Attachment 1

EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS

This interpretative statement provides an explanation to the public of EPA Region 1's interpretation of the Clean Water Act ("CWA" or "Act") and implementing regulations, and advises the public of relevant policy considerations, regarding the applicability of the National Pollutant Discharge Elimination System ("NPDES") program to publicly owned treatment works ("POTWs") that are composed of municipal satellite sewage collection systems owned by one entity and treatment plants owned by another ("regionally integrated POTWs"). When issuing NPDES permits to these types of sanitary sewer systems, it is EPA Region 1's practice to directly regulate, as necessary, the owners/operators of the municipal satellite collection systems through a co-permitting structure. This interpretative statement is intended to explain, generally, the basis for this practice. In determining whether to include municipal satellite collection systems as co-permittees in any particular circumstances, Region 1's decision will be made by applying the law and regulations to the specific facts of the case before the Region.

EPA has set out a national policy goal for the nation's sanitary sewer systems to adhere to strict design and operational standards:

> "Proper [operation and maintenance] of the nation's sewers is integral to ensuring that wastewater is collected, transported, and treated at POTWs; and to reducing the volume and frequency of …[sanitary sewer overflow] discharges. Municipal owners and operators of sewer systems and wastewater treatment facilities need to manage their assets effectively and implement new controls, where necessary, as this infrastructure continues to age. Innovative responses from all levels of government and consumers are needed to close the gap."[1]

Because ownership/operation of a regionally integrated POTW is sometimes divided among multiple parties, the owner/operator of the treatment plant many times lacks the means to implement comprehensive, system-wide operation and maintenance ("O & M") procedures. Failure to properly implement O & M measures in a POTW can cause, among other things, excessive extraneous flow (*i.e.*, inflow and infiltration) to enter, strain and occasionally overload treatment system capacity. This failure not only impedes EPA's national policy goal concerning preservation of the nation's wastewater infrastructure assets, but also frustrates achievement of the water quality- and technology-based requirements of CWA § 301 to the extent it results in sanitary sewer overflows and degraded treatment plant performance, with adverse impacts on human health and the environment.

In light of these policy objectives and legal requirements, it is Region 1's permitting practice to subject all portions of the POTW to NPDES requirements in order to ensure that the treatment

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[1] *See Report to Congress: Impacts and Control of CSOs and SSOs* (EPA 833-R-04-001) (2004), at p. 10-2. *See also* "1989 National CSO Control Strategy," 54 Fed. Reg. 37371 (September 8, 1989).

system as a whole is properly operated and maintained and that human health and water quality impacts resulting from excessive extraneous flow are minimized. The approach of addressing O&M concerns in a regionally integrated treatment works by adding municipal satellite collection systems as co-permittees is consistent with the definition of "publicly owned treatment works," which by definition includes sewage collection systems. Under this approach, the POTW in its entirety will be subject to NPDES regulation as a point source discharger under the Act. Region 1's general practice will be to impose permitting requirements applicable to the POTW treatment plant along with a more limited set of conditions applicable to the connected municipal satellite collection systems.

The factual and legal basis for the Region's position is set forth in greater detail in *Attachment A*.

Attachment A

ANALYSIS SUPPORTING EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS

Exhibit A List of POTW permits that include municipal satellite collection systems as co-permittees

Exhibit B Analysis of extraneous flow trends and SSO reporting for representative systems

Exhibit C Form of Regional Administrator's waiver of permit application requirements for municipal satellite collection systems

Introduction

On May 28, 2010, the U.S. EPA Environmental Appeals Board ("Board") issued a decision remanding to the Region certain NPDES permit provisions that included and regulated satellite collection systems as co-permittees. *See In re Upper Blackstone Water Pollution Abatement District*, NPDES Appeal Nos. 08-11 to 08-18 & 09-06, 14 E.A.D. __ (*Order Denying Review in Part and Remanding in Part*, EAB, May 28, 2010).[2] While the Board "did not pass judgment" on the Region's position that its NPDES jurisdiction encompassed the entire POTW and not only the treatment plant, it held that "where the Region has abandoned its historical practice of limiting the permit only to the legal entity owning and operating the wastewater treatment plant, the Region had not sufficiently articulated in the record of this proceeding the statutory, regulatory, and factual bases for expanding the scope of NPDES authority beyond the treatment plant owner/operator to separately owned/operated collection systems that do not discharge directly to waters of the United States, but instead that discharge to the treatment plant." *Id., slip op.* at 2, 18. In the event the Region decided to include and regulate municipal satellite collection systems as co-permittees in a future permit, the Board posed several questions for the Region to address in the analysis supporting its decision:

> (1) In the case of a regionally integrated POTW composed of municipal satellite collection systems owned by different entities and a treatment plant owned by another, is the scope of NPDES authority limited to owners/operators of the POTW treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that convey wastewater to the POTW treatment plant?

[2] The decision is available on the Board's website via the following link: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/30b93f139d3788908525706c005185b4/34e841c87f346d94852577360068976f!OpenDocument.

(2) If the latter, how far up the collection system does NPDES jurisdiction reach, *i.e.*, where does the "collection system" end and the "user" begin?

(3) Do municipal satellite collection systems "discharge [ ] a pollutant" within the meaning of the statute and regulations?

(4) Are municipal satellite collection systems "indirect dischargers" and thus excluded from NPDES permitting requirements?

(5) Is the Region's rationale for regulating municipal satellite collection systems as co-permittees consistent with the references to "municipality" in the regulatory definition of POTW, and the definition's statement that "[t]he term also means the municipality…which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works"?

(6) Is the Region's rationale consistent with the permit application and signatory requirements under NPDES regulations?

See *Blackstone, slip op.* at 18, 20, n. 17.

This regional interpretative statement is, in part, a response to the Board's decision. It details the legal and policy bases for regulating publicly owned treatment works ("POTWs") that include municipal satellite collection systems through a co-permittee structure. Region 1's analysis is divided into five sections. First, the Region provides context for the co-permitting approach by briefly describing the health and environmental impacts associated with poorly maintained sanitary sewer systems. Second, the Region outlines its evolving permitting practice regarding regionally integrated POTWs, particularly its attempts to ensure that such entity's municipal satellite collection systems are properly maintained and operated. Third, the Region explains the legal authority to include municipal satellite collection systems as co-permittees when permitting regionally integrated POTWs. In this section, the Region answers the questions posed by the Board in the order presented above. Fourth, the Region sets forth the basis for the specific conditions to which the municipal satellite collection systems will be subject as co-permittees. Finally, the Region discusses other considerations informing its decision to employ a co-permittee structure when permitting regionally integrated POTWs.

I. Background

A sanitary sewer system (SSS) is a wastewater collection system owned by a state or municipality that conveys domestic, industrial and commercial wastewater (and limited amounts of infiltrated groundwater and some storm water runoff) to a POTW.[3] *See* 40 C.F.R. §

[3] *See generally* Report to Congress: Impacts and Control of CSOs and SSOs (EPA 833-R-04-001) (2004), from which EPA Region 1 has drawn this background material.

