



MASSACHUSETTS WATER RESOURCES AUTHORITY
Charlestown Navy Yard
100 First Avenue, Building 39
Boston, MA 02129

Frederick A. Laskey
Executive Director

Telephone: (617) 242-6000
FAX: (617) 788-4889
TTY: (617) 788-4971

January 3, 2017

Ms. Susan Studlien
Office of Environmental Stewardship
U.S. EPA Region 1
5 Post Office Square, Suite 100
Mail Code OES04-5
Boston, MA 02109-3912

Ms. Susannah King
NPDES Program Manager
Division of Watershed Management
Department of Environmental Protection
1 Winter Street
Boston, Massachusetts 02108

RE: Massachusetts Water Resources Authority
Permit Number MA 0103284
Submission Pursuant to Part I.8.d. – Contingency Plan Modifications

Dear Ms. Studlien and Ms. King:

Pursuant to Part I.8.d of the Massachusetts Water Resources Authority's ("MWRA") National Pollutant Discharge Elimination Program ("NPDES") Permit (Permit Number MA0103284), MWRA is proposing interim modifications to the *Massachusetts Water Resources Authority Contingency Plan Revision 1, May 2001* (Original attached to the permit as Attachment O) which are attached for your review. Under Part I.8.d., interim modifications to the Contingency Plan can be made at any time and do not require a modification to the NPDES permit. (See attached Memorandum dated September 5, 2002 by Jeffrey Fowley of the Environmental Protection Agency's (EPA) Office of Regional Counsel regarding changes to MWRA's permit-attached Ambient Monitoring Plan, for which a similar interim modification process is outlined in permit Section I.7.c.iii).

The Contingency Plan can be retrieved from MWRA's website at:
<http://www.mwra.state.ma.us/harbor/enquad/pdf/2001-ms-71.pdf>

The Contingency Plan ("CP") was developed and attached to the permit with the clear intention that it was to be a "living document." Therefore, EPA included in the permit a separate process for modifying the CP outside the permit modification process (Parts I.8.c and I.8.d). EPA, DEP, and MWRA used this process previously to revise the CP in 2000-2001. Appreciable changes were incorporated into the CP, but the permit itself was not modified.

MWRA is proposing interim changes to its CP at this time to change Caution Level thresholds for two parameters that have been studied extensively in response to multiple exceedances since outfall startup in September 2000. The two parameters are the seasonal abundance of *Phaeocystis pouchetii* ("Phaeocystis") in the nearfield water column, and diversity of the benthic community in nearfield sediments. Evaluations of the threshold exceedances, with which OMSAP has concurred, have indicated the exceedances resulted from natural fluctuations in Massachusetts Bay, do not represent degradation, and did not result from MWRA's discharge.

MWRA prepared a briefing justifying these changes ([attached](#)) and submitted it for comment to EPA and DEP's Outfall Monitoring Science Advisory Panel ("OMSAP") in advance of its October 27, 2016

meeting. At that meeting, OMSAP members voted unanimously to endorse these recommended changes, which also received unanimous support at the meeting of OMSAP’s Public Interest Advisory Committee, which convened immediately following the OMSAP meeting.

The proposed changes are:

- Delete the Contingency Plan Caution Level threshold for *Phaeocystis*; and
- Delete the upper range thresholds currently tested for infaunal diversity, as shown in Table 1 below.

Table 1. Historical results of infaunal benthic community monitoring compared with Contingency Plan thresholds (measured once a year since September 2000).

Parameter	Threshold range		Exceedances since September 2000
	Low	High*	
Total species	43.0	81.9	No
Log-series Alpha	9.42	15.8	No
Shannon-Weiner H'	3.37	3.99	2010-2014 (high)
Pielou’s J'	0.57	0.67	2010-2014 (high)
Percent opportunists	10% (Caution) 25% (Warning)		No

*High range thresholds (in Red) are proposed for deletion.

As stated in the briefing package and discussed at the OMSAP meeting, MWRA will report on the per-survey abundance of *Phaeocystis* in future *Contingency Plan Quarterly Reports*, and the retention of the low diversity thresholds (which have never triggered an exceedance) means infaunal diversity will be reported as well.

MWRA will follow this request for interim changes with a formal request for changes to the CP pursuant to Part I.8.c of its NPDES permit, if a new NPDES permit has not gone into effect by November 15, 2017.

If you have any questions or need any additional information please contact me at (617) 788-4359.

