remediation General Permit, issue limits within the authorizations based on receiving water and/or dilution factors for certain pollutants. The exact same methodology was used in this general permit, resulting in permit limits that are identical to what would be required by an individual permit.

While MassDEP’s website does contain the language noted above (“A general permit is not tailored to a specific facility..”), the website is not a regulation. 314 CMR 3.06(8) states:

In lieu of requiring a discharger covered under a general permit to obtain an individual permit, the Department may direct such discharger to undertake additional control measures, BMPs or other actions to ensure compliance with the general permit, water quality standards, and/or to protect public health and the environment. The Department may exercise its authority to require the discharger to take the above actions by imposing a condition in the general permit to that effect, or by taking an enforcement action against the discharger, or by other means.

The regulation therefore permits the imposition of additional control measures, in this case, facility-specific discharge limitations, as noted in the EPA authorizations. As such, this MA general permit which includes by reference the NPDES general permit and the related authorizations is not contrary to the interpretation of the regulations.

Comment 5

Regarding the Draft 401 Certification:

MassDEP's draft 401 water quality certification for this General Permit fails to meet Section 401's requirements, with respect to the 26 WWTFs located in watersheds that are regulated under a TMDL. Because surface waters and groundwater within a watershed are inextricably connected, a NPDES permit within a watershed with at least one TMDL warrants additional scrutiny. MassDEP should amend the draft 401 certification to remove these 26 WWTFs from its coverage. The scope of a certifying authority's CWA Section 401 certification review and action is limited to assuring that the discharge from a point source into a water of the United States resulting from a federally licensed or permitted activity will comply with "water quality requirements," as defined in the rule. Any such certification that MassDEP makes with respect to any of the 26 WWTFs operating in watersheds with a TMDL are not grounded in data or other evidence. The most recent federal NPDES and state surface water discharge permits for these facilities were designed pursuant to their watershed's respective TMDL's adaptive management approach.

It is understood that at some point in the future the agencies will again assess whether the latest incrementally more restrictive discharge limits for the respective TMDLs have resulted in the river achieving Water Quality Standards or whether more restrictive limits or other actions are needed in the next round of discharge permits for these facilities. There is as yet no evidence or assurance that the effluent limitations in the current federal NPDES permits and state surface water discharge permits will produce receiving waters that meet their Water Quality Standards. EPA's understanding of this uncertainty is confirmed in the Fact Sheets for each respective permit, for example:

EPA recognizes the inherent uncertainty of projecting receiving water impacts given the complexity of receiving water conditions, particularly the extent to which, and pace at which, sediment phosphorus reductions will occur given the previous imposition of growing season limits and new non-growing season limits. EPA has concluded that it is reasonable, in light of this uncertainty, to continue to evaluate how the receiving water continues to respond to these new controls over the course of a permitting cycle. (p. 23, 2019 Hudson and Maynard permits Fact Sheet).

MassDEP, EPA Region 1, and Mass Rivers Alliance understand that implementing a TMDL is an iterative process, most of which included in this draft permit, have not reached their target water quality standards. Despite this understanding, the draft federal or state General Permits referenced herein fail to acknowledge this iterative process or set more restrictive discharge limits for the included facilities. The draft as currently written would actually undermine the adaptive management approach set forth in the individual facilities' TMDLs, as they drastically reduce or even eliminate monitoring requirements for all 44 covered facilities (see Detail Table 1 and Detail Table 2, Attachment A).

We strongly believe that MassDEP's draft 401 certification for EPA's NPDES General Permit here is not

believable, tenable, or legal with respect to the 26 WWTFs operating in a watershed with at least one TMDL. For these reasons, MassDEP must withdraw this draft 401 certification. All facilities operating under a TMDL must be removed from any subsequently issued 401 certification.

Response 5

MassDEP's Water Quality Certification, issued June 26, 2022, meets the requirements of Section 401 by ensuring that the permit limitations and conditions meet all applicable Massachusetts Surface Water Quality Standards and applicable TMDLs. MassDEP clarified the language in the final Water Quality Certification from the original draft to avoid any ambiguity. Please note that general permits can be issued to facilities discharging to water bodies subject to TMDLs.

Whereas MassDEP recognizes the adaptive management requirements of TMDLs, use of a general permit for these facilities ensures more frequent permit issuance, incorporating monitoring data from the permit cycle to establish authorization limitations for subsequent general permit issuances. Some minimum monitoring frequencies have been reduced for facilities that have consistent compliance. Nothing prevents facilities from additional monitoring.