35.2005(b)(37) (defining "sanitary sewer"). The purpose of these systems is to transport wastewater uninterrupted from its source to a treatment facility. Developed areas that are served by sanitary sewers often also have a separate storm sewer system (*e.g.*, storm drains) that collects and conveys runoff, street wash waters and drainage and discharges them directly to a receiving water (*i.e.*, without treatment at a POTW). While sanitary sewers are not designed to collect large amounts of runoff from precipitation events or provide widespread drainage, they typically are built with some allowance for higher flows that occur during periods of high groundwater and storm events. They are thus able to handle minor and controllable amounts of extraneous flow (*i.e.*, inflow and infiltration, or I/I) that enter the system. Inflow generally refers to water other than wastewater—typically precipitation like rain or snowmelt—that enters a sewer system through a direct connection to the sewer. Infiltration generally refers to other water that enters a sewer system from the ground, for example through defects in the sewer.

Municipal sanitary sewer collection systems can consist of a widespread network of pipes and associated components (*e.g.*, pump stations). These systems provide wastewater collection service to the community in which they are located. In some situations, the municipality that owns the collector sewers may not provide treatment of wastewater, but only conveys its wastewater to a collection system that is owned and operated by a different municipal entity (such as a regional sewer district). This is known as a satellite community. A "satellite" community is a sewage collection system owner/operator that does not have ownership of the treatment facility and the wastewater outfall but rather the responsibility to collect and convey the community's wastewater to a POTW treatment plant for treatment. *See* 75 Fed. Reg. 30395, 30400 (June 1, 2010).

Municipal sanitary sewer collection systems play a critical role in protecting human health and the environment. Proper operation and maintenance of sanitary sewer collection systems is integral to ensuring that wastewater is collected, transported, and treated at POTW treatment plants. Through effective operation and maintenance, collection system operators can maintain the capacity of the collection system; reduce the occurrence of temporary problem situations such as blockages; protect the structural integrity and capacity of the system; anticipate potential problems and take preventive measures; and indirectly improve treatment plant performance by minimizing I/I-related hydraulic overloading.

Despite their critical role in the nation's infrastructure, many collection systems exhibit poor performance and are subjected to flows that exceed system capacity. Untreated or partially treated overflows from a sanitary sewer system are termed "sanitary sewer overflows" (SSOs). SSOs include releases from sanitary sewers that reach waters of the United States as well as those that back up into buildings and flow out of manholes into city streets.

There are many underlying reasons for the poor performance of collection systems. Much of the nation's sanitary sewer infrastructure is old, and aging infrastructure has deteriorated with time. Communities also sometimes fail to provide capacity to accommodate increased sewage delivery and treatment demand from increasing populations. Furthermore, institutional arrangements relating to the operation of sewers can pose barriers to coordinated action, because many

municipal sanitary sewer collection systems are not entirely owned or operated by a single municipal entity.

The performance and efficiency of municipal sanitary sewer collection systems influence the performance of sewage treatment plants. When the structural integrity of a municipal sanitary sewer collection system deteriorates, large quantities of infiltration (including rainfall-induced infiltration) and inflow can enter the collection system, causing it to overflow. These extraneous flows are among the most serious and widespread operational challenges confronting treatment works.[4]

Infiltration can be long-term seepage of water into a sewer system from the water table. In some systems, however, the flow characteristics of infiltration can resemble those of inflow, *i.e.*, there is a rapid increase in flow during and immediately after a rainfall event, due, for example, to rapidly rising groundwater. This phenomenon is sometimes referred to as rainfall-induced infiltration.

Sanitary sewer systems can also overflow during periods of normal dry weather flows. Many sewer system failures are attributable to natural aging processes or poor operation and maintenance. Examples include years of wear and tear on system equipment such as pumps, lift stations, check valves, and other moveable parts that can lead to mechanical or electrical failure; freeze/thaw cycles, groundwater flow, and subsurface seismic activity that can result in pipe movement, warping, brittleness, misalignment, and breakage; and deterioration of pipes and joints due to root intrusion or other blockages.

Inflow and infiltration impacts are often regional in nature. Satellite collection systems in the communities farthest from the POTW treatment plant can cause sanitary sewer overflows ("SSOs") in communities between them and the treatment plant by using up capacity in the interceptors. This can cause SSOs in the interceptors themselves or in the municipal sanitary sewers that lead to them. The implication of this is that corrective solutions often must also be regional in scope to be effective.

The health and environmental risks attributed to SSOs vary depending on a number of factors including location and season (potential for public exposure), frequency, volume, the amount and type of pollutants present in the discharge, and the uses, conditions, and characteristics of the receiving waters. The most immediate health risks associated with SSOs to waters and other areas with a potential for human contact are associated with exposure to bacteria, viruses, and other pathogens.

Human health impacts occur when people become ill due to contact with water or ingestion of water or shellfish that have been contaminated by SSO discharges. In addition, sanitary sewer

[4] In a 1989 Water Pollution Control Federation survey, 1,003 POTWs identified facility performance problems. Infiltration and inflow was the most frequently cited problem, with 85 percent of the facilities reporting I/I as a problem. I/I was cited as a major problem by 41 percent of the facilities (32 percent as a periodic problem).

systems can back up into buildings, including private residences. These discharges provide a direct pathway for human contact with untreated wastewater. Exposure to land-based SSOs typically occurs through the skin via direct contact. The resulting diseases are often similar to those associated with exposure through drinking water and swimming (*e.g.*, gastroenteritis), but may also include illness caused by inhaling microbial pathogens. In addition to pathogens, raw sewage may contain metals, synthetic chemicals, nutrients, pesticides, and oils, which also can be detrimental to the health of humans and wildlife.

II. Region 1 Past Practice of Permitting POTWs that Include Municipal Satellite Collection Systems

Region 1's practice in permitting regionally integrated POTWs has developed in tandem with its increasing focus on addressing I/I in sewer collection systems, in response to the concerns outlined above. Up to the early 1990s, POTW permits issued by Region 1 generally did not include specific requirements for collection systems. When I/I and the related issue of SSOs became a focus of concern both nationally and within the region in the mid-1990s, Region 1 began adding general requirements to POTW permits that required the permittees to "eliminate excessive infiltration and inflow" and provide an annual "summary report" of activities to reduce I/I. As the Region gathered more information and gained more experience in assessing these reports and activities, it began to include more detailed requirements and reporting provisions in these permits.

MassDEP also engaged in a parallel effort to address I/I, culminating in 2001 with the issuance of MassDEP Policy No. BRP01-1, "Interim Infiltration and Inflow Policy." Among other provisions, this policy established a set of standard NPDES permit conditions for POTWs that included development of an I/I control plan (including funding sources, identification and prioritization of problem areas, and public education programs) and detailed annual reporting requirements (including mapping, reporting of expenditures and I/I flow calculations). Since September 2001, these requirements have been the basis for the standard operation and maintenance conditions related to I/I.

Regional treatment plants presented special issues as I/I requirements became more specific, as it is generally the member communities, rather than the regional sewer district, that own the collection systems that are the primary source of I/I. Before the focus on I/I, POTW permits did not contain specific requirements related to the collection system component of POTWs. Therefore, when issuing NPDES permits to authorize discharges from regionally integrated treatment POTWs, Region 1 had generally only included the legal entity owning and/or operating the regionally centralized wastewater treatment plant as the permittee. As the permit conditions were focused on the treatment plant and its effluent discharge, a permit issued only to the owner or operator of the treatment plant was sufficient to ensure that permit conditions could be fully implemented and that EPA had authority to enforce the permit requirements.

