



Minutes
July 18, 2023
Remote via zoom

Attendees:

WAC Members: Kannan Vembu (Chair), Dan Winograd (Vice Chair), Adriana Cillo (BWSC), Craig Allen, Wayne Chouinard, George Atallah, James Guiod (AB), Karen Lachmayr, Martin Pillsbury, Stephen Greene, Taber Keally (NepRWA), Alfredo Vargas, **Jim Ferrara** (Members in attendance in **bold**)

Guests: Wendy Leo, Betsy Reilley, Denise Ellis-Hibbett, Sally Carroll, David Duest, Michael O'Keefe, Jeremy Hall, Stephen Estes-Smargiassi (all MWRA), Matthew Romero (MWRA Advisory Board), Gwen Speeth (Save the Alewife), David White (Arlington ConComm), Judy Pederson (OMSAP), Peter Frick (ADS), Erika Casarano (AECOM), Michele Barden, Alexa Sterling, Betsy Davis, Stephen Wolf (all EPA), Charlie Jewell, Amy Scofield (BWSC), John Rashcko, Elisheva Thoreen (OTA), Stephen Perkins (MyRWA), Dan Stoneking (Medford Water)

Staff: Andreae Downs (WAC)

VOTE: June minutes approved.

DISCUSSION

Deer Island Draft NPDES Permit

Betsy Reilley, Director, Environmental Quality, gave a short presentation on the draft permit & background issues.

Permit issued May 31. 90-day comment period (August 30 deadline). Includes CSO

permits and all 43 sewer communities in MWRA as co-permittees.

MWRA will comment. Comments are important to request changes to the permit and to retain the right to appeal.

EPA will respond to comments and issue a final permit on their own schedule. If EPA makes substantive changes, may open those up for comment before finalizing.

Some requirement changes:


1. Contingency plan requirement removed
2. Hard copies of reports not required
3. Not added—Nitrogen limits (but monitoring and reporting continued)
4. Added enterococcus, but made seasonal.

Elements that concern MWRA

- Co-permittees (all 43 communities)—and requirements that they may not be practically or financially able to meet (storm event planning, O&M) and possible third-party liability for other permittee actions.
- Major Storm Event Plans—important to do this, but methods written in as permit requirements are difficult or impossible—or may have unintended consequences. Funding costs for municipalities is a huge issue.
- Algae monitoring added into the permit—along with a new ambient monitoring program. MWRA concerned with rationale and cost of monitoring.
- Lower dry day flow—EPA has updated to reflect their standard process. MWRA can comply, but concerning because it may affect operations and CSO discharges. MWRA goal to get as much water as possible to the plant.
- New I/I reduction plans and requirements—MWRA supports lowering I/I but many of the requirements are costly and timelines may not be practical or possible.
- Blending not included (oversight)? Need to allow to avoid SSOs and CSOs & legal liability.


- OMSAP gone— per the permit, monitoring plans, data, and results will be submitted to EPA and DEP
- PFAS precursor testing (AOF)—test method is not fully approved. High detection limits may not detect at limits that are useful. Costly (estimates TK)

Requirements with significant costs for MWRA:



Requirements with significant costs for MWRA

- Major Storm Event Planning
- Monitoring for Harmful Algal Blooms
- Expanded PFAS Monitoring
- Disinfection and dechlorination for seasonal Enterococcus
- Dye Studies for CSO Outfalls (1x)
- Video Inspection of Deer Island Outfall (every 5 yrs)
- Costs for Co-permittees (\$\$ x 43)



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- Video inspections of the outfall every 5 years—have been done once before. Doing the entire outfall is expensive, and MWRA currently monitors with hydraulic modeling. Does video some of the diffusers, not all of them, and not all risers.

Member discussion:

Q: will EPA even listen to global suggestion like taking items out of the permit if they aren't related to the discharge from Deer Island?

A: the more detailed the comments can be, the more likely they will be effective, either a legal rationale or good technical reasons—but legal is most effective. Must be prepared

that EPA will not remove an item, so have to look at what would make a condition more palatable.

1. Major Storm events: Does WAC want just to comment on how this planning requirement affects MWRA, or also on how this affects communities?

--think it's important to mention community impacts because still want EPA to think about how co-permittees are involved in these other topics.

--maybe a summary at the end that co-permittees are impacted by all the above

--think really don't want co-permittees in the permit, so anything we can do to emphasize what a bad idea it is would be desirable.

MWRA: this level of requirements (for major storms) and this language was not in previous permits and has not gone through a public comment process. Implications are so big, and just not right to insert it wholesale into a permit, without having reviewed/discussed with utilities

--make point 6 point 3 because costs are important and should happen early
--perhaps look at ways to modify rather than remove this item

--discomfort to think we would be pushing back on climate planning—modify, not remove. It should be done, but should be practical and cost-effective.

--not comfortable going for high court speculation

--lean away for legalistic arguments that we didn't develop. Recognize the importance of what EPA is trying to do, but suggest a more practical and cost-effective method

--particularly important for co-permittees. Hunch that it is unrealistic for all the 43 communities to make flood plans. Don't think they all have the resources for that. May be unnecessary. Becomes moot if co-permittees come out of the permit, but EPA should at least adjust the unrealistic burdens on the towns.

--Planning like that should be done at the regional scale. It's a regional system. They need to be partners, of course, but it is inefficient to have each municipality developing plans.

--will need Federal infrastructure dollars to help. Will still need to pace the construction.

--Agencies like the Charles River Watershed Association are already working on

flood models. MAPC and the Neponset River Watershed also.