B. Comments from Alison Field-Juma, OARS, dated April 21, 2022

Comment 6

Thank you for the opportunity to submit the following comments on the above-referenced draft 5-year General Permit covering specifically Wastewater Treatment Facilities (WWTFs) in Massachusetts with medium-sized discharges (1-5 mgd). These comments incorporate by reference those made in our comment letter to EPA Region 1 on EPA's parallel draft general permit, which has terms that are incorporated by reference in the MassDEP draft permit. Many of our comments on the EPA draft apply to the MassDEP draft. Here we will just address the additional specific matters covered by the MassDEP draft general permit referenced above. This permit, which applies to 44 medium-size WWTFs, would apply to three municipal facilities discharging to the Assabet River (Marlborough Westerly, Hudson and Maynard) and one discharging to the Concord River (Town of Concord). The Marlborough Westerly facility was excluded in this first draft general permit due to being under appeal, now resolved.

In addition to reviewing MassDEP's draft General Permit, we have reviewed EPA's draft General Permit, the permit's Fact Sheet, the draft Authorization Letters, and the underlying current permits from MassDEP and the EPA for the Assabet River plants—four different highly detailed documents for each of these three different facilities from each agency—which will be the focus of our comments. We share the concerns about these parallel federal and state general permits raised by Mass Rivers Alliance in its comments and strongly support the comments they are submitting. We will use the opportunity of this letter to provide a detailed assessment of the issues raised by MassDEP's draft General Permit for the Assabet River, which is one of our three watersheds. We are grateful to the EPA and Mass DEP staff who answered our questions as best they could, given the rules of the comment period, as we tried to understand the purpose and process entailed in this new approach to permitting.

Below we provide some background on our organization, the Assabet River and the downstream Concord River. We then provide a detailed discussion of the draft permit's provisions, and those of the draft Authorization Letters provided to the permittees, whose contents we were not aware of until well into the comment period.

OARS is a non-profit watershed organization established in 1986 to protect, preserve and enhance the natural and recreational features of the Assabet River, its tributaries and watershed. In 2011 the Sudbury and Concord Rivers were added to our mission. OARS has some 900 members and has operated a successful quality-controlled, water quality monitoring program with an EPA and MassDEP-approved QAPP since 2000, a biomass monitoring program, a large-scale volunteer annual river clean-up, and a variety of educational workshops, canoe trips and other activities designed to foster enjoyment and good stewardship of the rivers. OARS provides detailed annual Water Quality Reports to the local municipalities, the public and regulators (see: www.oars3rivers.org/river/waterquality). OARS' Water Quality Monitoring Program Final Report: 2018-19 Field Season is available at this site, and data for 2020 and 2021 have been provided to EPA Region 1 and MassDEP through EPA's data portal. OARS provides data used by MassDEP in developing the Integrated List of Waters under Sections 303(d), 314 and 305(b) of the Clean Water Act, by Region 1, by municipalities and by scientists and the public. It is the Clean Water Act that has made possible all the progress seen thus far. Within that framework, the municipalities, non-profits, citizens and state and federal government have collectively invested a tremendous amount of effort and money to get us to this point today, and all these stakeholders need to be able to continue to fully participate as provide under the Act. The Assabet and Concord Rivers are part of the federally-designated Sudbury-Assabet-Concord Wild and Scenic River.

Response 6

MassDEP acknowledges this comment and appreciates the monitoring data that OARS has provided and continues to provide to assist MassDEP's mandate.

Comment 7

We understand that the main goal of this general permit approach is to reduce the backlog of permitting that has resulted in substantial delays in permit reissuance. We share this concern: for the facilities on the Assabet River, the five-year permits have just now been renewed after 15-17 years. As noted below, the four Assabet River WWTFs are under a TMDL for phosphorus that requires adaptive management—a process that becomes increasingly difficult to be done effectively the longer the time that elapses between permit reissuance. We are concerned, however, that this proposed General Permit has such serious flaws that it fails to comply with the TMDL and fails to protect the water quality of the Assabet and Concord Rivers. Additionally, MassDEP simply does not have the regulatory authority to issue this kind of general permit.

Response 7

See Response 2.

Comment 8***The Assabet and Concord Rivers***

The Assabet River, once dubbed “the Cesspool of Massachusetts,” is now enjoyed by boaters, anglers, hikers and birdwatchers, and hosts many town conservation areas and the Assabet River National Wildlife Refuge on its banks. Yet major sections of the Assabet still suffer each summer and early fall from excessive nuisance aquatic plant growth that degrades recreation, aesthetics and wildlife habitat.

