Water/Wastewater Commission

Meeting AGENDA
Wednesday – February 21st, 2024
5:00 p.m.

Legislative Building, City Hall Campus
700 Main St.
Fitchburg, MA 01420

Please note that the Legislative Building will be open to the public for this meeting. For any member of the public that might not be ready to return to a public setting, they are invited to participate in the meeting via the Zoom webinar of February 21, 2024 at 5 PM Eastern Time .

Topic: Water/Wastewater Commission Meeting

Register in advance for the Public Comment/Hearing portion of the Agenda by going to:

https://us02web.zoom.us/webinar/register/WN_b_Ht4e2fRzqXrQcFdp0l_w

After registering, you will receive a confirmation email containing information about logging in to join the webinar.

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1. Review minutes from January 17th, 2024 Commission Meeting.

2. **Public Forum:**

3. **Water Division**
   - Water/Sewer Bills-Munis billing issue
   - Dams- general overview of Water Division Dams
   - SCADA Upgrade Project - update
   - Boulder Dr. Water Main Upgrade/Replacement Project – bid results
   - Regional Plant – new roof (loan request)

4. **Wastewater Division**
    - SRF Appropriation request for CSO 032, 045, 083 $40,000,000
    - Staffing– update
    - Budget update FY25
    - NPDES Draft response letters. (attached for handouts)

5. **Other Business**
    - The Water/Wastewater Commission will next meet at 5:00 pm on Wednesday **March 20, 2024** at the Legislative Building, City Hall Campus 700 Main St. Fitchburg Ma.

    - Adjourn

MCWRS
Massachusetts Coalition for
Water Resources Stewardship

January 29, 2024

FITCHBURG CITY CLERK
Feb 14 2024 8:44 am

Meredith Finegan
USEPA Region 1
5 Post Office Square-Suite 100 (06-1)
Boston, MA 02109-3912

Claire Golden
Massachusetts Department of Environmental Protection
Surface Water Discharge Program
150 Presidential Way
Woburn, MA 01801

RE: Comments on Draft NPDES Permit for Fitchburg Easterly Wastewater Treatment Facility NPDES Permit # MA 0100986
Comments via email to finegan.meredith@epa.gov & Claire.golden@mass.gov

Dear Ms. Finegan 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 offers the following comments on the EPA Region 1 draft NPDES permit for the Fitchburg Easterly Wastewater Treatment Facility and Combined Sewer Overflows.

ADAPTATION PLANNING

MCWRS remains disappointed to see Adaptation Planning requirements appear in several recently issued draft NPDES permits for Massachusetts cities, towns and districts. While Adaptation Planning is an improvement over earlier Major Storm Event Planning, it remains a troubling new requirement that should not be in a NPDES permit. That these requirements will only apply to communities in Massachusetts is truly abysmal. Because EPA retains primacy over NPDES permits in Massachusetts does not give the agency any rights to use the cities and towns in this state as experimental test subjects.

Adaptation Planning requirements should be removed from this and all other NPDES permits in Massachusetts until the need for these requirements are fully vetted, EPA's authority to include these provisions in NPDES permits has been identified, alternative approaches to long-term Adaptation Planning are considered, and a nationwide approach to this matter has been transparently developed and proposed through a rule making process before being implemented nationally. The people of Massachusetts, who will pay the tab for NPDES permits compliance, should not serve as guinea pigs for another EPA Region 1 overreach.

The permit Fact Sheet provides some insight into Region 1's thinking on the need for Adaptation Planning requirements and EPA's authority to include them. There is no denying that key wastewater facilities have been rendered temporarily inoperable due to major floods. Taking steps to reduce such occurrences is a responsible action, though MCWRS does not believe a NPDES permit is the proper vehicle to drive that initiative. There must be a level of reasonableness considered in such planning. There is a difference between reducing storm damage to facilities and eliminating such damage under all conditions. The Fact Sheet language implies that under the Clean Water Act (CWA), discharge permit limits must be achieved at all times and under all conditions; while entire cities may be under water and without power due to a major hurricane, somehow wastewater treatment plants and sewer pumping stations must remain fully operational. Taking cost effective measures to protect facilities from storms makes sense but there must be an understanding that there will always be a bigger storm or that the cost to protect or relocate the facility is not justifiable for a storm event of great infrequency.