In implementing the I/I conditions, Region 1 initially sought to maintain the same structure, placing the responsibility on the regional sewer district to require I/I activities by the contributing

systems and to collect the necessary information from those systems for submittal to EPA. MassDEP's 2001 Interim I/I Policy reflected this approach, containing a condition for regional systems:

> ((FOR REGIONAL FACILITIES ONLY)) The permittee shall require, through appropriate agreements, that all member communities develop and implement infiltration and inflow control plans sufficient to ensure that high flows do not cause or contribute to a violation of the permittee's effluent limitations, or cause overflows from the permittee's collection system.

As existing NPDES permittees, the POTW treatment plants were an obvious locus of regulation. The Region assumed the plants would be in a position to leverage preexisting legal and/or contractual relationships with the satellite collection systems they serve to perform a coordinating function, and that utilizing this existing structure would be more efficient than establishing a new system of direct reporting to EPA by the collection system owners. The Region also believed that the owner/operator of the POTW treatment plant would have an incentive to reduce flow from contributing satellite systems because doing so would improve treatment plant performance and reduce operation costs. While relying on this cooperative approach, however, Region 1 also asserted that it had the authority to require that POTW collection systems be included as NPDES permittees and that it would do so if it proved necessary. Indeed, in 2001 Region 1 acceded to Massachusetts Water Resources Authority's ("MWRA") request to include as co-permittees the contributing systems to the MWRA Clinton wastewater treatment plant ("WWTP") based on evidence provided by MWRA that its relationship with those communities would not permit it to run an effective I/I reduction program for these collection systems. Region 1 also put municipal satellite collection systems on notice that they would be directly regulated through legally enforceable permit requirements if I/I reductions were not pursued or achieved.

In time, the Region realized that its failure to assert direct jurisdiction over municipal satellite dischargers was becoming untenable in the face of mounting evidence that cooperative (or in some cases non-existent) efforts on the part of the POTW treatment plant and associated satellites were failing to comprehensively address the problem of extraneous flow entering the POTW. The ability and/or willingness of regional sewer districts to attain meaningful I/I efforts in their member communities varied widely. The indirect structure of the requirements also tended to make it difficult for EPA to enforce the implementation of meaningful I/I reduction programs.

It became evident to Region 1 that a POTW's ability to comply with CWA requirements depended on successful operation and maintenance of not only the treatment plant but also the collection system. For example, the absence of effective I/I reduction and operation/maintenance programs was impeding the Region's ability to prevent or mitigate the human health and water quality impacts associated with SSOs. Additionally, these excess flows stressed POTW treatment plants from a hydraulic capacity and performance standpoint, adversely impacting effluent quality. *See Exhibit B* (Analysis of extraneous flow trends and SSO reporting for

representative systems). Addressing these issues in regional systems was essential, as these include most of the largest systems in terms of flow, population served and area covered.

The Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator represents a necessary and logical progression in its continuing effort to effectively address the serious problem of I/I in sewer collection systems.[5] In light of its past permitting experience and the need to effectively address the problem of extraneous flow on a system-wide basis, Region 1 decided that it was necessary to refashion permits issued to regionally integrated POTWs to include all owners/operators of the treatment works (*i.e.*, the regional centralized POTW treatment plant and the municipal satellite collection systems).[6] Specifically, Region 1 determined that the satellite systems should be subject as co-permittees to a limited set of O&M-related conditions on permits issued for discharges from regionally integrated treatment works. These conditions pertain only to the portions of the POTW collection system that the satellites own. This ensures maintenance and pollution control programs are implemented with respect to all portions of the POTW. Accordingly, since 2005, Region 1 has generally included municipal satellite collection systems as co-permittees for limited purposes while it required the owner/operator of the treatment plant, as the primary permittee, to comply with the full array of NPDES requirements, including secondary treatment and water-quality based effluent limitations. The Region has identified 25 permits issued by the Region to POTWs in New Hampshire and Massachusetts that include municipal satellite collection systems as co-permittees. *See Exhibit A.* The 25 permits include a total of 55 satellite collection systems as co-permittees.

III. Legal Authority

[5] Although the Region has in the past issued NPDES permits only to the legal entities owning and operating the wastewater treatment plant (*i.e.*, only a portion of the "treatment works"), the Region's reframing of permits to include municipal satellite collection systems does not represent a break or reversal from its historical legal position. Region 1 has never taken the legal position that the satellite collection systems are beyond the reach of the CWA and the NPDES permitting program. Rather, the Region as a matter of discretion had merely never determined it necessary to exercise its statutory authority to directly reach these facilities in order to carry out its NPDES permitting obligations under the Act.

Although the Region adopted a co-permittee structure to deal I/I problems in the municipal satellite collection systems, that decision does nothing to foreclose a permitting authority from opting for alternative permitting approaches that are consistent with applicable law. Each permitting authority has the discretion to determine which permitting approach best achieves the requirements of the Act based on the facts and circumstances before it. Upon determining that direct regulation of a satellite collection system via an NPDES permit is warranted, a permitting authority has the discretion to make the owner or operator of the collection system a co-permittee, or to cover it through an individual or general permit. Nothing in EPA regulations precludes the issuance of a separate permit to an entity that is part of the larger system being regulated. As in the pretreatment program, there are many ways to ensure that upstream collection systems are adequately contributing to the successful implementation of a POTW's permit requirements.

[6] EPA has "considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges." *Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1380 (D.C.Cir.1977). ("[T]his ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.").

The Region's prior and now superseded practice of limiting the permit only to the legal entity owning and/or operating the wastewater treatment plant had never been announced as a regional policy or interpretation. Similarly, the Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator has also never been expressly announced as a uniform, region-wide policy or interpretation. Upon consideration of the Board's decision, described above, Region 1 has decided to supply a clearer, more detailed explanation regarding its use of a co-permittee structure when issuing NPDES permits to regionally integrated POTWs. In this section, the Region addresses the questions posed by the Board in the *Upper Blackstone* decision referenced above.

(1) In the case of a regionally integrated POTW composed of municipal satellite collection systems owned by different entities and a treatment plant owned by another, is the scope of NPDES authority limited to owners/operators of the POTW treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that convey wastewater to the POTW treatment plant?

The scope of NPDES authority extends beyond the owners/operators of the POTW treatment plant to include the owners/operators of the municipal satellite collection systems conveying wastewater to the treatment plant for the reasons discussed below.

The CWA prohibits the "discharge of any pollutant by any person" from any point source to waters of the United States, except, *inter alia,* in compliance with an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA. CWA § 301, 402(a)(1); 40 C.F.R. § 122.1(b).