The Assabet River originates in Westborough and flows north through Marlborough, Northborough, Hudson, Stow, Maynard and Acton to its confluence with the Sudbury River in Concord. The Assabet contributes about half the flow of the Concord River, which then continues northward for 15.5 miles before emptying into the Merrimack River in Lowell. The Merrimack River discharges to the Atlantic Ocean in Newburyport, Mass. The Assabet River is classified as Class B – Warm Water, and the Concord River is classified as Class B – Warm Water, Treated Water Supply. The Concord River is the sole public drinking water source of the Town of Billerica.

The Concord River has had a notable history of recreational use, particularly fishing, swimming and boating, stretching back several centuries. Despite water quality impairments, Recreation, Scenery and Ecology were recognized as Outstandingly Remarkable Values of sections of the Assabet, Sudbury and Concord Rivers by Congress when these sections, collectively, were designated a Wild and Scenic River in 1999. RiverFest, an annual celebration of the three rivers, holds some 40 river-based events each year, from canoe trips to fishing classes. As the rivers’ popularity as a recreational resource has grown, area residents have become increasingly active in river stewardship.

The *Massachusetts Year 2018-20 Integrated List of Waters* lists the Assabet and Concord Rivers under Category 5 (Waters Requiring a TMDL). Segments of the Assabet remain impaired for Nutrient/Eutrophication Biological Indicators,” “Algae,” and “Dissolved Oxygen” (a result of eutrophication and essential for aquatic life). Due to TMDL-induced reductions in Total Phosphorus discharges from Assabet and Concord River point sources thus far, the Concord River was delisted in 2016 as impaired for Total Phosphorus—a major achievement.

However, the Assabet River does not meet its designated “Class B – Warm Water” water quality standard. In 2004 MassDEP published the Total Maximum Daily Load (TMDL) study for phosphorus for the Assabet River.¹ In 2005, EPA and MassDEP adopted a 2-step “adaptive management” approach to meeting the terms of the TMDL in which the two agencies were to jointly issue NPDES discharge permits to all four municipal wastewater treatment plants (WWTPs) discharging to the Assabet River, with phosphorus limits designed to be the first step toward meeting water quality standards. The second step was to be the next 5-year permit, to be issued in 2010, which was to complete the process and contain discharge limits that would enable the Assabet River to meet its water quality standard. In this period a study of phosphorus contributions by sediment behind the dams by the Army Corps of Engineers (“ACOE”) was completed, OARS continued monitoring water quality, and OARS and MassDEP monitored plant biomass and duckweed, respectively.

¹ *Assabet River Total Maximum Daily Load for Phosphorus, Report No: MA82B-01-2004-01*, 2004. See: <https://www.mass.gov/doc/final-nutrient-tmdl-report-for-the-assabet-river/download>

Although the second round of permits was not completed until 17 years after the first-round permits were issued (a delay of concern to OARS and the agencies), the reissued permits used the data from the ACOE dam study and OARS' monitoring to understand better how the river responded to phosphorus discharges from the facilities under with the first-round NPDES permits. The second round of permits (2019-22) were based on an analysis of all four facilities discharging to the river, how each influenced the receiving waters of all downstream facilities, and how a reduced 7Q10 affected the dilution factor all the way down the river, starting with a dilution factor of zero at the Westborough facility at the headwaters. As a result, the four final second-round permits included more stringent winter Total Phosphorus discharge limitations than the 2005 permits and added important monitoring provisions regarding DEHP and PFAS.² The DEHP monitoring was added only to the Town of Hudson permit and, on the Concord River to the Town of Concord's permit, due to the specific characteristics of their influent streams, illustrating the presence of significant differences between the four medium-sized facilities covered in this permit in the SuAsCo watershed.

This is the essence of "adaptive management" – making periodic, highly specific changes to NPDES permits based on the conditions of this particular river and its permittees. But no one involved is claiming that this reduction in the winter TP limit will solve the Assabet River's eutrophication problem. According to the TMDL (p. 26), "a substantial reduction in total biomass of at least 50% from July 1999 values is considered a minimum target for achieving designated uses." This has not yet been achieved; so the adaptive management approach required by the TMDL is still in force.

Response 8

See Response 5.

Comment 9

OARS' COMMENTS ON THE DRAFT NPDES PERMIT:

1. MassDEP's General Permit regulation at 314 CMR 3.06 does not allow MassDEP to issue a surface water discharge General Permit of the type that EPA and MassDEP are each seeking separately to issue here, namely, one that contains differing effluent discharge limits that are tailored specifically for a significant number of the 44 medium size WWTFs included in its coverage. Two of the WWTFs that have been assigned specifically tailored discharge limits are those in Hudson and Maynard.