MCWRS agrees that planning for potential storm damage to facilities located in flood prone areas may be of value to communities and should certainly be encouraged. Such planning requirements do not belong in a NPDES permit. Rather, the Federal and State governments should work cooperatively with wastewater utilities on a program independent of NPDES or the CWA to encourage planning for storms. Further, there should be a dedicated grant program to fund Adaptation Planning implementation exclusively for wastewater utilities. If these provisions continue to be included in NPDES permits there should be guaranteed funding for each system receiving these requirements. This should not be a competitive grant process but automatic funding - if Adaptation planning is included in your NPDES permit, your system gets the funding needed to do the planning.

MCWRS' objections to the inclusion of Adaptation Planning in NPDES permits are based on the following:

1. The EPA lacks legal authority to include Adaptation Planning and implementation requirements in NPDES permits. The NPDES program mandates the mitigation of actual discharges to reduce or eliminate pollutants from entering receiving waters. Adaptation Planning is not mitigation but intended to address future conditions that may potentially impact facilities. This planning requirement is unrelated to a point source, discharge, receiving water or pollutant load, making this provision outside the realm of NPDES.
2. Inclusion of Adaptation Planning and implementation requirements within the Operations and Maintenance section of the permit is puzzling. Proper operations and maintenance (O&M) of a wastewater facility would not include long-term storm planning. Adaptation Planning for climate change is too far removed from traditionally recognized O&M activities to be included in this section.
3. The CWA implementing regulations include language that provides permittees with an affirmative defense to an enforcement action should noncompliance be caused by unintentional factors beyond the reasonable control of the permittee. Flooding of a wastewater facility that results in a temporary exceedance of discharge limits would

typically be covered by this Upset Provision. This requirement to develop and implement Adaptation Plans renders the Upset Provision moot. Once a wastewater utility is required to have a plan to address floods or storm damage to facilities, its ability to use the Upset Provision is effectively lost. A utility that exceeds discharge limits due to storm damage would be viewed as having failed to adequately plan and implement its adaptation strategy and would therefore be at fault even if a flood damaged its facility. A requirement within a NPDES permit should not have the ability to render a regulatory affirmative upset defense meaningless.

4. Permit provisions that only apply to Massachusetts violate the equal sovereignty principle under the tenth amendment and are unconstitutional. Massachusetts is one of the few remaining states where NPDES permits have not been delegated. EPA Region 1 writes the permits for Massachusetts, but EPA still retains control over CWA implementation by the states and regularly mandates delegated states to add new provisions to NPDES permits. There is no evidence, however, of EPA ordering or directing any delegated states to include storm/flood/Adaptation Planning to NPDES permits. In fact, even in states where EPA retains primacy over NPDES permits, recent permits do not all include climate planning requirements. In April 2023 EPA Region 1 issued a revised draft permit for Portsmouth, New Hampshire's Peirce Island Wastewater Treatment Facility (NH0100234). That revised draft permit did not include any storm/flood planning requirements. A final permit was issued for Peirce Island in September 2023 with no mention of storm/flood/Adaptation Planning. If Region 1 were looking to include these climate adaptation planning requirements in NPDES permits, it had an opportunity to do so with the Peirce Island permit and chose not to. The timeline of this permit is similar to Massachusetts permits issued as drafts in spring 2023 and as final in September 2023, all of which include the planning provisions. MCWRS is not suggesting that New Hampshire wastewater utilities should be subject to the storm planning requirements - no one should. Rather, we point to this New Hampshire permit to highlight Region 1's unequal application of its own NPDES permit "rules". Massachusetts is certainly not unique in the risks posed by climate change so there should be no reason to single out this state with climate change driven requirements in NPDES permits.
5. EPA Region 1 recently began to offer training in the use of its CREAT tool, which Region 1 suggests could be used to complete Component 2: Adaptative Measures Assessment. The training program is 12 hours in duration (6 sessions of 2 hours each). Wastewater treatment and collection system staff will be hard-pressed to find 12 hours to devote to training. One might also wonder, if it takes 12 hours to be trained in the use of CREAT, just how simple and efficient will it be to utilize this tool?
6. Storm event planning as envisioned may have some value to communities but does not belong in a NPDES permit. Such planning appears well-suited to a federal grant program as opposed to an enforcement approach via a permit. Congress, in its 2021 Bipartisan Infrastructure Law (BIL), clearly understood this and directed EPA to "establish a clean water infrastructure resilience and sustainability program …(to) award grants to eligible entities for the purpose of increasing the resilience of publicly owned treatment works" to natural hazard vulnerabilities. Why has EPA chosen an unfunded permit approach rather than a grants program to address wastewater system resiliency as directed by Congress and signed by President Biden?