"Publicly owned treatment works" are facilities that, when they discharge, are subject to the NPDES program. Statutorily, POTWs as a class must meet performance-based effluent limitations based on available wastewater treatment technology. *See* CWA § 402(a)(1) ("[t]he Administrator may…issue a permit for the discharge of any pollutant….upon condition that such discharge will meet (A) all applicable requirements under [section 301]…"); § 301(b)(1)(B) ("In order to carry out the objective of this chapter there shall be achieved…for publicly owned treatment works in existence on July 1, 1977...effluent limitations based upon secondary treatment[.]"); *see also* 40 C.F.R. pt 133. In addition to secondary treatment requirements, POTWs are also subject to water quality-based effluent limits if necessary to achieve applicable state water quality standards. *See* CWA § 301(b)(1)(C). *See also* 40 C.F.R. § 122.44(a)(1) ("…each NPDES permit shall include…[t]echnology-based effluent limitations based on: effluent limitations and standards published under section 301 of the Act") and (d)(1) (same for water quality standards and state requirements). NPDES regulations similarly identify the "POTW" as the entity subject to regulation. *See* 40 C.F.R. § 122.21(a) (requiring "new and existing POTWs" to submit information required in 122.21(j)," which in turn requires "all POTWs," among others, to provide permit application information).

The CWA and its implementing regulations broadly define "POTW" to include not only wastewater treatment plants but also the sewer systems and associated equipment that collect wastewater and convey it to the treatment plants. When a municipal satellite collection system conveys wastewater to the POTW treatment plant, the scope of NPDES authority extends to both the owner/operators of the treatment facility and the municipal satellite collection system, because the POTW is discharging pollutants.

Under section 212 of the Act,

> "(2)(A) The term 'treatment works' means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, *sewage collection systems* [emphasis added], pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.
>
> (B) In addition to the definition contained in subparagraph (A) of this paragraph, 'treatment works' means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and *sanitary sewer systems* [emphasis added]. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title."

EPA has defined POTW as follows:

> "The term *Publicly Owned Treatment Works* or *POTW* [emphasis in original]…includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works."

See 40 C.F.R. §§ 403.3(q) and 122.2.

Thus, under the CWA and its implementing regulations, wastewater treatment plants and the sewer systems and associated equipment that collect wastewater and convey it to the treatment plants fall within the broad definition of "POTW."

The statutory and regulatory definitions plainly encompass both the POTW treatment plant and municipal satellite collection systems conveying wastewater to the POTW treatment plant even if the treatment plant and the satellite collection system have different owners. Municipal satellite collection systems indisputably fall within the definition of a POTW. First, they are "sewage collection systems" under section 212(A) and "sanitary sewer systems" under section 212(B). Second, they convey wastewater to a POTW treatment plant for treatment under 40 C.F.R. § 403.3(q)). The preamble to the rule establishing the regulatory definition of POTW supports the reading that the treatment plant comprises only one portion of the POTW. *See* 44 Fed. Reg. 62260, 62261 (Oct. 29, 1979).[7] Consistent with Region 1's interpretation, courts have similarly taken a broad reading of the terms treatment works and POTW.[8] Finally, EPA has long recognized that a POTW can be composed of different parts, and that sometimes direct control is required under a permit for all parts of the POTW system, not just the POTW treatment plant segment. *See Multijurisdictional Pretreatment Programs Guidance Manual,* Office off Water (4203) EPA 833-B-94-005 (June 1994) at 19. ("If the contributing jurisdiction owns or operates the collection system within its boundaries, then it is a co-owner or operator of the POTW. As such, it can be included on the POTW's NPDES permit and be required to develop a pretreatment program. Contributing jurisdictions should be made co-permittees where circumstances or experience indicate that it is necessary to ensure adequate pretreatment program implementation."). The Region's interpretation articulated here is consistent with the precepts of the pretreatment program, which pertains to the same regulated entity, i.e., the POTW.[9]

Thus, under the statutory and regulatory definitions, a satellite collection system owned by one

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[7] "A new provision…defining the term 'POTW Treatment Plant' has been added to avoid an ambiguity that now exists whenever a reference is made to a POTW (publicly owned treatment works). …[T]he existing regulation defines a POTW to include both the treatment plant and the sewer pipes and other conveyances leading to it. As a result, it is unclear whether a particular reference is to the pipes, the treatment plant, or both. The term "POTW treatment plant" will be used to designate that portion of the municipal system which is actually designed to provide treatment to the wastes received by the municipal system."

[8] *See, e.g., United States v. Borowski, 977 F.2d 27, 30 n.5* (1st Cir. 1992) ("We read this language [POTW definition] to refer to such sewers, pipes and other conveyances that are publicly owned. Here, for example, the City of Burlington's sewer is included in the definition because it conveys waste water to the Massachusetts Water Resource Authority's treatment works."); *Shanty Town Assoc. v. Envtl. Prot. Agency, 843 F.2d 782, 785* (4th Cir. 1988) ("As defined in the statute, a 'treatment work' need not be a building or facility, but can be any device, system, or other method for treating, recycling, reclaiming, preventing, or reducing liquid municipal sewage and industrial waste, including storm water runoff.") (citation omitted); *Comm. for Consideration Jones Fall Sewage System v. Train,* 375 F. Supp. 1148, 1150-51 (D. Md. 1974) (holding that NPDES wastewater discharge permit coverage for a wastewater treatment plant also encompasses the associated sanitary sewer system and pump stations under § 1292 definition of "treatment work").

[9] The fact that EPA has endorsed a co-permittee approach in addressing pretreatment issues in situations where the downstream treatment plant was unable to adequately regulate industrial users to the collection system in another jurisdiction reinforces the approach taken here.

municipality that transports municipal sewage to another portion of the POTW owned by another municipality can be classified as part of a single integrated POTW system discharging to waters of the U.S.

(2) If the latter, how far up the collection system does NPDES jurisdiction reach, i.e., where does the "collection system" end and the "user" begin?

NPDES jurisdiction extends beyond the treatment plant to the outer boundary of the municipally-owned sewage collection systems, that is, to the outer bound of those sewers whose purpose is to transport wastewater for others to a POTW treatment plant for treatment, as explained below.

As discussed in response to Question 1 above, the term "treatment works" is defined to include "sewage collection systems." CWA § 212. In order to identify the extent of the sewage collection system for purposes of co-permittee regulation—*i.e.*, to identify the boundary between the portions of the collection system that are subject to NPDES requirements and those that are not—Region 1 is relying on EPA's regulatory interpretation of the term "sewage collection system." In relevant part, EPA regulations define "sewage collection system" at 40 C.F.R. § 35.905 as:

> ".... each, and all, of the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive waste waters directly from facilities which convey waste water from individual structures or from private property and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey waste water from individual structures, from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition…."

Put otherwise, a municipal satellite collection system is subject to NPDES jurisdiction under the Region's approach insofar as it transports wastewater for others to a POTW treatment plant for treatment. This test (i.e., common sewer installed to receive and carry waste water from others) allows Region 1 to draw a principled, predictable and readily ascertainable boundary between the POTW's collection system and the users. This test would exclude, for example, single user branch drainpipes that collect and transport wastewater from plumbing fixtures in a commercial building or public school to the common lateral sewer, just as service connections from private residential structures to lateral sewers are excluded. This type of infrastructure would not be considered part of the collection system, because it is not designed to receive and carry wastewaters from other users. Rather, it is designed to transport its users' wastewater to such a common collection system at a point further down the sanitary sewer system.

EPA's reliance on the definition of "sewage collection system" from the construction grants regulations for interpretative guidance is reasonable because these regulations at 40 C.F.R. Part 35, subpart E pertain to grants specifically for POTWs, the entity that is the subject of this NPDES policy. Additionally, the term "sewage collection systems" expressly appears in the definition of treatment works under section 212 of the Act as noted above.

