



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

SEP 04 2019

The Honorable Joseph A. Curtatone
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

Re: In the Matter of the City of Somerville, Massachusetts
Administrative Order Docket No. CWA-AO-R01-FY19-27

Dear Mayor Curtatone:

Enclosed is an Administrative Order issued by the U.S. Environmental Protection Agency pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act, 33 U.S.C §§ 1318(a) and 1319(a)(3). The order has been revised from the draft previously shared with the City based on discussions at an August 12, 2019 meeting and subsequent conversations between the City and EPA's technical staff and legal counsel. We believe that this order addresses the concerns raised by the City while establishing a road map and schedule for the City to achieve compliance with its federally issued permits and the Clean Water Act.

We intend to continue to work cooperatively with the City in its efforts to comply with the Clean Water Act. Your staff should feel free to contact Alex Rosenberg at (617) 918-1709 regarding any technical issues relating to the order. Legal issues may be directed to Tonia Bandrowicz, Senior Enforcement Counsel, in EPA's Office of Regional Counsel at (617) 918-1734.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen McGuire".

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

cc (electronic only):

David Shapiro, Assistant City Solicitor, Somerville
Richard E. Raiche, Director Infrastructure & Asset Management, Somerville
Kevin Brander, Mass DEP
Tonia Bandrowicz, EPA
Alex Rosenberg, EPA

Enclosure: Administrative Order

**United States Environmental Protection Agency
Region I - New England**

IN THE MATTER OF)	DOCKET NO. CWA-AO-R01-FY19-27
)	
City of Somerville, Massachusetts)	
NPDES Permit No. MA0101982)	
)	ADMINISTRATIVE COMPLIANCE
)	ORDER
Proceedings under Sections 308 and)	
309(a)(3) of the Clean Water Act)	
33 U.S.C. §§ 1318 and 1319(a)(3))	

I. STATUTORY AUTHORITY

The following Findings are made and ADMINISTRATIVE COMPLIANCE ORDER (“Order”) issued pursuant to Sections 308 and 309(a)(3) of the Clean Water Act (the “Act”), 33 U.S.C. §§ 1318 and 1319(a)(3). Section 309(a)(3) of the Act grants to the Administrator of the U.S. Environmental Protection Agency (“EPA”) the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318, and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System (“NPDES”) permit, including the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, issued under Section 402 of the Act, 33 U.S.C. § 1342. Section 308 of the Act, 33 U.S.C. § 1318, authorizes EPA to require the submission of any information necessary to carry out the objectives of the Act. These authorities have been delegated to the EPA, Region I Administrator, and, in turn, to the Director of the EPA, Region I Enforcement and Compliance Assurance Division (“Director”).

The Order herein is based on findings of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the conditions of NPDES Permit No. MAR041082 and MA0101982. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Order provides a schedule for compliance that the Director has determined to be reasonable.

II. DEFINITIONS

Unless otherwise defined herein, terms used in this Order shall have the meaning given to those terms in the Act, 33 U.S.C. §§ 1251 *et seq.*, the regulations promulgated thereunder, and applicable NPDES permits.

III. FINDINGS

The Director makes the following findings of fact:

1. The City of Somerville, Massachusetts (the “City” or “Somerville”) is a “municipality,” as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4), established under the laws of the Commonwealth of Massachusetts, and, as such, is a “person” under Section 502(5) of the Act, 33 U.S.C § 1362(5).
2. The City is a customer community of the Massachusetts Water Resources Authority (“MWRA”)¹ and does not operate its own wastewater treatment facility. The City is the owner and operator of a sanitary collection system that conveys the City’s residential, commercial, and industrial sewage to the MWRA (the “Collection System”). The City’s Collection System includes both separate sanitary sewer pipes as well as combined sewer pipes that carry both sanitary waste and storm water.
3. The City is also the owner and operator of a Municipal Separate Storm Sewer System (“MS4”), which is comprised of a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm

¹ The MWRA is a public authority established by an act of the Massachusetts Legislature in 1984 to provide wholesale water and sewer services to 2.5 million people and more than 5,500 large industrial users in 61 metropolitan Boston communities.

drains) designed to collect, convey, and discharge stormwater to receiving waters.