ADSORBABLE ORGANIC FLUORINE

Unrelated to Adaptation Planning, MCWRS objects to the inclusion of Adsorbable Organic Fluorine in the list of parameters to be monitored in Part 1.A. Adsorbable Organic Fluorine must be monitored quarterly and reported in both the plant effluent and influent. This parameter 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 permitees. EPA should do its own research on the effectiveness of Adsorbable Organic Fluorine as a surrogate parameter for PFAS and spare permitees the costs and responsibility for performing this testing.

ALUMINUM

Effluent limits for aluminum in Part 1.A appear to disregard recently adopted Massachusetts State Surface Water Quality Standard for this metal. As noted in the Fact Sheet, the lack of site-specific data allows for watershed default values to be applied. In the Nashua River Basin, the default value for chronic aluminum is 200 ug/L, and this limit is very conservative as it is based on 5th percentile water quality data rather than the 10th percentile used in most watersheds. Despite this, Region 1 has applied an effluent limit of 139 ug/L, which is apparently unchanged from the previous permit. If this is a case of anti-backsliding being applied, it is an incorrect application. The new aluminum standards are based on much better science than previous standards and discussions on this very issue of anti-backsliding when a new standard is adopted indicated that anti-backsliding would not apply. The permit effluent limit for aluminum should be 200 ug/L.

EPA Region 1 is off the mark with the requirement for Adaptation Planning via NPDES permits. This surprising new initiative is inconsistent with the intent of the NPDES program and is an affront to the cities, towns and districts of Massachusetts who should not be subjected to conditions unknown to the rest of the nation. We encourage EPA to remove these provisions from the Fitchburg Easterly WWTF permit and other recently issued draft and final permits and seek a more open and cooperative approach to address such plans that include full federal funding through a grants program as directed by Congress.

Sincerely,

Philip D. Guerin
President

City of Fitchburg
Department of Public Works

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January 29, 2024

United States Environmental Protection Agency, Region 1
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Attention: Meridith Finegan
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Surface Water Discharge Program
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Re: **Fitchburg Easterly WWTF – DRAFT NPDES Permit No. MA0100986**
Comment Letter from City of Fitchburg, MA

Dear Ms. Finegan & Ms. Golden:

The City of Fitchburg has reviewed the draft NPDES Permit No. MA0100986 for the Fitchburg Easterly Wastewater Treatment Facility (WWTF). The draft permit and authorization includes a number of items which are concerning to the City of Fitchburg. We offer the following comments on the draft permit and authorization, including addressing permit items or language that we believe should be changed, or which require additional explanation and/or justification from EPA.

The permit changes in question and the City's comments are as follows:

1. **Ammonia Nitrogen:** The City of Fitchburg objects to the reduction in Ammonia Nitrogen limits for the April and May "shoulder" seasons, as identified on pages 4 and 9 of 35 of the draft permit. The monthly average limit for Ammonia Nitrogen during the months of April and May includes a steep reduction from 5 mg/L to 3.4 mg/L. The City requests that additional information be provided for the basis of this decision. It appears that an assumed receiving water temperature is the cause of this lowered limit. On page 24 of 46 of the 2023 Fact Sheet, EPA is making assumptions of the critical temperature for the receiving water. EPA is using a critical water temperature of 20 degrees C for both April and May. EPA has an established practice of issuing permits with spring seasonal limits for Ammonia Nitrogen. Such spring season limits are appropriate, recognizing that this can be a "shoulder" season for nitrification in facilities located in New England, and that stream temperatures tend to remain cool in the spring (greatly mitigating the toxicity of ammonia). EPA is using the assumption that the receiving water temperature in April and May is nearly that of the

summer season (25 degrees C) versus the temperature in March (5 degrees C). The City requests that EPA revise their assumptions regarding receiving water temperatures for the "shoulder" seasons (especially for the month of April) and that the Average Monthly Ammonia Nitrogen limit be restored to 5 mg/L for the months of April and May.