(3) Do municipal satellite collection systems "discharge [] a pollutant" within the meaning of the statute and regulations?

Yes, the collection system "discharges a pollutant" because it adds pollutants to waters of the U.S. from a point source. This position is consistent with the definition of "discharge of a pollutant" at 40 C.F.R. § 122.[10] The fact that a collection system may be located in the upper reaches of the POTW and not necessarily near the ultimate discharge point at the treatment plant, or that its contribution may be commingled with other wastewater flows prior to the discharge point, is not material to the question of whether it "discharges" a pollutant and consequently may be subject to conditions of an NPDES permit issued for discharges from the POTW.[11]
40 C.F.R. § 122.2 defines "discharge of a pollutant" as follows:

> "Discharge of a pollutant means:
>
> (a) Any addition of any 'pollutant'' or combination of pollutants to 'waters of the United States'' from any 'point source,' or
> (b) Any addition of any pollutant or combination of pollutants to the waters of the 'contiguous zone' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
>
> This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any 'indirect discharger.'"

POTW treatment plants as well as the municipal satellite collection systems that comprise portions of the larger POTW and that transport flow to the POTW treatment plant clearly add pollutants or combinations of pollutants to waters of the U.S. and to waters of the "contiguous zone" and are thus captured under sections (a) and (b) of this definition.[12]

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[10] This position differs from that taken by the Region in the *Upper Blackstone* litigation. There, the Region stated that the treatment plant was the discharging entity for regulatory purposes. The Region has clarified this view upon further consideration of the statute, EPA's own regulations and case law and determined that a municipal satellite collection system in a POTW is a discharging entity for regulatory purposes.

[11] As explained more fully below, non-domestic contributors of pollutants to the collection system and treatment plant do not require NPDES permits because they are regulated through the pretreatment program under Section 307 of the CWA and are specifically excluded from needing an NPDES permit. 40 C.F.R. § 122.3(c).

[12] Some municipal satellite collection systems have argued that the addition of pollutants to waters of the United States from pipes, sewers or other conveyances that go to a *treatment plant* are not a "discharge of a pollutant" under 40 C.F.R. § 122.2. This is erroneous. Only one category of such discharges is excluded: indirect discharges. For the reasons explained below in section 4, the satellite system discharges at issue here are not indirect discharges. It is correct that the discharge of wastewater that does not go to the treatment works is included as a discharge under

(4) Are municipal satellite collection systems "indirect dischargers" and thus excluded from NPDES permitting requirements?

No, municipal satellite collection systems that convey wastewater from domestic sources to another portion of the POTW for treatment are not "indirect dischargers" to the POTW.

Section 307(b) of the Act requires EPA to establish regulatory pretreatment requirements to prevent the "introduction of pollutants into treatment works" that interfere, pass through or are otherwise incompatible with such works. Section 307 is implemented through the General Pretreatment Regulations for Existing and New Sources of Pollution (40 C.F.R. Part 403) and categorical pretreatment standards (40 C.F.R. Parts 405-471). Section 403.3(i) defines "indirect discharger" as "any non-domestic" source that introduces pollutants into a POTW and is regulated under pretreatment standards pursuant to CWA § 307(b)-(d). The source of an indirect discharge is termed an "industrial user." *Id*. at § 403.3(j). Under regulations governing the NPDES permitting program, the term "indirect discharger" is defined as "a non-domestic discharger introducing 'pollutants' to a 'publicly owned treatment works.'" 40 C.F.R. § 122.2. Indirect dischargers are excluded from NPDES permit requirements at 40 C.F.R. § 122.3(c), which provides, "The following discharges do not require an NPDES permit: . . . The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers."

Municipal satellite collection satellite systems are not indirect dischargers as that term is defined under part 122 or 403 regulations. Unlike indirect dischargers, municipal satellite collection systems are not a non-domestic discharger "introducing pollutants" to POTWs as defined in 40 C.F.R. § 122.2. Instead, they themselves fall within the definition of POTW, whose components consist of the municipal satellite collection system owned and operated by one POTW and a treatment system owned and operated by another POTW. Additionally, they are not a non-domestic *source* regulated under section 307(b) that introduces pollutants into a POTW within the meaning of § 403.3(i). Rather, they are part of the POTW and collect and convey municipal sewage from industrial, commercial and domestic users of the POTW.

The Region's determination that municipal satellite collection systems are not indirect dischargers is, additionally, consistent with the regulatory history of the term indirect discharger. The 1979 revision of the part 122 regulations defined "indirect discharger" as "a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a 'discharge of pollutants'…" *See* National Pollutant Discharge

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the definition. However, interpreting the *inclusion* of such discharges under the definition as categorically *excluding* the conveyance of other discharges that do go to the treatment works is not a reasonable reading of the regulation. This argument is also flawed in that it incorrectly equates "treatment works," the term used in the definition above, with "treatment plant." To interpret "treatment works" as it appears in the regulatory definition of "discharge of a pollutant" as consisting of only the POTW treatment plant would be inconsistent with the definition of "treatment works" at 40 C.F.R. § 403.3(q), which expressly includes the collection system. *See also* § 403.3(r) (defining "POTW Treatment Plant" as "*that portion* [emphasis added] of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.")

Elimination System, 44 Fed. Reg. 32854, 32901 (June 7, 1979). The term "non-municipal" was removed in the Consolidated Permit Regulations, 45 Fed. Reg. 33290, 33421 (May 19, 1980) (defining "indirect discharger" as "a nondomestic discharger…"). Although the change was not explained in detail, the substantive intent behind this provision remained the same. EPA characterized the revision as "minor wording changes." 45 Fed. Reg. at 33346 (Table VII: "Relationship of June 7[, 1979] Part 122 to Today's Regulations"). The central point again is that under any past or present regulatory incarnation, municipal satellite collection systems, as POTWs, are not within the definition of "indirect discharger," which is limited to non-domestic sources subject to section 307(b) that introduce pollutants to POTWs.

(5) How is the Region's rationale consistent with the references to "municipality" in the regulatory definition of POTW found at 40 C.F.R. § 403.3(q), and the definition's statement that "[t]he term also means the municipality….which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works?"

There is no inconsistency between the Region's view that municipally-owned satellite collection systems fall within the definition of POTW, and the references to municipality in 40 C.F.R. § 403.3(q), including the final sentence of the regulatory definition of POTW in the pretreatment regulations.

The Region's co-permitting rationale is consistent with the first part of the pretreatment program's regulatory definition of POTW, because the Region is only asserting NPDES jurisdiction over satellite collection systems that are owned by a "State or municipality (as defined by section 502(4) of the Act)." The term "municipality" as defined in CWA § 502(4) "means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes…" Thus, in order to qualify under this definition, a wastewater collection system need only be "owned by a State or municipality." There is no requirement that the constituent components of a regionally integrated POTW, *i.e.*, the collection system and regional centralized POTW treatment plant, be owned by the same State or municipal entity.

Furthermore, there is no inconsistency between the Region's view that a satellite collection system is part of a POTW, and the final sentence of the regulatory definition of POTW in the pretreatment regulations. As noted above, the sentence provides that "POTW" may "also" mean a municipality which has jurisdiction over indirect discharges to and discharges from the treatment works. This is not a limitation because of the use of the word "also" (contrast this with the "only if" language in the preceding sentence of the regulatory definition).

