



April 22, 2024

BY EMAIL massdep.publiccommentnpdes@mass.gov

MassDEP
Attention: Cathy Coniaris
100 Cambridge St, Suite 900
Boston, MA 02114

From: Patrick Herron, Executive Director, Mystic River Watershed Association

RE: Tentative Determination to Adopt a Variance for Combined Sewer Overflow Discharges to Alewife Brook/Upper Mystic River Basin

The Mystic River Watershed Association (MyRWA) is a non-profit organization dedicated to the preservation and enhancement of the Mystic River Watershed. Its mission is to protect and restore the Mystic River, its tributaries, and watershed lands for the benefit of present and future generations and to celebrate the value, importance, and great beauty of these natural resources. This includes working to improve the water quality in the Mystic River and all of its tributaries.

Our organization has followed with great interest the mitigation measures applied to combined sewer overflows (CSOs) in the Mystic River watershed for several decades. During this time, we have worked with nearly every major public and private stakeholder concerned about this issue to advocate for the most effective and efficient possible mitigation measures and to monitor progress toward improved water quality in the rivers of the watershed. MyRWA has also worked with these parties to directly address the effects of pollution on the Mystic and its tributaries, marshaling thousands of citizen volunteers to clean up the banks of the river and remove invasive species from its waters. Our goal is to completely end the discharge of sewage into the watershed as soon as possible and, until that time, to minimize the effects of sewage discharge on water quality, human health, and public benefit from our surface waters.

In this matter, MyRWA is particularly concerned about the Alewife Brook. The Alewife is a regional recreation and environmental resource that has long been under assault from combined sewer overflows (CSOs). It is, in fact, the scene of the largest completely untreated CSO discharges of any freshwater river or stream in greater Boston. Many people use the Greenway Path in the Alewife Brook Reservation for recreation and to get to and from the Alewife MBTA Station. During some heavy rainstorms, when CSOs are releasing untreated sewage into the Alewife Brook, the brook overflows its bank into Arlington, covering parts of the Greenway Path with untreated human and industrial waste. This is an immediate and long-term concern.

Alewife Brook flows through environmental justice neighborhoods (as defined by MassEEA). According to the US-EPA's EJScreen mapping tool, Alewife-adjacent neighborhoods are among the top 10% in the country in terms of their exposure to and proximity to toxic wastewater in streams (using EPA's Risk-Screening Environmental Indicators methodology). The Alewife

Brook Reservation is the local state park for residents of these neighborhoods. A clean Alewife Brook would enhance their enjoyment of the park, provide more recreational opportunities and protect public health. The Tentative Determination does not indicate how MassDEP considered environmental justice in determining whether to issue the variance, the conditions required, or any appropriate mitigation measures.

MyRWA approaches this Tentative Determination with decidedly mixed feelings. It is disappointing in the sense that this proposed variance is a formal acknowledgment that we are not going to achieve Class B water quality standards in the Alewife Brook and Upper Mystic River for another five years despite much hard work and expense by the Massachusetts Water Resources Authority (MWRA), and the cities of Cambridge and Somerville and their ratepayers. At the same time, MyRWA offers its qualified support for a strengthened Final Determination because we believe that, with enhancements, the proposed variance provides the opportunity to maintain a sharp focus on CSO control and public health protection while completing the updated CSO planning required by the current variance.

The remainder of this letter provides MyRWA's comments on the elements of the Tentative Determination in the order in which they appear. We also provide comments on relevant parallel sections of the Fact Sheet that accompanies the Tentative Determination. While MyRWA's comments here focus on the Tentative Determination for the Alewife Brook/Upper Mystic River Basin, many of them are equally applicable to the Tentative Determination for the Lower Charles River/Charles Basin.

Basis for Variance

The Massachusetts Department of Environmental Protection (MassDEP) proposes to grant this Variance based on its determination that implementation of more stringent CSO controls to meet the underlying designated use and criteria at this time would result in substantial and widespread social and economic impact as specified in 314 CMR 4.03(4)(f) and 40 CFR 131.10(g)(6). In a number of respects, this determination is not well supported by the available record.

The finding rests on an August 8, 2023 letter from MWRA that offers little more than an inflation adjustment to a 18 year-old analysis. The underlying analysis does not consider whether CSO controls short of "system-wide elimination" would achieve water quality standards in any of the variance waters and what the cost of this level of control would be. It seems unlikely that all of the system elements included in MWRA's original 2005 cost estimate would be required to eliminate CSO discharges at some or perhaps many of the outfalls covered by the variance.

MyRWA also notes that the current variance (2019) assigns requirements and responsibilities for CSO discharges separately to the owners of the outfalls in the variance waters. As such, MassDEP should have required separate findings from MWRA, Cambridge, and Somerville. These three entities have different means of raising funds and additional regulatory environmental demands. MyRWA also notes that it is unclear whether the financial capability analysis performed by MassDEP aggregates the census-based household data at the municipality level to determine the impact on households. It is our understanding that each municipality has the flexibility to set different rates that could, for instance, cap the rates on low-income households.