2. **Total Phosphorus:** The City of Fitchburg objects to the reduction in Total Phosphorus limit for the April 1 to October 31 season, as identified on page 4 of 35 of the draft permit. The monthly average limit for Total Phosphorus includes a reduction from 0.2 mg/L to 0.16 mg/L. On page 30 of 46 of the 2023 Fact Sheet, EPA is relying upon in stream phosphorus concentrations taken 16 years ago (2008) at a location downstream of the Fitchburg WWTF. EPA states that this is the best available data to characterize the receiving water with respect to phosphorus under current conditions. EPA uses this data to calculate the median background concentration of 0.013 mg/L, and states that this is representative of the receiving water upstream of the Fitchburg WWTF discharge. EPA uses this data to calculate a downstream concentration of 122 ug/L which exceeds the instream target of 100 ug/L. The City requests EPA use current in stream phosphorus concentrations taken upstream of the Fitchburg WWTF to calculate the median background phosphorus concentration and subsequent concentrations and permit limits. If such information cannot be provided with proper time for review by the City, or it does not properly determine the need for the reduced limit, the City requests that the Total Phosphorus limit be restored to 0.2 mg/L.

   It should be noted that the draft permit includes ambient monitoring requirements to ensure that current ambient phosphorus data are available for use in the reassessment of the total phosphorus in the next permit cycle. EPA notes that this ambient data will be used in the next permit reissuance to re-evaluate whether a more stringent limit may be necessary. EPA does not state that should the ambient data reveal less stringent limits, that the phosphorus limit will be increased. EPA would likely refer to anti-backsliding regulations. Until such time that current, applicable ambient data is available, the City requests that the Total Phosphorus limit be restored to the 0.2 mg/L limit in the current permit.

3. **Total Aluminum:** The City of Fitchburg objects to the handling of the average monthly Total Aluminum limit, as identified on page 3 of 35 of the draft permit. The authorization is silent as to changes to the average monthly Total Aluminum limit, such that the current limit is not changed. EPA has now accepted the specific Massachusetts Water Quality Standards (WQS) for aluminum, which was recognized in the final issuance of the Medium General Permit late in 2022. The new Massachusetts WQS for aluminum are 200 µg/L (chronic) and 350 µg/L (acute) for the Nashua River, and are applicable to the Fitchburg permit. EPA specifically recognized in the final Medium General Permit that anti-backsliding should generally not apply to changes related to the new aluminum WQS. This acceptance of backsliding for aluminum was stated explicitly by EPA in the response to comments for that permit. More specifically, in Fitchburg, the specific provision to allow backsliding of the aluminum limit exist (that is, the facility has been operated properly, and the old limits were not able to be consistently met) and should be applied.

   The draft NPDES permit includes a reduction in the Total Phosphorus limit from 0.2 mg/L to 0.16 mg/L. If additional phosphorus removal is required to meet either the 0.2 mg/L or the proposed 0.16 mg/L, that would be achieved with more chemical addition (aluminum salts). Therefore, the higher aluminum limit would be needed. The City requests EPA recalculate the average monthly limit for Total Aluminum based on the new specific WQS for aluminum and adjust the permit accordingly.

4. **Nitrogen Monitoring:** The City of Fitchburg objects to the added requirement of monitoring of Nitrogen, as identified on pages 4, 8 and 9 of 35 of the draft permit. The draft permit adds requirements for monitoring of nitrogen (TKN, Nitrate+Nitrite, Total Nitrogen) on a weekly/monthly basis. These requirements will add significantly to the costs for laboratory testing and seem unwarranted. The 2023 Fact Sheet references 10-year old nitrogen data collected in 2014 in the Merrimack River as justification for the additional monitoring in Fitchburg. There is no information provided about nitrogen data in the North Nashua River. Based on the discussion in the Fact Sheet, EPA is focused on the nitrogen loading from point sources. It is unclear how this information will provide value without a complete understanding of the nitrogen loading from non-point sources throughout the Merrimack River watershed. This appears to be an exercise in collecting data for the sake of collecting data, at significant cost to the communities with a WWTF. Lacking proper justification, these additional test requirements should be removed from the permit.