4. Pursuant to Section 402(p)(6) of the Act, 33 U.S.C. § 1342(p)(6), on December 8, 1999 (64 Fed. Reg. 68722), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth NPDES permit requirements to address stormwater discharges.

5. Pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26, on April 18, 2003, EPA issued a NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems for Massachusetts (MAR041082) (“2003 General Permit”), that was reissued on April 4, 2016 (“2016 General Permit”).

6. The City sought and, on September 17, 2003, received coverage under the 2003 General Permit. On September 28, 2018, the City submitted a Notice of Intent (NOI) for coverage under the 2016 General Permit. By letter dated December 7, 2018, EPA notified the City that its NOI under the 2016 General Permit required revisions. Through email correspondence on April 24, 2019 the City was given notice that the NOI was complete. On June 3, 2019 the City submitted comments on its NOI during the public comment period and EPA appended those comments to the revised NOI on June 4, 2019. Coverage under the 2016 General Permit was granted on June 4, 2019.

7. The 2003 and 2016 General Permits authorize the City to discharge from the MS4 outfalls listed in its applications, in accordance with the conditions of the General Permit.

8. The City’s application for coverage under the 2003 General Permit lists 12 outfalls and the application for coverage under the 2016 General Permit lists 18 outfalls from the City’s MS4 that discharge to either the Mystic River or Alewife Brook which drains to the Mystic River. The Mystic River, in turn, drains to Boston Harbor, and the Massachusetts Bay. All of the

surface waters listed in this paragraph are “navigable waters” under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

9. Both the Mystic River and Alewife Brook are surface water bodies designated as Class B pursuant to the Massachusetts Surface Water Quality Standards, 314 C.M.R. § 4.00.

10. Part I(B)(2)(j) of the 2003 General Permit and Part 1.3 of the 2016 General Permit specifically provide that discharges of stormwater mixed with non-stormwater are not authorized, unless the discharge is in compliance with another NPDES permit or allowable under Part I(F) of the 2003 General Permit and Part 1.4. of the 2016 General Permit.²

11. Part I(B)(2)(k) of the 2003 General Permit and Part 2.1 of the 2016 General Permit specifically provide that discharge of stormwater that would cause or contribute to instream exceedances of water quality standards are not authorized.

12. Fecal coliform bacteria, *Escherichia coli* (“*E. coli*”) bacteria, enterococcus bacteria, and sewage are “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

13. Since January 2007, the Massachusetts Surface Water Quality standard for *E. coli* bacteria in Class B water bodies has been a geometric mean of samples collected within the most recent six months of not more than 126 colony forming units per 100 milliliters (“cfu/100ml”) typically based on a minimum of five samples, with no single sample exceeding 235 cfu/100ml.³ Alternatively, the geometric mean of all enterococci samples taken within the most recent six

² Part I(F) of the 2003 General Permit and Part 1.4. of the 2016 General Permit authorizes 18 categories of non-stormwater discharges provided that it has been determined by the permittee that the discharges are not significant contributors of pollutants to the MS4. These categories include water line flushing, landscape irrigation, diverted stream flows, and rising ground waters. In addition, discharges or flows from firefighting activities occurring during emergency situations are authorized as allowable non-stormwater discharges, unless identified by EPA as significant sources of pollutants.

³ 314 CMR 4.00 MA - Surface Water Quality Standards - Class B Waters.

months shall not exceed 33 cfu/100ml typically based on a minimum of five samples and no single sample shall exceed 61 cfu/100ml.

14. The MS4 outfalls from which the City discharges to Alewife Brook and the Mystic River are “point sources,” as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

15. On July 4, 2014 EPA personnel collected surface water quality samples, in accordance with an EPA-approved Quality Assurance Project Plan, from Somerville MS4 outfalls to Alewife Brook located beneath Massachusetts Avenue bridge crossing (Sample “MassAve”) and at the Broadway bridge crossing (Sample “Ale02”). Analyses indicated that the discharge from Ale02 exceeded the Massachusetts Surface Water Quality standards single sample standard for *E. coli* bacteria and enterococci bacteria for Class B Waters. The resulting data, summarized in Attachment 1, demonstrate that the City is discharging stormwater mixed with non-stormwater containing *E. coli* and enterococcus bacteria through its MS4 into Alewife Brook. Both discharges were also analyzed for, and found to contain, selected pharmaceutical compounds. The presence of the specific pharmaceutical compounds in these samples provides evidence that the sources of the bacterial water quality exceedances are of human origin and are due to the presence of sanitary sewage.

