



November 5, 2021

Attn: Sewage Notification
MassDEP
One Winter Street
5th Floor
Boston, MA 0210
massdep.npdes@mass.gov

RE: Comments on 314 CMR 16.00 Notification Requirements to Promote Public Awareness of Sewage Pollution

The Mystic River Watershed Association (MyRWA), a nonprofit advocacy organization dedicated to the sustainable management and wise use of the Mystic River Watershed, is grateful for this opportunity to comment on the proposed regulations for Notification Requirements to Promote Public Awareness of Sewage Pollution (314 CMR 16.00).

MyRWA and its members have been active participants in the legislative process producing the regulatory authority for these proposed rules (the authority of M.G.L. c.21A, §§ 26 - 53 and Section 2 of Chapter 322 of the Acts of 2020) dating back to its earliest filing in 2013. Our watershed is highly affected by sewage discharges and, despite tremendous progress in remediation and stormwater management in recent years, remains severely affected by ongoing pollution from these sources. The EPA's most recent water quality grades assign "F" ratings to the Alewife Brook and three other tributaries to the Mystic River; it is clear that much of this degradation is due to frequent sewage discharge. We are deeply invested in this issue especially because these discharges overburden environmental justice populations, which are as concentrated in the Mystic as any watershed in the Commonwealth.

We applaud the Department for the many well thought out, detailed, and beneficial provisions in its draft regulations. We noted with appreciation that the proposed requirements for the content and presentation of discharge reports, the mandated notification list, and the timeliness of notifications seem to be faithful and effective interpretations of the law. We recognize that the draft regulations make, largely appropriate, accommodations for practical barriers to operators' implementation without sacrificing the essential public interest in notification. We appreciate that the regulations call for a presumption of discharge in ambiguous cases, erring on the side of public safety and transparency. Lastly, we appreciate that the regulations consider and promote the interests of Environmental Justice populations explicitly. We believe the implementation of these rules will have a substantial, positive impact on public awareness of the challenges faced by our community's management of stormwater and sewage, public safety, and public health.

Major areas of concern

However, we do have several specific concerns about the draft regulations which we urge the Department to address. Our most significant concerns are,

1. **Blended sewage:** The exceptions allowed in the draft regulations for so-called “blended sewage” appear to dramatically undermine both the legislative intent of the law and the public interest in raising awareness of the frequency and characteristics of sewage discharges. The definition of “blended sewage” offered in the draft regulations seems to be an immaterial rebranding of the “partially treated” discharge category, which is explicitly included alongside fully untreated sewage (with no differentiation in notification requirements) in the definition of “discharge” written into law. The Department must remove these exceptions for “blended sewage” from the final regulations.
2. **Website:** The law’s requirement for the Department to consolidate discharge reports on its own website is absolutely integral and fundamental to the impact of the law, and should be addressed directly in the regulations. In order to uphold the legislative intent of greater public awareness of discharges, the Department’s rules for its own website must require that,
 - a. Discharge notifications received from all operators be recorded along with all metadata (time, volume, level of treatment, etc.),
 - b. All notifications covered by the regulations be stored in perpetuity to ensure indefinite public access,
 - c. Manual access to the data be supported through contextualized and multi-lingual data querying and visualization features,
 - d. Opt-in to automated notification via e.g. an email sign up feature,
 - e. Programmatic access to the data be supported by provision of an Application Programming Interface (API) and data table exports in machine readable formats (e.g. comma separated values, csv),
3. **Public Health Warnings:** Boards of Health should be empowered, at their discretion, to amplify notifications issued by permittees by sharing them through any or all of the communication channels under their control. However, the permittee should be clearly designated as the responsible party for issuing public notifications. The responsibility for controlling and reporting discharges clearly falls on the operator and nothing in the regulation should increase the burden on municipal Boards of Health, with respect to either operational duties or liability. In particular, no municipal entity should be required to issue a Reverse 911 call, an extraordinary level of notification, unless they feel it is specifically required to preserve public health given the qualifications of the discharge.

Additional areas of concern

4. **SSOs:** There appears to be an inconsistency in the regulation where CSOs and SSOs are subject to similar notification requirements, yet one category (CSOs) are obligated to follow a notification planning process while the other (SSOs) is not. We believe that both categories would benefit from a formal planning regiment and that, therefore, the Department should write an SSO notification planning process into the final regulations.

5. **Approval process:** Section 16.04 2) of the draft regulations allows for the use of detection methodologies other than metering and for reporting timescales beyond the standard requirements at the discretion of the Department. Because of the direct and evident potential of these allowances to circumscribe the impacts of the regulations, we believe there should be more clear controls on the provision and use of these approvals. In particular, we recommend there be a clear guideline for the duration of such allowances and that permittees be obligated to state, to the public record, how they will resolve the limitations that necessitate them.

6. **Enforcement penalties:** Section 16.10 provides for enforcement of violations, but does not offer any specific penalties. The Department must assert at least a minimum penalty for each category of violation to set appropriate expectations among both operators and the public for the consequences of noncompliance. We note that this enforcement should be directed at the permittee and not the Boards of Health.

We thank the Department for its consideration of these comments.

Sincerely,



Patrick Herron
Executive Director