(6) How does the Region's rationale comport with the permit application and signatory requirements under NPDES regulations?

"Any person who discharges or proposes to discharge pollutants"… must comply with permit application requirements set forth in 40 C.F.R. § 122.21 ("Application for a Permit"), including the duty to apply in subsection 122.21(a). It is the operator's duty to obtain a permit. *See* 40

C.F.R. § 122.21(b). An operator of a sewage collection system in a regionally integrated treatment works is operating a portion of the POTW and thus can be asked to submit a separate permit application pursuant to § 122.21(a) (requiring applicants for "new and existing POTWs" to submit information required in 122.21(j)," which in turn requires "all POTWs," among others, to provide permit application information). In the Region's experience, however, sufficient information about the collection system can be obtained from the treatment plant operator's permit application. The NPDES permit application for POTWs solicits information concerning portions of the POTW beyond the treatment plant itself, including the collection system used by the treatment works. *See* 40 C.F.R. § 122.21(j)(1). Where this information is not sufficient for writing permit conditions that apply to a separately owned municipal satellite system, EPA can request that the satellite system to submit an application with the information required in 122.21(j), or alternatively use its authority under CWA section 308 to solicit the necessary information. Because Region 1 believes that it will typically receive information sufficient for NPDES permitting purposes from the POTW treatment plant operator's application, the Region will formalize its historical practice by issuing written waivers to exempt municipal satellite collection systems from permit application and signatory requirements in accordance with 40 C.F.R. § 122.21(j).[13] To the extent the Region requires additional information, it intends to use its information collection authority under CWA § 308.

IV. Basis for the Specific Conditions to which the Municipal Satellite Collection Systems are Subject as Co-permittees

Section 402(a) of the CWA is the legal authority for extending NPDES conditions to all portions of the municipally-owned treatment works to ensure proper operation and maintenance and to reduce the quantity of extraneous flow into the POTW. This section of the Act authorizes EPA to issue a permit for the "discharge of pollutants" and to prescribe permit conditions as necessary to carry out the provisions of the CWA, including Section 301 of the Act. Among other things, Section 301 requires POTWs to meet performance-based requirements based on secondary treatment technology, as well as any more stringent requirements of State law or regulation, including water quality standards. *See* CWA § 301(b)(1)(B),(C).

The Region imposes requirements on co-permittees when it determines that they are necessary to assure continued achievement of effluent limits based on secondary treatment requirements and state water quality standards in accordance with sections 301 and 402 of the Act, and to prevent unauthorized discharges of sewage from downstream collection systems. With respect to achieving effluent limits, the inclusion of the satellite systems as co-permittees may be necessary when high levels of I/I dilute the strength of influent wastewater and increase the hydraulic load on treatment plants, which can reduce treatment efficiency (*e.g.*, result in violations of technology-based percent removal limitations for BOD and TSS due to less concentrated

[13] EPA may waive applications for municipal satellite collection systems, when requiring such applications may result in duplicative or immaterial information. The Regional Administrator ("RA") may waive any requirement of this paragraph if he or she has access to substantially identical information. 40 C.F.R. § 122.21(j). *See generally*, 64 Fed. Reg. 42440 (August 4, 1999). The RA may also waive any application requirement that is not of material concern for a specific permit. *Id.*

influent, or violation of other technology-based or water quality-based effluent limitations due to reduction in treatment efficiency). Excess flows from an upstream collection system can also lead to bypassing a portion of the treatment process, or in extreme situations make biological treatment facilities inoperable (*e.g.*, wash out the biological organisms that treat the waste).

By preventing excess flows, the co-permittee requirements will also reduce water quality standards violations that result from SSOs by lessening their frequency and extent. *See Exhibit B* (Analysis of extraneous flow trends and SSO reporting for representative systems). SSOs that reach waters of the U.S. are discharges in violation of section 301(a) of the CWA to the extent not authorized by an NPDES permit.

Imposing standard permit conditions on the satellite communities may be necessary to give full effect to some of the standard permit conditions applicable to all NPDES permits at 40 C.F.R. § 122.41 . To illustrate, NPDES permitting regulations require standard conditions that "apply to all NPDES permits," pursuant to 40 C.F.R. § 122.41, including a duty to mitigate and to properly operate and maintain "all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit." *Id.* at § 122.41(d), (e). If the owner or operator of a downstream POTW treatment plant is unable, due to legal constraints for example, or unwilling to ensure that upstream collection systems are implementing requirements concerning the collection system, such as I/I requirements, making the upstream POTW collection system subject to its own permit requirements may be the only or best available option to give full effect to these permit obligations.

V. Conclusion

For all the reasons above, Region 1 has determined that it is reasonable to, as necessary, directly regulate municipal satellite collection systems as co-permittees when issuing NPDES permits for discharges from regionally integrated treatment works.

Exhibit A

Name	Issue Date
Massachusetts Water Resources Authority – Clinton (NPDES Permit No. MA0100404)	September 27, 2000
City of Brockton (NPDES Permit No. MA0101010)	May 11, 2005
City of Marlborough (NPDES Permit No. MA0100480)	May 26, 2005
Westborough Wastewater Treatment Plant (NPDES Permit No. MA0100412)	May 20, 2005
Lowell Regional Wastewater Utilities (NPDES Permit No. MA0100633)	September 1, 2005
Town of Webster Sewer Department (NPDES Permit No. MA0100439)	March 24, 2006
Town of South Hadley, Board of Selectmen (NPDES Permit No. MA0100455)	June 12, 2006
City of Leominster (NPDES Permit No. MA0100617)	September 28, 2006
Hoosac Water Quality District (NPDES Permit No. MA0100510)	September 28, 2006
Board of Public Works, North Attleborough (NPDES Permit No. MA0101036)	January 4, 2007
Town of Sunapee (NPDES Permit No. 0100544)	February 21, 2007
Lynn Water and Sewer Commission (NPDES Permit No. MA0100552)	March 3, 2007
City of Concord (NPDES Permit No. NH0100331)	June 29, 2007
City of Keene (NPDES Permit No. NH0100790)	August 24, 2007
Town of Hampton (NPDES No. NH0100625)	August 28, 2007
Town of Merrimack, NH (NPDES No. NH0100161)	September 25, 2007
City of Haverhill (NPDES Permit No. MA0101621)	December 5, 2007
Greater Lawrence Sanitary District (NPDES Permit No. MA0100447)	August 11, 2005

City of Pittsfield, Department of Public Works (NPDES No. MA0101681)	August 22, 2008
City of Manchester (NPDES No. NH0100447)	September 25, 2008
City of New Bedford (NPDES Permit No. MA0100781)	September 28, 2008
Winnipesaukee River Basin Program Wastewater Treatment Plant (NPDES Permit No. NH0100960)	June 19, 2009
City of Westfield (NPDES Permit No. MA0101800)	September 30, 2009
Hull Permanent Sewer Commission (NPDES Permit No. MA0101231)	September 1, 2009
Gardner Department of Public Works (NPDES Permit No. MA0100994)	September 30, 2009

Exhibit B

Analysis of extraneous flow trends and SSO reporting for representative systems

I. Representative POTWS

The **South Essex Sewer District (SESD)** is a regional POTW with a treatment plant in Salem, Massachusetts. The SESD serves a total population of 174,931 in six communities: Beverly, Danvers, Marblehead, Middleton, Peabody and Salem. The **Charles River Pollution Control District (CRPCD)** is a regional POTW with a treatment plant in Medway, Massachusetts. The CRPCD serves a total population of approximately 28,000 in four communities: Bellingham, Franklin, Medway and Millis. Both of these facilities have been operating since 2001 under permits that place requirements on the treatment plant to implement I/I reduction programs with the satellite collection systems, in contrast to Region 1's current practice of including the satellite collection systems as co-permittees.