5. **Effluent Characteristic Testing:** The draft permit includes more frequent effluent characteristic testing than other area WWTFs located just downstream from the Fitchburg WWTF. The Fitchburg draft permit requires daily testing for BOD, TSS and E Coli as opposed to testing 2 times per week. The Fitchburg permit requires Total Residual Chlorine (TRC) testing 3 times per day as opposed to 2 times per day. The Fitchburg WWTF operations has improved significantly over the last several years and the facility has been able to meet the BOD, TSS, E Coli and TRC effluent requirements more consistently. As EPA's Fact Sheet notes, the facility had no E Coli and no TRC exceedance during the EPA review period. The draft permit, as currently written, requires a significant increase in new testing requirements for nitrogen, ambient characteristics, influent characteristics, organic fluorine, PFAS analytes, and Industrial Pretreatment Program sampling. These additional testing requirements have significant cost and staffing impacts. The City requests that EPA reduce the daily testing for BOD, TSS and E Coli to 2 times per week and the TRC testing to 2 times per day.

6. **Ambient Characteristic Testing**: Please provide information on the rationale to require additional sampling of Dissolved Organic Carbon and Total Phosphorus as part of the Ambient Characteristic testing identified on pages 5, 6, 9 and 10 of 35 of the draft permit. These additional testing requirements have both cost and staffing impacts. The City requests information on the justification and rationale to require these additional sampling and testing procedures. Lacking proper justification, these additional test requirements should be removed from the permit.

   If the requirement of ambient Total Phosphorus sampling remains in the permit, EPA should commit in writing in the final permit, that should the ambient data reveal less stringent limits for phosphorus, that the phosphorus limit will be increased accordingly and that the anti-backsliding regulations will not apply.

7. **Influent Characteristic Testing**: Please provide information on the rationale to require additional sampling of influent BOD, TSS, PFAS Analytes and Adsorbable Organic Fluorine identified on page 6 of 35 of the draft permit. These additional testing requirements have both cost and staffing impacts. The City requests information on the justification and rationale to require these additional sampling and testing procedures. Lacking proper justification, these additional test requirements should be removed from the permit.

8. **Adsorbable Organic Fluorine:** Please provide information on the rationale to require additional sampling of Adsorbable Organic Fluorine in influent flow and effluent flow as identified on pages 4 and 6 of 35 of the draft permit. These additional testing requirements have both cost and staffing impacts. The City requests information on the justification and rationale to require these additional

sampling and testing procedures. Lacking proper justification, these additional test requirements should be removed from the permit.

9. **PFAS Analytes:** The draft permit includes additional requirements to sample for and report on PFAS Analytes in influent flow, effluent flow, and sludge from the WWTF. It is our understanding that this testing will be conducted using Method 1633. There is concern in the industry on the number of labs that will be capable of completing this sampling and testing. Once many permittees are required to sample and test, this concern will be exacerbated. It is well known that PFAS compounds are present in the environment, but WWTFs should not be the target of enforcement. The City supports the need for limiting PFAS compounds in consumer goods and industrial uses. We further understand that testing industrial users likely to contribute PFAS may be needed. The City recognizes the need to provide for legislation to remove these compounds from commerce as the primary method of reducing the presence of these compounds in our environment.

   The impacts of these PFAS monitoring requirements will be significant for all WWTFs. One of the major concerns with this monitoring requirement is the resulting impact on sludge disposal. Once PFAS is demonstrated to be in wastewater sludge, the ability to properly dispose of sludge from not only this WWTF, but from all Massachusetts WWTFs may be severely compromised. The number of sludge processing facilities that can properly dispose of PFAS compounds is severely limited and will result in a significant cost increase for sludge disposal for all facilities.

   The City requests that all PFAS monitoring requirements be removed from the NPDES permit until legislation related to PFAS removal from consumer products and industrial uses is in place in Massachusetts. At such time as those most important provisions are in place, a more reasonable approach to addressing the presence of PFAS compounds in wastewater may be appropriate.