16. Somerville has collected water quality samples at multiple outfalls from its MS4 as a requirement of a prior Massachusetts Department of Environmental Protection (“MassDEP”) enforcement action (MassDEP Unilateral Administrative Order UAO-NE-10-1N004). Analyses of samples collected by Somerville on January 5, 2011, included in the City’s MS4 Illicit Discharge Detection And Elimination (“IDDE”) report dated August 29, 2014, indicate that the discharges from the outfalls SD7 (Alewife @ Broadway into Alewife Brook), SD9 (Alewife @

High Brook) and SD31 (60 Pearson Road into Medford's MS4) from the Somerville MS4 have exceeded the Massachusetts Surface Water Quality standards single sample standard for *E. coli* bacteria and or enterococci bacteria for Class B Waters. Additionally, City contractors collected two rounds of samples on December 12 and 13, 2013 and May 7, 2014. Results of the sample analysis from Outfalls SD7, SD8 (Alewife @ Powder), SD9, SD11 (Alewife @ Woods), SD25 (Mystic @ Mt. Vernon), (SD28 (Crest Hill @ Shore), and SD31 indicate the MS4 discharges exceeded the Massachusetts surface water quality standards single sample standard for *E. coli* bacteria and or enterococci bacteria for Class B Waters. These data demonstrate that Somerville is discharging stormwater mixed with non-stormwater containing *E. coli* and/or enterococcus bacteria through its MS4, into Alewife Brook, the Mystic River and the City of Medford MS4 and in turn into the Mystic River.

17. Discharges of pollutants from Somerville's MS4 include waste streams that are not "stormwater" as defined in 40 C.F.R. § 122.26(b)(13) and are not included in any of the 18 categories of allowable non-stormwater discharges under Part I(F) of the 2003 and Part 1.4. of the 2016 General Permits. Such discharges are specifically listed in Part I(B)(2)(j) of the 2003 and Part 1.3 of the 2016 General Permits as not authorized by the General Permit and are not authorized by any other NPDES permit or any other provision of the Act.

18. The data demonstrate that discharges of pollutants from the City's MS4 identified above may cause, or contribute to, in-stream exceedances of water quality standards. Such discharges are specifically listed in Part I(B)(2)(k) of the 2003 General Permit as not authorized, nor they authorized by any other NPDES permit or any other provision of the Act.

19. The City's unauthorized discharges of pollutants from its MS4 to the Mystic River and

Alewife Brook have occurred in violation of the 2003 General Permit and, therefore, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

20. Based on past sampling, and unless corrective action is taken, the City will continue to have unauthorized discharges from its MS4 in violation of the 2016 General Permit.

21. Based on an EPA inspection conducted on February 25, 2019 and based on the City's revised 2016 permit application dated June 3, 2019, EPA finds that the City has not enacted an Illicit Discharge Detection and Elimination ("IDDE") program that fully complies with the 2003 and 2016 General Permits (Part II.B.3. and Part 2.3.4. respectively), nor has it prepared erosion and sediment control and post-construction plans and authorities that are in compliance with the 2003 and 2016 General Permits (Part II.B.4./Part II.B.5. and Part 2.3.5/2.3.6.respectively).

22. On July 11, 2012 EPA issued NPDES permit MA0101192 ("NPDES Permit") to the City for discharges from three City owned Combined Sewer Overflow ("CSO") outfalls. Among other things, the NPDES Permit required the City to properly operate and maintain all facilities and system of treatment and control and related appurtenances.

23. Based on February 25, 2019 EPA audit findings and the City's November 16, 2018 sanitary sewer overflow report EPA finds that the City has not adequately operated and maintained its Collection System which has contributed to unauthorized discharges to navigable waters as defined in the Clean Water Act, including the Mystic River.