MassDEP's General Permit regulation at 314 CMR 3.06 (which is part of its Surface Water Discharge Regulation at 314 CMR 3.00) appears to be drafted to mirror and complement EPA's General Permit regulation for NPDES permits at 40 CFR 122.28. Its basic provisions, which align fully with EPA's General Permit regulation, are as follows:

"The Department may issue a general permit that regulates one or more categories of surface water discharges and covers multiple dischargers who have properly applied for coverage under the general permit. The Department may issue a general permit jointly with EPA or on its own."
314 CMR 3.06(1).

² The 2005 Phase 1 NPDES permit limits for phosphorus were 0.1 mg/L Total Phosphorus in the growing season and 1.0 mg/L TP in the winter. The Phase 2 (2019-22) permits contain more stringent winter limits of 0.2 mg/L average monthly TP.

"A general permit may be written to regulate one or more categories or subcategories of discharges or disposal practices or facilities, including within areas that correspond to geographic or political boundaries such as municipal or state political boundaries, sewer districts or sewer authorities, urbanized areas as designated by the federal Bureau of the Census, or any other appropriate division or combination of boundaries as determined by the Department." 314 CMR 3.06(2)

Just as EPA's regulation allows it to "exclude specified sources or areas from coverage," 40 CFR 122.28(4)(ii), MassDEP's regulation at 314 CMR 306(2) allows it to "exclude specified sources or areas from coverage."

It is not surprising that MassDEP's General Permit regulation for surface water discharges would align fully with EPA's regulation, since for very practical reasons MassDEP's permits for surface water discharges into federally regulated waters – most waterbodies in the state – need to be issued either jointly or separately at the same time that EPA issues a NPDES permit. Having conflicting regulations could significantly complicate if not negate that joint or separate-but-simultaneous permit writing process.

What about the requirement in the EPA regulation at 40 CFR 122.28(a)(2)(i)(C) that "all" wastewater treatment facilities included in a General Permit must "require the **same** effluent limitations"? (Emphasis added.) There is nothing specific one way or the other in the MassDEP regulation about this. But there is also nothing in the regulation to suggest that DEP would be permitted to craft a general permit for wastewater treatment facilities that specifically tailored the effluent discharge limits for each facility, or even some of the facilities covered by the general permit.

DEP has, however, clarified this uncertainty in a helpful web page ([here](#)) commenting on the process for submitting an NOI under a general permit, and this web page states:

"A general permit is not tailored to a specific facility but rather written to cover multiple dischargers with similar operations and types of discharges. Once issued, dischargers may request coverage, consistent with the permit eligibility and authorization provisions. Dischargers covered under general permits know their applicable requirements before obtaining coverage under that permit." (Emphasis added.)

One can only conclude based on this commentary, the absence of any specific language to the contrary in its General Permit regulation, and MassDEP's apparent overall intention to design its General Permit regulation to align fully with EPA's regulation, that MassDEP has intended that WWTFs covered by general permits **must all have the same discharge limits**, just as EPA's regulations require. No contrary interpretation of MassDEP's General Permit regulation can be justified.

That being the case, then under its own General Permit regulation this draft MassDEP surface water discharge general permit cannot be issued as a final General Permit because it contains a large number of differing effluent discharge limits tailored to specific facilities. See Appendix E of the draft General Permit and compare the draft Authorizations for each facility. Two of the WWTFs listed with individually tailored permits are those in Hudson and Maynard. Such a permit does not comport

with the meaning of a “general permit” under MassDEP’s own regulation. The only permissible General Permit for WWTFs under MassDEP’s own regulation is one that does not contain tailored limits for specific facilities. Thus, the only way MassDEP can go forward here with a final General Permit under its own regulation is to remove all the facilities with specially tailored effluent discharge limits – including the WWTFs in Hudson and Maynard – leaving only those that have the “same” discharge limits. If this is not done, OARS must consider appealing this issue to MassDEP’s OADR and seek a stay of MassDEP’s General Permit.

Response 9

See Response 4.

Comment 10

3. Pursuant to MassDEP’s regulation at 314 CMR 306(2), which allows it to “exclude specified sources or areas from coverage,” OARS respectfully requests that all the Assabet River WWTFs currently included in this draft state General Permit be excluded from its coverage. OARS hereby incorporates by reference all the reasons supporting this exclusion that are stated in OARS’ comments on EPA’s draft General Permit for medium size WWTFs. These facilities are clearly more appropriately regulated under the Assabet River TMDL for Total Phosphorus, individual permits, and the adaptive management approach that all parties have been following since MassDEP issued the TMDL in 2004

Response 10

This comment references reasons outlined in OARS’ comments on EPA’s NPDES General Permit. Please refer to the EPA’s NPDES Response to Comments, Responses 224, 225, 226, 229, 230 and 233.