While MyRWA considers this analysis to be deficient, if system-wide elimination of CSO is considered to be the threshold for this variance, then it is vital that there is a clear understanding of the affordability threshold and the analysis required for the updated control plan. As described further below, the affordability analysis required in the proposed variance conditions must comprise a brand new analysis that considers a range of alternatives, not merely another

update to the 2005 analysis. Furthermore, MWRA, Cambridge, and Somerville must each determine their own portion of the costs and their ability to fund their proposed updated CSO plans.

MassDEP notes that once approved, the Variance and its conditions will be incorporated into the NPDES permits for the MWRA and the Cities of Cambridge and Somerville. As such, the variance conditions must be written with an eye to enforceability. Several of the proposed variance conditions are deficient in this regard. Below, we will cite particular conditions that need to be improved. It is also unclear whether the variance conditions are automatically considered incorporated into the NPDES permits, or whether the permits need to be formally revised to incorporate the conditions.

MyRWA disagrees with MassDEP's conclusion that a five-year variance is needed. The development of the draft updated CSO plans and the reviews and approvals by MassDEP, EPA, and MEPA should be completed by the end of 2026 according to the Gantt chart submitted by MWRA in September 2022 as part of the request to extend the schedule. It makes sense that MEPA would be reviewing a draft plan (with alternatives) with input from MassDEP and outreach to the public, including Environmental Justice communities. That would leave sufficient time for MassDEP to issue another variance incorporating the approved implementation milestones by the end of August, 2027. We note that MWRA's letter reflects the same timing: "At a minimum, 8 months should be added beyond the new submission date for the Final Updated CSO Control Plans, bringing the Variances to at least August, 2027." Thus it appears that a three-year variance would be more appropriate.

Comments on Variance Conditions

A. Level of Required CSO Control During Variance

The final variance should make it clear that the CSO discharge limits in Exhibit D shall remain in effect during the term of the variance, regardless of whether the Court determines the original case to be closed during the variance period. We request that MassDEP note that outfalls CAM004 (2015) and CAM400 (2011) are now closed, so no CSO discharges are allowed at those outfalls.

The enforceability of this condition is seriously compromised by the "...allowance for any conditions that exceed Typical Year conditions." How will MassDEP determine whether or when the Typical Year conditions have been exceeded? Would it be rainfall in excess of an annual total of 46.8 inches? Or by more than 93 storms? MassDEP needs to clarify how this allowance will be determined in the Final Determination.

B. Receiving Water Quality Monitoring

MyRWA fully supports this condition.

C. CSO Performance Assessment

C.1 CSO Activations and Volumes

MWRA's supplemental report on activations and volumes, due to MassDEP and EPA by Dec 31, 2024, should be copied to the watershed advocate groups (i.e., MyRWA and Save the Alewife Brook).

C.2 Annual CSO Discharge Report

Similarly, the Annual CSO Discharge Reports by MWRA, Cambridge and Somerville should be copied to the watershed advocate groups. We suggest that the final clause at (ii) ["based on the most recently approved rainfall data"] be deleted or explained.

D. Notification to the Public of CSO Discharges and Impacts

Since we expect there will be very little to no improvement in how the sewage systems operate over the course of the variance, MyRWA believes that the public using the Alewife Brook Greenway and abutters of the Brook need much clearer warning when there are active CSO discharges, and for at least 24 hours after a discharge has ended (e.g., red light when discharging, yellow light for 24 hours after discharge ends). Subscriber-based notifications are insufficient for those who may be using the greenway. It is imperative to add requirements for MWRA, Cambridge, and Somerville to enhance notification by installing warning beacons or similar, highly visible signage when the outfalls on the Alewife Brook are discharging. MWRA, Cambridge and Somerville should be required to work together to agree on a common approach along the Alewife. We urge MassDEP to coordinate with the Department of Conservation and Recreation (MassDCR) to expedite any required approvals.

Furthermore, because we know that Alewife Brook is prone to localized flooding over the bank into Greenway paths in exactly the extreme precipitation events that activate CSOs (multiple events were documented in 2023), MyRWA urges DEP to consider another condition in addition to signage. MassDEP should require MWRA, Somerville, and Cambridge to engage MassDCR, local residents, and other stakeholders in a public engagement process with the goal of creating a plan to physically protect users of the Greenway in these flood conditions. Projects should reflect input from the community, but potential projects might involve elevating paths, or building boardwalks over frequently affected portions of path in order to reduce the likelihood of physical contact with CSO-contaminated water.

Other Actions to Minimize CSO Discharges

MassDEP should add a condition requiring Cambridge and Somerville to limit future increases in sewage flows to current combined sewers discharging to the Alewife Brook/Upper Mystic during the term of the variance. This could take the form of a prohibition on new hook ups to the combined system, or a prohibition on more than de minimis increases in current flows.

a. MyRWA notes that these conditions are only effective if they are enforced. Save the Alewife Brook has documented instances of failures of floatable controls at SOM001A. Odor control has also been an issue at manholes along the Greenway Path. MassDEP and EPA must commit to better enforcement of these measures.