24. The City's failure to adequately operate and maintain all facilities and systems of treatment and control and related appurtenance is in violation of its NPDES Permit and, therefore, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

IV. ADMINISTRATIVE ORDER

Accordingly, pursuant to Sections 308 and 309(a)(3) of the Act, the Director hereby orders the City to undertake the following actions:

Illicit Discharge Detection and Elimination (“IDDE”) Program

1. By June 30, 2020, the City shall enact an illicit discharge investigations and elimination ordinance as described in Section 2.3.4 of the 2016 General Permit. This ordinance shall be included on the City’s website and a link to the website shall be submitted to both EPA and MassDEP.
2. The City shall inspect and sample its MS4 outfalls and MS4 discharges to other municipalities’ MS4s or non-City owned outfalls, in accordance with the requirements below and those in the 2016 General Permit. The City shall utilize the following IDDE screening thresholds as guidelines for its analysis of the data generated for each field sample:
 - a. Bacteria: Class A or B waters - *E. coli*: greater than 235 coliform forming units /100 milliliters (“cfu/100 ml”) and/or enterococcus: greater than 61 cfu/100 ml; Class SA or SB waters – enterococcus: greater than 104 cfu/100 ml.
 - b. Surfactants: Equal to or greater than 0.25 milligrams per liter (“mg/l”) (via field kits) or 0.1 mg/l via laboratory analysis.
 - c. Ammonia: Equal to or greater than 0.5 mg/l.
 - d. Chlorine: Greater than non-detect (0.02 mg/l method detection limit).
3. By June 30, 2020, the City shall submit to EPA and MassDEP a Preliminary IDDE Plan and schedule for screening and monitoring of all MS4 outfalls and MS4 discharges to other municipalities’ MS4s or non-City owned outfalls, investigation of Sub-Catchment areas, and

identification and removal of illicit discharges. The Preliminary IDDE Plan shall include a schedule for the completion of dry-weather sampling inspections (less than 0.1 inches of rain in the preceding 48 hours and no significant snowmelt) and wet-weather sampling inspections. Samples shall be analyzed for enterococcus bacteria, *E. coli* bacteria, surfactants, ammonia, total residual chlorine, temperature, conductivity, and salinity using instrumentation defined in Tables 1 and 2 of EPA Region 1's *EPA New England Bacterial Source Tracking Protocol*, dated January 2012 Draft ("*Tracking Protocol*") (included as Attachment 2 to this Order). The City shall maintain detailed and accurate records of the date and time that sampling was conducted and the weather conditions both during, and in the 48 hours prior to, each sampling event. For sub-catchment areas, such as those draining to outfalls 7, 9 and 31, where the City intends to reinitiate IDDE activities after the completion of sewer rehabilitation construction projects, the City must include in the preliminary IDDE Plan the specific infrastructure work as a placeholder within the sampling schedule.

4. Upon submission to EPA and MassDEP, the City shall immediately and continuously implement the Preliminary IDDE Plan. The City shall incorporate any comments provided by EPA and MassDEP into the Preliminary IDDE Plan unless the City objects to one or more of such comments, in which case the parties will enter into informal discussions for a period of 30 days (or a longer period as agreed to by the parties). If, following such discussions, the City continues to object to incorporating certain comments into the Preliminary IDDE Plan, the City may seek federal judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-708, such review being limited to the disputed comments.

5. By December 31, 2021, the City shall submit to EPA and MassDEP a Final IDDE Plan

for any remaining screening and monitoring of all MS4 outfalls and MS4 discharges to other municipalities' MS4s or non-City owned outfalls, investigation of Sub-Catchment areas, and identification and removal of illicit discharges

6. Upon submission to EPA and MassDEP, the City shall immediately and continuously implement the Final IDDE Plan. The City shall incorporate any comments provided by EPA and MassDEP into the Final IDDE Plan unless the City objects to one or more of such comments, in which case the parties will enter into informal discussions for a period of 30 days (or a longer period as agreed to by the parties). If, following such discussions, the City continues to object to incorporating certain comments into the Final IDDE Plan, the City may seek federal judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-708, such review being limited to the disputed comments.