Sincerely,

Michael J. Hornbrook
Chief Operating Officer

Cc:

Environmental Protection Agency, Region I

Matthew Liebman (hard copy)

Todd Borci

National Marine Fisheries Service

Daniel Morris

Stellwagen Bank National Marine Sanctuary

Craig MacDonald

US Food and Drug Administration

Martin Dowgert

MA EOEEA

Kathy Baskin

MA Department of Environmental Protection

Kevin Brander

Nihar Mohanty

Cathy Vakalopoulos (hard copy)

MA Division of Marine Fisheries

Jack Schwartz

MA Dept of Public Health

Michael Moore

Cape Cod Commission

Tom Cambareri

Outfall Monitoring Science Advisory Panel

Robert Beardsley

Robert Kenney

Judy Pederson

Michael Shiaris

James Shine

Geoffrey Trussell

Juanita Urban-Rich

Public Interest Advisory Committee

Patty Foley

Hyannis Library

Ann-Louise Harries (hard copy)

MWRA Library

Elizabeth Steele (hard copy)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

Memorandum

Date: September 5, 2002

Subj: Potential Changes to MWRA Ambient Monitoring Plan

From: Jeffry Fowley, Office of Regional Counsel, EPA

To: Roger Janson, EPA (cc: Matt Liebman, Brian Pitt, Janet LaBonte - Deshaes, Ken Moraff - EPA; Steve Lipman, Pam Harvey - DEP; Andrea Rex, Chris John - MWRA) By memorandum dated July 15, 2002, Andrea Rex of the MWRA requested a legal opinion from the EPA regarding the procedures to be followed if the MWRA proposes changes to its Ambient Monitoring Plan (Attachment N to its NPDES Permit). This request was forwarded to me by Matt Liebman, and I am responding to it now.

For most changes, the procedures to be followed are similar to those followed in making the recent changes to the MWRA's Contingency Plan. A formal permit modification is not required. Rather, if the MWRA is seeking interim approval of changes, it must submit these changes to the EPA (and DEP) as specified in Part I.1.7.c.iii of the Permit. If the MWRA is seeking long term approval of changes, it must submit these on an annual basis as specified in Part I.1.7.c.i of the Permit. In either case, the MWRA must give public notice of the proposed changes pursuant to Part I.20.e of the Permit by describing them on its web site and in documents filed in the two repositories established pursuant to the Permit. In addition, prior to obtaining long term approval, the MWRA must publish a Notice describing the proposed changes and seeking public comment, in the Environmental Monitor. The Notice in the Environmental Monitor should be similar to the one published by the MWRA regarding proposed Contingency Plan changes on November 8, 2000, but should be improved by specifying EPA and DEP (as well as MWRA) contacts to which any comments should be sent, and by specifying that the public has 30 days to comment. Thus, a future Notice should read as follows:

PUBLIC NOTICE REGARDING PROPOSED CHANGES TO MWRA AMBIENT MONITORING PLAN: Pursuant to Section I.1.7.c of its National Pollutant Discharge System permit, the Massachusetts Water Resources Authority has submitted a list of proposed modifications to its Ambient Monitoring Plan to the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection, as follows: [Describe proposed changes]. To obtain more information on this proposal and the opportunities for public comment, please visit

the MWRA web site at [list] or contact [give MWRA contact, with phone number]. Comments and questions on these proposed changes also may be directed to Janet-Labonte-Deshals at the EPA, mail code- CPE, One Congress St., Boston, MA 02114, tel: 617-918-1667, and Steven Lipman at the DEP, One Winter St., Boston, MA 02108, tel: 617-292-5698. The EPA and DEP will consider any comments received within 30 days of the date of this Notice.

There may be cases in which proposed changes to the Ambient Monitoring Plan are so significant as to instead require a formal Permit Modification, as provided by Part I.1.7.c.v of the Permit. An example would be a proposal to terminate a large portion of the monitoring. However, this does not mean that a permit modification is required for every major revision to the Plan or whenever there is an objection to a proposed revision. The Ambient Monitoring Plan (like the Contingency Plan) was intended to be a "living document" that would continually be reviewed and revised based on the assessment of information and current scientific understanding. By providing for public comment and regulatory agency decision-making outside the context of a formal permit modification, the Permit clearly contemplates that the regulatory agencies may make decisions, including to agree or disagree with public comments, without needing to utilize the formal permit modification process.

However, the EPA cannot commit in advance that whatever changes the MWRA proposes will not require a formal permit modification. Rather, the EPA (and the DEP) need to reserve the right to require a formal permit modification, when proposed changes are submitted and after assessing the extent of the proposed changes.

Changes to the Ambient Monitoring Plan which do not require a formal permit modification can continue to be processed even after the Permit expires but remains in effect pursuant to 40 C.F.R. § 122.6. Approving or disapproving such changes is part of permit administration which the EPA is authorized to carry out by 40 C.F.R. § 122.6(b) even for expired permits. However, changes which require a formal permit modification can be processed by the EPA only during the term of the Permit - not after it has expired. Thus, if the MWRA wants to propose very large and controversial changes to the Ambient Monitoring Plan, it should do so prior to the expiration of the Permit or as part of its application for its next renewed Permit.