See Responses 7, 8 and 9.

Comment 11

OARS’ COMMENTS ON THE DRAFT 401 CERTIFICATION:

MassDEP’s draft 401 water quality certification for this General Permit fails to meet Section 401’s requirements, with respect to at least the WWTFs in Hudson and Maynard. Therefore, before this draft 401 certification is made final, it must be amended by deleting the Hudson and Maynard WWTFs from its coverage. The scope of a certifying authority’s CWA Section 401 certification review and action is limited to assuring that the discharge from a point source into a water of the United States resulting from a federally licensed or permitted activity will comply with “water quality requirements,” as defined in the rule. Any such certification that MassDEP makes with respect to any of the four WWTFs on the Assabet River is not grounded in data or other evidence, because these facilities are all the subject of a TMDL for Total Phosphorus; the Assabet River continues to exhibit eutrophic conditions and fails to meet its Class B water quality standards due to nutrients (e.g., not swimmable with excessive biomass); and the most recent federal NPDES and state surface water discharge permits for these facilities were designed pursuant to the TMDL’s adaptive management approach, which remains ongoing.

It is understood that at some point in the future the agencies will again assess whether the latest incrementally more restrictive discharge limits for Total Phosphorus have resulted in the river achieving Water Quality Standards or whether more restrictive limits or other actions are needed in the next round of discharge permits for these four facilities. There is as yet no evidence or assurance that the effluent limitations in the current Assabet River federal NPDES permits and state surface water discharge permits will produce a river that meets its Water Quality Standards. We all hope it will, but this cannot be assured. EPA's understanding of this uncertainty is confirmed by this statement it made in the Fact Sheets at p. 23 for the 2019 Hudson and Maynard permits:

EPA recognizes the inherent uncertainty of projecting receiving water impacts given the complexity of receiving water conditions, particularly the extent to which, and pace at which, sediment phosphorus reductions will occur given the previous imposition of growing season limits and new non-growing season limits. EPA has concluded that is reasonable, in light of this uncertainty, to continue to evaluate how the receiving water continues to respond to these new controls over the course of a permitting cycle.

MassDEP, EPA Region 1, and all stakeholders in the Assabet watershed understand that implementing this TMDL is an iterative process that has yet to reach its goal – achieving the Assabet River's Class B water quality standards. However, there is nothing new in the draft federal or state General Permits at issue here that provides any indication whatsoever that discharges from the WWTFs in Hudson and Maynard will be any different than they are now under their 2019 individual permits. These General Permits do not mandate any more restrictive discharge limits for TP at these two facilities. In fact, these draft General Permits would make it harder going forward to do adaptive management assessments of progress in addressing the eutrophic condition of the river, because they would reduce the monitoring for TP at these facilities from 13 times per month to 2 times per month.

For all these reasons, MassDEP's draft 401 certification for EPA's NPDES General Permit here is not believable, tenable, or legal with respect to at least the Hudson and Maynard WWTFs. We believe that MassDEP must withdraw this draft 401 certification for the same reason. The Hudson and Maynard facilities must then be remove (*sic*) from any subsequently issued 401 certification. If this is not done, OARS will have to seriously consider appealing this issue to DEP's OADR and seek a stay of the effective date of this 401 certification, which covers 44 facilities including Hudson and Maynard. It may also appeal this issue to federal court.

Response 11

See Response 5.

Comment 12

CONCLUSION:

We appreciate the intent of the proposed change in the permitting process to achieve efficiencies and hence reduce the NPDES and MassDEP permitting backlog for WWTFs. However, the proposed draft MassDEP permit not only appears to not achieve these goals but, at least for the Assabet River, also undermines the intent of the Commonwealth's Clean Waters Act to restore the attainable uses of our

rivers. We have all achieved so much through rigorous research and application of the Clean Waters Act, and collaboration and major investments by all stakeholders in implementing MassDEP's federally-approved TMDL for the Assabet River. We cannot support an approach that will undermine this progress and the end goal of a fishable and swimmable river.

Thank you for your work over several decades to restore the health of our rivers and watershed. We hope that these comments are useful.

Response 12

MassDEP acknowledges this comment but, as outlined in the Responses above, disagrees with OARS' conclusion that this permit fails to achieve the goals of reducing backlog and undermines the intent of the Commonwealth's Clean Waters Act.