10. **Adaptation Plan:** The City of Fitchburg objects to the added requirement of an Adaptation Plan for the City's WWTF and sewer system, as identified on pages 12, 13, 14 and 15 of 35 of the draft permit. The requirements for this planning effort have multiple components including an identification of vulnerable critical assets, assessment of adaptive measures, implementation and maintenance schedule, and adaptation plan annual progress reporting. These prescriptive requirements are onerous and will require significant effort and cost for the operation of the WWTF. The City understands the value of planning for potential storm events and flooding; however, we object to the inclusion of these storm planning requirements within the NPDES permit for the WWTF. Communities would be better served if EPA and DEP worked cooperatively with the communities on a program to assist the communities with planning, and provide funding for this type of storm impact planning effort rather than creating another unfunded mandate under the guise of an NPDES permitting requirement. As many other communities have commented, the City disagrees with the EPA that the agency has the legal authority to include such general stormwater/flood planning in the NPDES permit. The NPDES permit regulates the quality of the effluent leaving the WWTF, not a theoretical future storm event that may or may not have an impact.

    The City continues to make significant progress in the removal of CSOs and SSOs to improve the water quality of the receiving waters. This ongoing progress will continue to take significant financial resources to reach our goals over the coming years. By creating another unfunded mandate at this point in time is not helpful for the City and could jeopardize the City's progress if additional resources are required to be diverted to the development of the adaptation planning effort. The City strongly feels that our resources are best spent on the continued removal of the CSOs and request that EPA remove the adaptation planning from the NPDES permit.

11. **Industrial Pretreatment Program:** The City of Fitchburg objects to the added requirement of PFAS testing as part of the Industrial Pretreatment Program as identified on page 24 of 35 of the draft permit. The draft permit identifies numerous types of industrial discharges that require PFAS sampling by the City. These discharges include commercial car washes, platers/metal finishers, paper and packaging manufacturers, tanneries and leather/fabric/carpet treaters, manufacturers of parts with Polytetrafluoroethylene (PTFE) or Teflon type coatings, landfill leachate, centralized waste treaters, known or suspected PFAS contaminated sites, firefighting training facilities, airports and any other known or expected sources of PFAS. The City objects to these requirements as EPA is requiring the City to identify potential PFAS sources outside of current industrial pretreatment program. EPA is requiring the City to identify properties or users that are not otherwise covered by the industrial pretreatment program but may be sources of PFAS, determine if a user or property is a potential source of PFAS, and identify properties or sites that may be or could be PFAS contaminated. EPA should be taking the lead on identifying potential PFAS sources and regulating such sources with Categorical Pretreatment requirements.

    The City agrees that there is significant concern with the impacts of PFAS. However, the cost of investigating and identifying industries and PFAS sources should be borne by EPA and MADEP, not the City of Fitchburg. Once EPA and MADEP identify these PFAS sources, they should separately regulate such sources. The cost of the PFAS sampling at these industries should be borne by the industrial user, not the City of Fitchburg.

    The City continues to make significant progress in the removal of CSOs and SSOs to improve the water quality of the receiving waters. This ongoing progress will continue to take significant financial resources to reach our goals over the coming years. Adding the PFAS identification and sampling requirements to the already burdensome Industrial Pretreatment Program will divert additional valuable resources away from the City's CSO removal program. EPA's actions are not helpful for the City and could jeopardize the City's progress. The City feels strongly that our resources are best spent on the continued removal of the CSOs and request that EPA remove the costly IPP PFAS identification and sampling requirements from the NPDES permit.

The City of Fitchburg and its staff are committed to providing safe and effective service to its utility users and the general public, including acting appropriately to protect the environment. Our community is active in managing, maintaining and improving our water resource systems to meet local needs. We request that US EPA consider the comments submitted herein and make the requested revisions to the draft permit prior to final issuance of these permitting components.

We are available to discuss these comments at your convenience.

Sincerely,

Mark McNamara
Deputy Commissioner of Wastewater
City of Fitchburg DPW- Wastewater Division
cc: US EPA
Massachusetts DEP
Weston & Sampson