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April 16, 2024

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Via email to: Cobb.Michael@epa.gov; Claire.golden@mass.gov

RE: Comments on Draft NPDES Permit for Fall River Wastewater Treatment
Facility NPDES Permit # MA0100382

Dear Mr. Cobb and Ms. Golden:

The Massachusetts Coalition for Water Resources Stewardship (MCWRS) is a non-profit organization representing the interests of municipalities, districts and commissions in the world of wastewater, stormwater and drinking water. Members include municipal, district and commission wastewater, stormwater and drinking water utilities, engineering consultants, legal firms and stormwater coalitions.

MCWRS appreciates the opportunity to comment on the draft NPDES permit for the Fall River Wastewater Treatment Plant and 18 combined sewer overflow (CSO) outfalls.

Like many Massachusetts communities, the City of Fall River is under an Administrative Order (AO) to undertake specific projects to control pollutant discharges in accordance with the Clean Water Act. In Fall River's case, the original AO dates back to 1989, and the 1992 Federal Court Order. These orders and schedules have been revised overtime as the City has implemented water quality improvements. Over the last 30 years the City has worked diligently in planning the most viable path forward to improve water quality while being fiscally responsible to its ratepayers as documented most recently in its 2015 Integrated Wastewater and Stormwater Master Plan (updated January 2024), its 2018 Wastewater Treatment Facilities Plan and its 2019 CSO Control Plan. The City has invested hundreds of millions of dollars in its wastewater and collection system infrastructure since the 1990s, resulting in over 90 percent reduction in combined sewer overflows between 1994 and 2022, and is currently taking steps to continue to improve its wastewater treatment infrastructure.

The draft NPDES permit requirements and associated compliance schedules are **not** in agreement with the above referenced plans. The draft permit inappropriately expedites the implementation of wastewater treatment plant improvements to achieve an unsubstantiated total nitrogen (TN) limit of 5 mg/L. It is disheartening to see that the draft NPDES permit clearly does not reflect the City's diligent planning efforts and acknowledge the real world logistical and financial realities of the community.

Specific Areas of Concern are as follows:

1. **Nitrogen Limits and Schedule.** The need for the stringent proposed TN limits at the wastewater treatment facility are not supported by the administrative record and are therefore arbitrary and capricious. In the draft NPDES permit EPA attempts to support the proposed 5 mg/L TN limit by developing a simple argument – that the receiving water is impaired and that a 5 mg/L TN limit would improve receiving water conditions. Given the complex cause and effect relationship between nitrogen, algae and dissolved oxygen in the Taunton River and Mount Hope Bay this analysis is too simplistic. In addition, the Fact Sheet acknowledges that TN levels in Mount Hope Bay are already within the range of acceptable levels set forth in nitrogen TMDLs in the region. No analysis or data are presented to justify that a new TN limit is required to meet water quality standards.

In addition, the schedule for compliance with the TN limit (that is, 5 years from the effective date of the permit to design, bid, construct, and commission \$200 million of improvements) is unrealistic and unattainable given the realities of project of this type and complexity and is not in line with the schedule established in the Wastewater Facilities Plan. Given the plants current configuration, a low SRT oxygen activated sludge facility, a wholesale biological process replacement would be required to reduce nitrogen. This is a particularly complex design on an extremely constrained site and pilot testing would be advised to establish the best path forward. Based on this, we would expect the duration to be significantly longer than that depicted in the draft permit. Also, the draft permit schedule significantly disrupts the well thought out plan for sequentially upgrading the treatment facility including upgrading the preliminary and primary treatment systems prior to upgrading the secondary treatment system for nitrogen removal. Upgrading the secondary system to impart nitrogen removal prior to upgrading the preceding unit processes would be ill-advised.

2. **Co-Permittees and CSO Discharges.** EPA has overstepped its statutory authority and gone against its own policies relative to co-permittees and regulation of the CSO discharges as it has done on previous permits. The fact that one co-permittee is in Rhode Island, a delegated state, further complicates jurisdiction.
3. **PFAS.** Proposed PFAS monitoring is too costly and inappropriately targets the City's already burdened ratepayers. PFAS monitoring should be part of a nationwide program and not the responsibility of this community.

The proposed permit would require Fall River to take quarterly grab samples of influent, effluent and biosolids and test for PFAS analytes using Method 1633 and report results in ng/L, or parts per trillion. There are only a few labs currently certified to do PFAS sampling and the cost of sampling has been reported from \$300 to \$1,200 per sample. Because of the ubiquitous nature of PFAS, the collection of samples requires a detailed protocol to avoid sample contamination. Sampling performed to date at treatment facilities around the nation have found PFAS analytes to fall within a relatively narrow range of concentrations for the influent, effluent and biosolids, with limited seasonal variation evident. Because of the cost and nature of PFAS sampling, limited availability of labs to perform the testing, and the extremely low detection limits, if the PFAS monitoring requirements are not deleted, MCWRS suggests that testing twice per year is a more reasonable request. If after 2 years of sampling concentrations are relatively consistent, sampling could be moved to once per year.

The draft permit also proposes that Fall River take quarterly grab samples of influent and effluent and test for Adsorbable Organic Fluorine (AOF), using Method 1621, at the same time as samples are grabbed for PFAS Analytes. Method 1621 is a draft test method designed to capture all organic fluorine compounds in the wastewater. This method is still under development by EPA's Engineering and Analysis Division (EAD), which indicated it is not approved for CWA compliance monitoring. The multi-laboratory validation study has not yet been performed on this method. Again, it appears that EPA is using its permitting authority in Fall River to test methods and requirements that are not yet instituted across the nation, unfairly burdening Fall River. In addition, Adsorbable Organic Fluorine is not a pollutant and has never been identified as a cause of water quality violations in any surface water. Rather, Adsorbable Organic Fluorine is a surrogate measure for PFAS. While it may prove useful as a better way to measure PFAS, the burden of proving its utility in this regard should not fall upon NPDES permittees. EPA should do its own research on the effectiveness of Adsorbable Organic Fluorine as a surrogate parameter for PFAS and spare permittees the costs and responsibility for performing this testing. This proposed requirement should be removed from the permit.

- 4. Adaptation Planning.** Adaptation planning requirements are not appropriate for inclusion in a NPDES permit. As contended by MCWRS in previous comment letters, Adaptation Planning does not fall under the category of Operations and Maintenance, has no place in a five-year permit, is not related to a discharge, cannot be applied solely to Massachusetts permittees and would be better received if it were offered through a funded federal program as directed by Congress. Climate change planning is more appropriate when communities are undertaking significant planning efforts as demonstrated by the City of Fall River. Fall River has already included many elements of adaptation planning requirements of the draft permit through its previous studies, including the 2015 Integrated Plan, the 2018 Wastewater Facilities Plan, the 2024 Integrated Plan, the 2019 Community Resiliency Building Study, and the 2023 Fall River Hazard Mitigation Plan Update. Including these requirements in the NPDES permit is redundant and overly burdensome given the City's demonstrated commitment to and accomplishment of adaptation planning.

MCWRS appreciates the opportunity to provide comments on this permit. We believe EPA Region 1 has overstepped its authority and ignored the great efforts and huge costs undertaken by Fall River to improve its wastewater infrastructure. A permit built upon a collaborative relationship between the City, EPA and MassDEP would be in order at this time given Fall River's demonstrated long term commitment to its wastewater system. This draft permit, which showcases EPA piling on with more costly, burdensome and unwarranted conditions, is sending the wrong message.

Sincerely,



Philip D. Guerin
President