7. The Preliminary and Final IDDE Plan submitted pursuant the previous paragraphs shall be consistent with EPA Region 1's *Tracking Protocol*, the 2016 General Permit and this Order. The City shall update the Final IDDE Plan, if necessary, to comply with NPDES permits issued or made applicable to the City in the future. The City shall utilize the screening thresholds listed in Section IV, Paragraph 2 to prioritize all MS4 drainage Sub-Catchment areas for IDDE investigations. For purposes of this Order, the "Date of Verification" of an illicit discharge shall be the date on which the City has identified a point of entry from a specific location or address that contributes wastewater flow to the MS4. In addition, the Preliminary and Final IDDE Plan shall include:

- a. An MS4 Sub-Catchment area map showing the boundaries of each Sub-Catchment area and each associated MS4 outfall or interconnection;

b. A prioritization of all Sub-Catchment areas based on all information and data available, including EPA and City monitoring results and applicable Total Maximum Daily Loads (“TMDLs”) for impaired waterbodies on the applicable EPA-approved Massachusetts CWA § 303(d) Integrated List of Waters;

c. An illicit discharge removal and abatement plan that shall contain the following schedule for removal of illicit discharges:

i. illicit discharges shall be removed within sixty (60) Days of the Date of Verification, except as circumstances require an alternative schedule in accordance with Section IV, Paragraph 7(b)(i).

ii. If the City cannot remove an illicit discharge within sixty (60) Days of the Date of Verification, or within sixty (60) Days of the Effective Date for illicit discharges verified before the Effective Date, the City shall submit for EPA approval a schedule to remove the illicit discharge(s) as expeditiously as possible unless justification for a longer timeframe can be made due to systematic problem (e.g. sanitary sewer exfiltration migrating through underdrains, extensive construction requiring procurement under Massachusetts General Laws, etc.). The City shall meet milestones in such schedule unless EPA responds to the submitted proposal with a different schedule. Schedules for removal of verified illicit discharges shall be consistent with the following:

1. If the City determines that the removal of the illicit discharge is the responsibility of the property owner, the City shall notify the property

owner in writing, sent both by certified mail/return receipt requested and regular mail, that it is responsible for eliminating the illicit discharge.

2. If the City determines that removal of the illicit discharge is the responsibility of the property owner, and the property owner has not eliminated the illicit discharge, within sixty (60) Days of the Date of Verification, or within sixty (60) Days of the Effective Date for existing verified illicit discharges, the City or its legal department shall send the property owner a letter that notifies the property owner of its responsibility to remove the illicit discharge as expeditiously as possible, the legal consequences of its failure to do so, and details the range of available enforcement options from penalties to terminating service as specified in the City's IDDE ordinance drafted according to Section IV, paragraph 1.

3. If the City determines that removal of the illicit discharge is the responsibility of the property owner, and the property owner has not eliminated the illicit discharge within ninety (90) Days of the Date of Verification, or within ninety (90) Days of the Effective Date for existing verified illicit discharges, the City or its legal department shall send the property owner a second letter. This letter shall notify the property owner that imposition of fines is commencing, that fines will continue to escalate until removal of the illicit discharge, and that fines

will be included in the property owner's water and sewer bill. In addition, the letter shall enumerate further actions that the City may take in accordance with its regulations governing the use of sanitary and combined sewers and storm drains. Thereafter, in accordance with the MS4 General Permit and its legal authorities, the City shall diligently pursue action against the property owner for removal of the illicit discharge. Under Section V (Reports on Compliance), the City shall report on each legal action and the steps it has taken to escalate enforcement.

4. Where the City's IDDE investigation identifies a source of pollutants to the City's MS4 for which infrastructure repair or correction will not eliminate the illicit discharge, and therefore the elimination of the source of pollutants requires implementation of stormwater BMPs, the City shall implement appropriate green infrastructure ("GI")/low-impact development ("LID") best management practices ("BMPs") to remediate the pollutant source(s). For the purposes of this Order, green infrastructure/low impact development or GI/LID shall mean the range of stormwater control measures that use natural or engineered systems to direct stormwater to areas where it can be stored, infiltrated, evapotranspired, or reused. GI/LID may include, but is not limited to, bioretention and extended detention wetland areas, vegetated swales, pocket wetlands, rain

gardens, infiltration planters, green roofs, and porous and permeable pavements. Where GI/LID BMPs are not implemented in such a situation, the City shall provide a reason why GI/LID BMP implementation is not being implemented for each particular location in describing what alternative BMP is going to be implemented.