II. Comparison of flows to standards for nonexcessive infiltration and I/I

Flow data from the facilities' discharge monitoring reports (DMRs) are shown in comparison to the EPA standard for nonexcessive infiltration/inflow (I/I) of 275 gpcd wet weather flow and the EPA standard for nonexcessive infiltration of 120 gallons per capita per day (gpcd) dry weather flow; the standards are multiplied by population served for comparison with total flow from the facility. See *I/I Analysis and Project Certification*, EPA Ecol. Pub. 97-03 (1985); 40 CFR 35.2005(b)(28) and (29).

Figures 1 and 2 show the Daily Maximum Flows (the highest flow recorded in a particular month) for the CRPCD and SESD, respectively, along with monthly precipitation data from nearby weather stations. Both facilities experience wet weather flows far exceeding the standard for nonexcessive I/I, particularly in wet months, indicating that these facilities are receiving high levels of inflow and wet weather infiltration.

Figure 1. CRPCD Daily Maximum Flow Compared to Nonexcessive I/I Standard

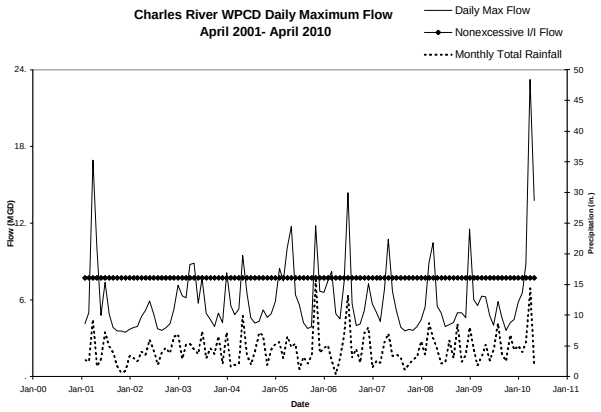
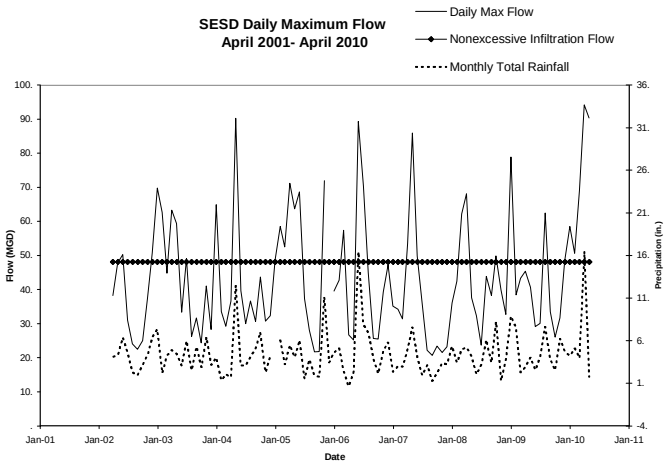


Figure 2. SESD Daily Maximum Flow Compared to Nonexcessive I/I Standard



Figures 3 and 4 shows the Average Monthly Flows for the CRPCD and SESD, which exceed the nonexcessive infiltration standard for all but the driest months. This indicates that these systems experience high levels of groundwater infiltration into the system even during dry weather.

Figure 3. CRPCD Monthly Average Flow Compared to Nonexcessive Infiltration Standard

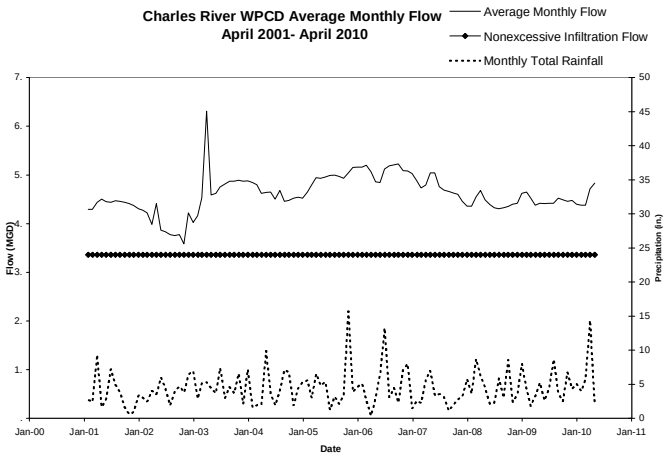
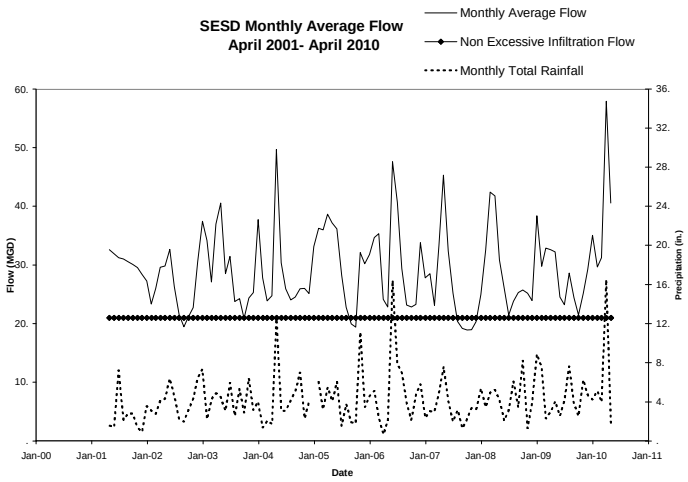


Figure 4. SESD Monthly Average Flow Compared to Nonexcessive Infiltration Standard



II. Flow Trends

Figures 5 and 6 show the trend in Maximum Daily Flows over the period during which these regional facilities have been responsible for implementing cooperative I/I reduction programs with the satellite collection systems. The Maximum Daily Flow reflects the highest wet weather flow for each month. The trend over this time period has been of increasing Maximum Daily Flow, indicating that I/I has not been reduced in either system despite the permit requirements.