MyRWA offers comments on the individual Additional System Optimization Measures below.

Exhibit A - MWRA

1. Summary of Metering Data for CSO and SSO Events.

MyRWA encourages MassDEP to make this a standing requirement, rather than just upon requests from MassDEP or EPA.

2. Regional Inflow and Infiltration Abatement Plan

Since I/I is a well-known contributor to overflows in the Alewife Brook and Upper Mystic, the required scope and implementation plan due within 90 days of the effective date of the variance, should require MWRA to analyze CSO events over the past 5 years in the Alewife Brook to identify instances where there was concurrent excess flow from separate sewer lines connecting to the Alewife Brook Sewer and/or Alewife Brook Conduit. Where there is such evidence, MWRA should be required to provide technical assistance and require communities contributing excess flow to prioritize this I/I work to reduce these flows. MWRA should identify how much I/I reduction will be achieved during the term of the variance and report annually on progress.

Specific Projects

The projects must include milestone dates and the status of the projects should be included in the annual discharge reports required at C.2. We request that the technical work on the third project - CAM401A metering and model calibration - be completed within 12 months and that a report be submitted no more than 90 days later.

Exhibit B - City of Cambridge

1. Summary of Metering Data for CSO and SSO Events.

MyRWA encourages MassDEP to make this a standing requirement, rather than just upon request from MassDEP or EPA.

2. Specific Projects

The projects must include milestone dates and the status of the projects should be included in the annual discharge reports required at C.2. We request that the technical work on the first project - CAM401A metering and model calibration - be completed within 12 months and that a report be submitted no more than 90 days later

Is there no I/I work Cambridge should be required to do?

Exhibit B - City of Somerville

1. Summary of Metering Data for CSO and SSO Events.

MyRWA encourages MassDEP to make this a standing requirement, rather than just upon requests from MassDEP or EPA.

2. Specific Projects

The projects must include milestone dates and the status of the projects in the annual discharge reports required at C.2.

F. Updated CSO Control Planning

The schedule approved by MassDEP on July 22, 2022 has been superseded. The first sentence needs to be revised to reflect the new schedule contained in the September 2022 letters from MWRA, Cambridge and Somerville and concurred on by MassDEP and EPA in May 2023.

MassDEP should require that all required analyses, reports and draft plans be copied to MyRWA and Save the Alewife Brook.

F.2 There is no reason or rationale provided for removing the language regarding green infrastructure that is included in the current variance at F.2. The following sentence should be included: "For the Cities of Cambridge and Somerville, use of Green Stormwater Infrastructure technologies shall be considered."

F.3. The first sentence should be revised to replace the minimum requirements language with text that reflects the public meetings and hearings included in the Gantt chart submitted by MWRA, Cambridge and Somerville in the request to extend the schedule. Part of the rationale for the extension was to be able to provide robust public participation. We appreciated the meetings that have been held to date.

We note that the Fact Sheet references a requirement for "...active public engagement from Environmental Justice communities.." (p. 12, 1st bullet). There is no such language in the Tentative Determination. We request that it be included in this condition.

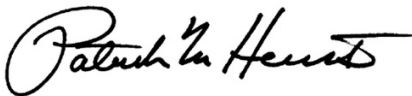
F.4. MyRWA appreciates the explicit requirement that the affordability analysis be consistent with EPA's 2023 guidance. We request that MassDEP explicitly require that MWRA, Cambridge and Somerville each conduct and submit affordability analyses. MWRA's cost should no longer be pegged to a "system wide elimination" threshold, but rather include only the costs associated with eliminating discharges at the outfalls in the variance waters.

F.6. MWRA's September 2022 request to extend the schedule contains a December 31, 2026 deadline for submitting the Final Updated CSO control plan, not January 31, 2027. The same request envisioned that MEPA review would occur during 2026, concurrent with, or overlapping with reviews of the Draft Plans by MassDEP and EPA.

In closing, we reiterate our vision that Class B water quality standards will one day be attained throughout the Mystic River watershed. We are hopeful that the proposed variance and its conditions represent the opportunity to set new goals for CSO control that get us significantly closer to that vision.

We thank MassDEP for the opportunity to comment on this issue which is of paramount importance to our membership.

On behalf of the Mystic River Watershed Association,

A handwritten signature in black ink, reading "Patrick Herron". The signature is written in a cursive, flowing style.

Patrick Herron, Executive Director

Cc:

J. Hall, MWRA

C. Woodbury, Cambridge

L. Hiller, Somerville

T. Borci, EPA Region 1

Charles River Watershed Association

Save the Alewife Brook

Mass Rivers Alliance

Representative Sean Garballey

Representative Dave Rogers

Senator Cindy Friedman