5. Within sixty (60) Days following the removal of a verified illicit discharge, the City shall conduct additional dry- and wet-weather monitoring consistent with the approved IDDE Plan to confirm that the illicit discharge has been eliminated.

6. The City shall comply with all schedules for removal for verified illicit discharges establish pursuant to Section IV, Paragraph 7. All work conducted by the City in its efforts to identify and eliminate unauthorized discharges of sewage from its MS4 to waters of the United States pursuant to this Order shall be performed using sound engineering practices to ensure that construction, management, operation, and maintenance of the MS4 and Collection System comply with the Act.

Fats, Oils, and Grease (“FOG”) Program

8. On or before June 30, 2020, the City shall update or finalize and submit to EPA and MassDEP an effective FOG Program, as well as an ordinance or other regulatory mechanism to enable the program’s implementation, the purpose of which is to ensure that fats, oils, and grease

accumulations are not impacting the Collection System capacity and contributing to sanitary sewer overflows (“SSOs”). The FOG Program shall, at a minimum, include:

- a. Specific requirements for the installation or upgrade of FOG control equipment at all food preparation establishments;
 - b. Provisions for periodic and random FOG equipment inspections by the City;
 - c. Enforcement procedures for non-compliant facilities including the ability to assess fines for violations of the City’s FOG Program and the City’s sewer use ordinances;
 - d. A public education program targeted at FOG facilities;
 - e. All necessary modification to local regulations, including the City’s sewer use ordinances, to allow full enforcement of the FOG Program including standard operating procedures for escalating enforcement from warnings through penalties as described in the ordinance required in Section IV, Paragraph 8;
 - f. An explanation of which department(s) within the City has (have) the authority and will be responsible for (a) managing, (b) inspecting, and (c) enforcing the FOG Program;
 - g. A list of all food preparation establishments that includes average daily discharge volume; and
 - h. A proposed schedule for the implementation of the approved FOG Program (the “FOG Implementation Schedule”).
9. Upon submission to EPA and MassDEP, the City shall immediately and continuously implement the FOG Program according to the Implementation Schedule. The City shall

incorporate any comments provided by EPA and MassDEP into its FOG Program unless the City objects to one or more of the comments, in which case the parties will enter into informal discussion for a period of 30 days (or a longer period as agreed to by the parties). If, following such discussion, the City continues to object to incorporating certain comments into its FOG Program, the City may seek federal judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-708, such review being limited to the disputed comments.

CMOM Self-Assessment

10. By June 30, 2020, the City shall submit to EPA and the MassDEP, a Capacity, Management, Operation, and Maintenance (“CMOM”) Program Self-Assessment that contains the following:
 - a. An inventory of the Collection System that characterizes the age, condition, type of construction, and operation of each element where such information exists and provides for further assessments where warranted;
 - b. An assessment of the capacity of critical elements of the Collection System; and
 - c. An assessment of the City’s current operation and maintenance practices, all of which shall comprise the “CMOM Program Self-Assessment.” The CMOM Program Self-Assessment shall be consistent with EPA’s “Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems,” EPA 305-B-05-002, January 2005 (the “Guide for Evaluating CMOM Programs”), which is available on-line at http://www.epa.gov/npdes/pubs/cmom_guide_for_collection_systems.pdf. As part of the CMOM Program Self-Assessment, the City shall complete and submit EPA

Region 1's "Wastewater Collection System CMOM Program Self-Assessment Checklist," (the "CMOM Program Self-Assessment Checklist") (included as Attachment 3), which is a Region 1 modification of the checklist included in the Guide for Evaluating CMOM Programs. For the purposes of this Order, SSOs shall mean any overflow, spill, diversion or release of wastewater from, or caused by, the City's Collection System. SSOs include, but are not limited to, discharges to waters of the United States from the City's collection system, as well as any release of wastewater from the City's Collection System to public or private property that does not reach waters of the United States, including wastewater backups onto public streets, into buildings, or onto private property.