Figure 5. CRPCD Daily Maximum Flow Trend

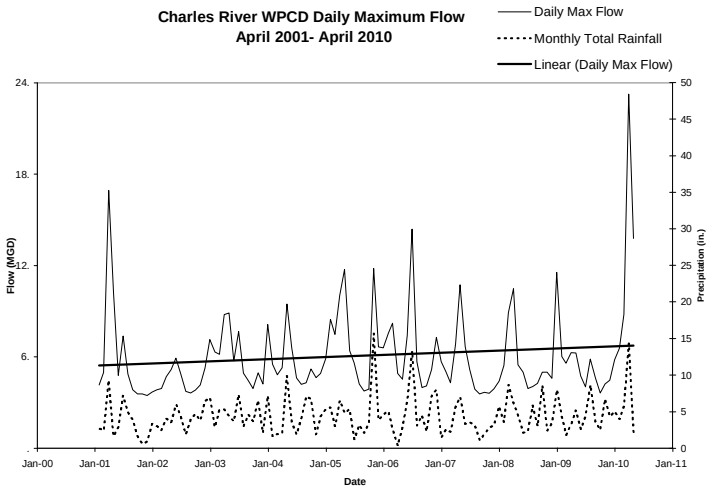
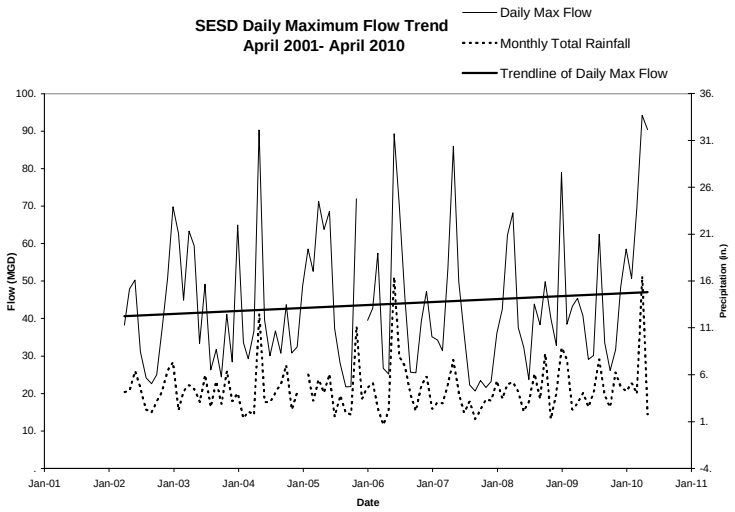


Figure 6. SESD Daily Maximum Flow Trend



III. Violations Associated with Wet Weather Flows

Both the CRPCD and SESD have experienced permit violations that appear to be related to I/I, based on their occurrence during wet weather months when excessive I/I standards are exceeded. Figure 7 shows violations of CRPCD's effluent limits for CBOD (concentration) and TSS (concentration and percent removal). Twelve of the sixteen violations occurred during months when daily maximum flows exceeded the EPA standard.

Figure 7. CRPCD CBOD and TSS Effluent Limit Violations

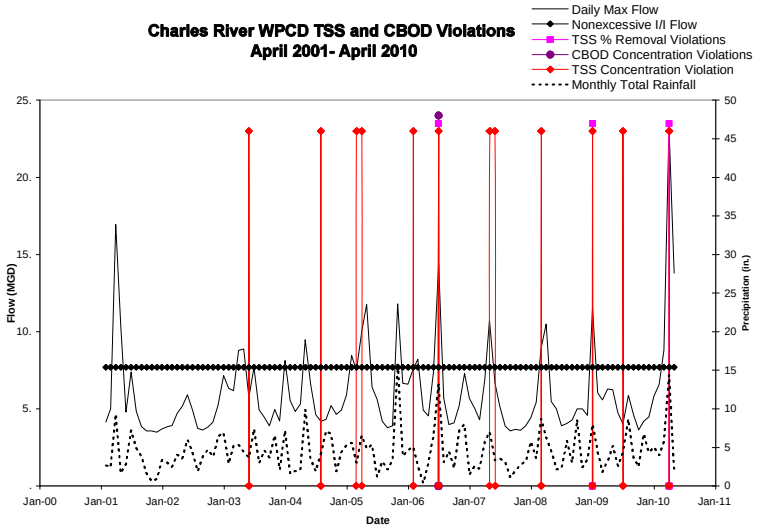
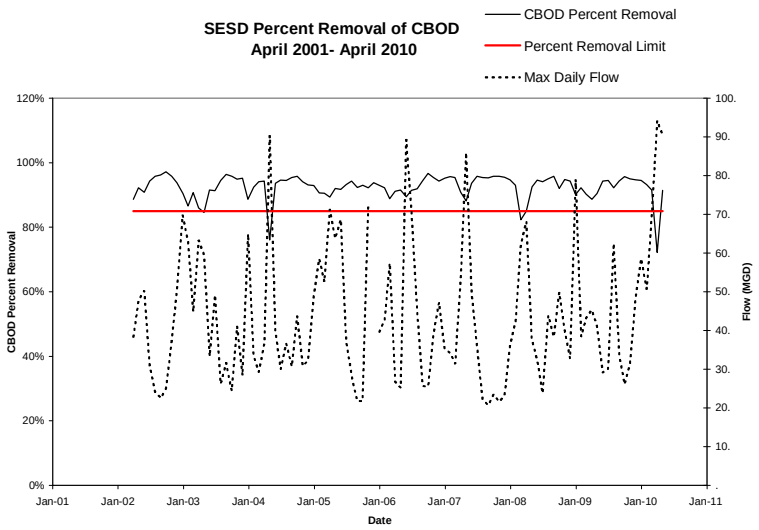


Figure 8 shows SESD's results for removal of CBOD, in percentage, as compared to maximum daily flow. SESD had three permit violations where CBOD removal fell below 85%, all during months with high Maximum Daily Flows.

Figure 8. SESD CBOD Percent Removal



IV. SSO Reporting

In addition, both of these regional POTWs have experienced SSOs within the municipal satellite collection systems. In the SESD system, Beverly, Danvers, Marblehead and Peabody have reported SSOs between 2006 and 2008, based on data provided by MassDEP. In the CRPCD system, both Franklin and Bellingham have reported SSOs between 2006 and 2009.

Exhibit C

Form of Regional Administrator's or Authorized Delegate's Waiver of Permit Application Requirements for Municipal Satellite Collection Systems

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

Re: Waiver of Permit Application and Signatory Requirements for [Municipal Satellite Sewage Collection System]

Dear _____:

Under NPDES regulations, all POTWs must submit permit application information set forth in 40 C.F.R. § 122.21(j) unless otherwise directed. Where the Region has "access to substantially identical information," the Regional Administrator [or Authorized Delegate] may waive permit application requirements for new and existing POTWs. *Id.* Pursuant to my authority under this regulation, I am waiving NPDES permit application and signatory requirements applicable to the above-named municipal satellite collection systems.

Although EPA has the authority to require municipal satellite collection systems to submit individual permit applications, in this case I find that requiring a single permit application executed by the regional POTW treatment plant owner/operator will deliver "substantially identical information," and will be more efficient, than requiring separate applications from each municipal satellite collection system owner/operator. Municipal satellite collection system owners/operators are expected to consult and coordinate with the regional POTW treatment plant operators to ensure that any information provided to EPA about their respective entities is accurate and complete. In the event that EPA requires additional information, it may use its information collection authority under CWA § 308. 33 U.S.C. § 1318.

This notice reflects my determination based on the specific facts and circumstances in this case. It is not intended to bind the agency in future determinations where a separate permit for municipal satellites would not be duplicative or immaterial.

If you have any questions or would like to discuss this decision, please contact [EPA Contact] at [Contact Info].

Sincerely,

Regional Administrator