--weather-related items are regional and we will need regional solutions, not 43 individual fingers in the pie. That would delay implementation. EPA should be the leader here. EPA needs to do the full development here

--keep in mind that this is a wastewater discharge permit. Regional flooding is off-track

“pace of work” —but still want communities to do the work and do it as promptly as possible. OK with concrete goals and timelines. Current incentive is to get all the MWRA grant \$\$ they can and to reduce sewer charges. Currently, the draft permit doesn't have targets—but the plan the community makes would be the timelines. That's pretty good. Issue is with how quickly a community can put together a plan—

2. Co-permittees:

Q: Can WAC ask EPA to be more specific and eliminate possible liability of co-permittees for each other's actions?

A: EPA has listened to concerns, and said they are open to alternate language, but both MWRA and AB lawyers are examining whether the language EPA inserted into the permit is an adequate shield from third-party suits.

Matt Romero—Advisory Board is working with counsel, MWRA and BWSC on comments for the permit. Our focus is primarily with the co-permittee language. Also looking at the major storm language and the new requirements there. AB has also charged their lawyers with putting together a set of comments for communities to use as a jumping off point in making their own comments.

Modeled after MS4 permit—and so there's a parallel. But the in-house capacity is limited. Consultants are more expensive if you don't have the expertise in house to set limits. Communities will need a lot of help with this. And they won't necessarily want MWRA coming in to do it for them

--for co-permittee issue, WAC may want to be more measured than the AB because WAC is unsure that it's the best way to address EPA's concerns, but WAC has a strong history of sharing those concerns. Recall very early WAC comments before Deer Island was built was that over 50% of the flow was I/I. Some of them even referred to Deer

Island as a “white elephant” because the issue first and foremost is I/I removal. Language WAC may use “appreciate EPA thinking of new ways of reducing I/I and want them to continue to do so, concern that it could “compromise a superior wastewater service by requiring it to be a regulator. So, I think it’s appropriate that our comments about co-permittees and other things not be exactly what the advisory board says.

--O&M plans and exactly what they have to include is overly prescriptive—may also be a security issue putting out maps of exactly where everything is located publicly

--Does WAC want to use legal references crafted by lawyers for NACWA or the Advisory Board, or continue to stick to more readable language?

AB and MWRA: the EPA is most likely to listen to legal arguments.

--Initial thought that re-using language might not be as effective as unique language

3. Combining the CSO permits—this complicates the implementation of the plans, and includes the same liability issues as the other co-permittee issue

--this is even more complicated than the co-permittee issue. Much more intertwined

--Lots going on with the CSO program. MWRA demonstrating compliance at the end of the LTCP, and still have discharges that are not approved, variance for that. Variances change and have different durations: 3-5 years. Not final right now. Difficult if they are in this permit because legal activities are underway. It’s particularly confusing.

--putting what everyone is doing into one permit makes it difficult to adapt if the current effort goes in a new direction.

--effluent limits are appropriate for this permit. EPA may be overreaching in this section.

Other comments:

Harmful Algal blooms—particularly the rapid response/reporting for those blooms that have time-consuming, expensive tests.

OMSAP—how to modify the monitoring plan without it?

Judy Pederson—OMSAP elimination is a great concern. Support a regional look at MassBay and all Mass waters, including other dischargers. Would be helpful.

It took OMSAP over a year to develop a monitoring plan initially—consultants, agencies, scientists and public input & review. Complicated to find specific questions & then a plan to address those. Just part of a survey that found subtropical species in New Jersey. Not monitored earlier, so not known.

Needs a report and someone to receive it and review it.

WAC feels paramount that there be a Science Advisory Panel involved. On page 56 of permit asks MWRA to create a monitoring plan, but needs a mechanism to review the plan and make changes.

It's a 5-year permit, and the current permit is 23 years old—also was a 5-year permit. But the weather is changing quickly—hot oceans off Florida, for instance, and perhaps there needs to be a more nimble way to modify the monitoring plan.

MWRA will comment, but WAC needs to make its own comment. MWRA would like its permit to be less unique & more mainstreamed with other permits. But lots of things are a lot bigger than MWRA, like climate change—want the permit right-sized to fit MWRA and its discharge. Have provided a lot of information for the scientists and others. But when is it MWRA's job to provide this and when is it time for others to take it over?

The Mass. Bays National Estuary Partnership¹ is interested in taking this function on, and MWRA would support that.

Monitoring plan drops some elements of the current plan. Needs to be updated to reflect what remains that the HABs. But only 30 days to develop a plan. So may be just copying what's in the permit—no scientific involvement or public involvement possible in that

¹ <https://www.mass.gov/orgs/massachusetts-bays-national-estuary-partnership>

time. EPA also requires developing a plan, but then tells MWRA what's to be in the plan.

In early years of current permit, there was a lot of discussion about the process for modifying it that would allow modification even between permits. Includes scientific and public comments. Draft permit doesn't have any of that. EPA gets back to MWRA on whether modifications are OK.

PFAS testing—don't want to get into the legal details, but can comment on additional cost—also how to modify the test, if this one is ineffective. It should include information that is useful.

State permit doesn't specify at test

we could use the other groups' research to enlighten our comments, so EPA knows that WAC knows what we are talking about.

--when refer to language want retained, copy out the language.

--MWRA will let us know if we need two comment letters or just cc DEP on the EPA comments (update – can cc DEP)

--water conservation—MWRA will still provide conservation materials, but permit requirement is redundant, according to EPA (in fact sheet)

Next **WAC meeting** Wednesday August 16, 10:30 am.

Virtual. Just on the Deer Island Draft Permit.

--since doing 2 summer meetings, maybe remove a meeting or two in the winter?

--two tours planned. In-person, so expect lower attendance.