CMOM Corrective Action Plan

11. By December 31, 2020, the City shall submit to EPA and MassDEP, a CMOM Corrective Action Plan that shall include the following:
 - a. A list of any deficiencies (including data gaps) identified by the CMOM Program Self-Assessment;
 - b. A list of causes and contributing factors that led to SSOs or flow restrictions identified in the response to the CMOM Program Self-Assessment Checklist;
 - c. A description of the specific short and long-term actions that the City is taking, or plans to take, to address any of the deficiencies identified during the completion of the CMOM Program Self-Assessment Checklist including but not limited to an initial cleaning and assessment of all sanitary sewer lines;
 - d. A schedule for implementation of the CMOM Corrective Action Plan (the

“CMOM Corrective Action Plan Implementation Schedule”).

e. A CMOM Program Document that (i) consolidates all of the Collection System preventative and reactive maintenance programs and Collection System capital improvement plans into a single CMOM Program Document; (ii) is maintained at a location that is readily accessible to the City’s maintenance staff and is available for inspection by EPA and the MassDEP, and review by the public, during normal business hours; and (iii) a digital copy of these documents is put on a publicly-accessible website; and

f. An assessment of the adequacy of the City’s sanitary sewer and stormwater operations, maintenance, and engineering staff to properly operate and maintain the City’s MS4 and Collection System and to implement the SWMP and CMOM Corrective Action Plan, and, if additional staff members are necessary for the City to properly operate and maintain its sewers, a schedule for the hiring of the additional staff.

12. Upon submission to EPA and MassDEP, the City shall immediately and continuously implement the CMOM Corrective Action Plan according to the CMOM Corrective Action Plan Implementation Schedule. The City shall incorporate any comments provided by EPA and MassDEP into its CMOM Corrective Action Plan unless the City objects to one or more of the comments, in which case the parties will enter into informal discussion for a period of 30 days (or a longer period as agreed to by the parties). If, following such discussion, the City continues to object to incorporating certain comments into its CMOM Corrective Action Plan, the City may seek federal judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5

U.S.C. §§ 701-708, such review being limited to the disputed comments.

V. REPORTS ON COMPLIANCE

1. As required by Part II. D.1.e. (1) of the NPDES Permit, the City shall submit to EPA a report of all sanitary sewer overflows within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. Beginning on January 31, 2021, and on each January 31st and July 31st thereafter until otherwise notified by EPA, the City shall submit to EPA for review Compliance Reports for the previous six-month period (January 1st through June 30th, and July 1st through December 31st) (“Reporting Period”), with a copy to MassDEP. Each Compliance Report shall include, at a minimum, the following items:

- a. A listing of all illicit discharges identified during the previous Reporting Period, including the following:
 - i. The estimated flow from each illicit discharge;
 - ii. The actions taken by the City to remove each illicit discharge;
 - iii. The date each illicit discharge was removed;
 - iv. The cost of removing each illicit discharge;
 - v. The resulting volume removed from the City’s MS4 under the IDDE Plan during the Reporting Period for each individual illicit discharge, cumulative for the Reporting Period, and cumulative for all illicit discharges to date;

vi. An Attachment that contains a summary listing of the address, associated volume of sewage and/or industrial/commercial wastewater, and date of elimination for all illicit discharges cumulative to date; and

vii. An Attachment that contains a listing of each Sub-Catchment area, the percentage within each Sub-Catchment area investigated during the Reporting Period, and the cumulative percentage of IDDE investigations completed for each Sub-Catchment area.

b. A chronological list of each of the following categories of SSO events that occurred during the Reporting Period: such as releases to streets or areas with storm drain catch basins; Building/Private Property Backups; and citizen reports of SSO events, including Building/Private Property Backups. Each of the lists shall include, but need not be limited to, the following information:

- i. The date and time(s) when each event was discovered/reported and was stopped;
- ii. The location by address;
- iii. The final disposition of the SSO, *e.g.*, whether it discharged to the ground, street, or surface water, including: the name of the water body, street, or intersecting streets nearest the SSO; and, if the release occurred to the ground or street, the name of the nearest downgradient MS4 catch basin and the name of the receiving water of the MS4;
- iv. The source of notification (*e.g.*, property owner, general public, field crew, police);

- v. The cause(s) of the event (*e.g.*, vandalism, sediments, roots, grease, mechanical, electrical and structural failures, capacity issues);
 - vi. A determination of whether the event was caused by blockages or hydraulic limitations within the publicly-owned portion of the Collection System;
 - vii. The measures taken to stop the event;
 - viii. The estimated gallons of wastewater released, the estimated gallons of wastewater that reached a surface water, and the bases for those estimates; and
 - ix. The date of the last SSO that occurred at the event location.
- c. A GIS map or figure, consistent with the requirements of Part 2.3.4.5. of the 2016 General Permit, indicating the location of each illicit discharge and SSO event including a Building/Private Property Backup;
 - d. A description of the activities undertaken during the Reporting Period to address the CMOM Program Self-Assessment and CMOM Corrective Action Plan;
 - e. A description of any additional activities undertaken during the Reporting Period directed at achieving compliance with this Order;
 - f. A description of any proposed changes to the remedial measures;
 - g. An identification of all plans, reports, and other submissions required by this Order that the City completed and submitted during the Reporting Period;
 - h. A description of the activities the City plans to undertake during the six months following the Reporting Period in order to achieve compliance with this Order; and

- i. An identification of any noncompliance with the requirements of this Order. If any noncompliance is reported, the notification shall include the following information:
 - i. A description of the noncompliance;
 - ii. A description of any actions taken or proposed by the City to comply with any lapsed requirements;
 - iii. A description of any factors that tend to explain or mitigate the noncompliance; and
 - iv. The date by which the City will perform the required action.
3. The reporting requirements set forth in this Section do not relieve the City of its obligation to submit any other reports or information as required by federal, Commonwealth, or local law or regulation.

VI. NOTIFICATION PROCEDURES

1. Where this Order requires a specific action to be performed within a certain time frame, the City shall submit a written notice of compliance or noncompliance with each deadline. Notification must be mailed within fourteen (14) calendar days after each required deadline. The timely submission of a required report shall satisfy the requirement that a notice of compliance be submitted.
2. If noncompliance is reported, notification shall include the following information:
 - a. A description of the noncompliance;
 - b. A description of any actions taken or proposed by the City to comply with the lapsed schedule requirements;

- c. A description of any factors that explain or mitigate the noncompliance; and
- d. An approximate date by which the City will perform the required action.

3. The City may reserve all rights and remedies in any notice of noncompliance submitted under this Section VI.

4. After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved.

5. Submissions required by this Order shall be in electronic and written formats and shall be emailed/mailed to the following addresses:

Alex Rosenberg
rosenberg.alex@epa.gov

and to:

Tonia Bandrowicz
bandrowicz.toni@epa.gov

and to:

Massachusetts Department of Environmental Protection
Northeast Region Main Office
205B Lowell Street
Wilmington, MA 01887
Attn: Kevin Brander

EPA and/or MassDEP shall notify the City in writing of any changes to the contact persons or addresses.

VII. GENERAL PROVISIONS

1. Nothing in this Order shall be construed to relieve the City of the requirements of the Clean Water Act, or any other applicable requirements under federal, state, or local law, and does not constitute a waiver or a modification of the terms and conditions of the 2016 General Permit or the City's NPDES Permit, or any subsequently issued permits.
2. EPA reserves the right seek all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, or other applicable law, for the violations cited in this Order, and for violation of the terms of the Order, and for future or past violations of the Clean Water Act.
3. Any material modification to the terms of this Order shall be by an EPA-issued formal amendment of this Order agreed to by the City or, if not agreed to by the City, then subject to the City's right to seek federal judicial review of the modified order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
4. Any nonmaterial modifications to the terms of this Order, such as the due dates of submissions, shall be effective upon written approval from EPA.
5. This Order shall become effective upon receipt of the City.
6. The City may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

9-3-19
Date



Karen McGuire, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency, Region I