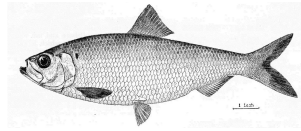


Save the Alewife Brook



Environmental Health is Community Health

To: Massachusetts Department of Environmental Protection(DEP)

Date: February 24, 2023

RE: Combined Sewer Overflow Final Public Notification Plans

Save the Alewife Brook is a grassroots environmental group with supporters in the communities along the Alewife Brook and the Little River, including Belmont, Cambridge, Arlington, Somerville, and Medford. We formed our organization to raise awareness about the unsafe condition of the Brook and to advocate for an end to untreated sewage discharges. We envision an Alewife Brook that is safe to live near, an environmentally healthy community resource, not a public waterbody that is treated as a source of hydraulic relief for an outdated, overburdened sewer system.

As an organization focused on sewage discharges to the Alewife Brook, the scope of our comments here is limited to Public Notification Plans that impact the Alewife (Final Public Notification Plans from MWRA, Cambridge, and Somerville and the Town of Arlington's SSO Public Notification Plan, the Plans).

We appreciate the effort that has gone into compliance with the state's new Public Notification law (Act to Promote Awareness of Sewage in Public Waters, General Law, Chapter 21, section 43A (the Law)). That Massachusetts seeks to protect its most vulnerable citizens and beleaguered waters is a point of pride. No other state has made the effort to enhance public notification of sewage discharges to this degree.

To respect that effort, we want to ensure that public notifications for the Alewife are accurate, timely, and targeted. People using the Alewife need to know whether a particular CSO is discharging. We need to know as soon as possible if the discharge has made using the Alewife unsafe. We also need to know when an elevated level of risk has passed.

Thanks to the efforts of the CSO Permittees, conditions in the Alewife Brook have improved, but they are not where they need to be, and Climate Change is rapidly exacerbating the problem.

The Permittees have a duty to advise the public about the risk posed by sewage discharges. Shifting that risk to the public through reliance on an "opt-in" email-based system, without corresponding real world warnings about actual conditions, enhances the belief that using the Alewife is always risky, or that it is never risky. Save the Alewife Brook is disappointed in the Permittees' responses to the new Public Notification requirements. They had an opportunity here to accurately define when and where users are at risk. The Permittees failed to make use of it.

DEP Should Consolidate Electronic Notification

Save the Alewife Brook is aware that DEP is implementing a statewide data system for CSO discharges. We hope that DEP does more with the system than passively publish notices. We would like to see the Department follow the lead of other entities that employ similar web-based systems to meet community needs for timely notification of CSO discharges. That would mean publishing easily understood information about discharges as quickly as they are discovered. Other states and water districts that utilize such systems update a map to indicate actual conditions, including active discharges. For example: <https://www.neorsd.org/cso-alerts-map-and-status-of-outfalls/>

With regard to the CSO Permittees legal duties under the law, Save the Alewife Brook does not believe consolidating subscription to the Permittees existing and required public advisories poses any bar to DEP's enforcement authority.

For the Alewife, the Permittees' existing email-based notification system should be consolidated into a watershed-based system which would give users a single site to subscribe to Discharge Advisories and Public Health Warnings for the watershed.

Unlike those of Cambridge and Somerville, the MWRA's system for CSO notifications requires providing unnecessary personal information with no guarantee that the information will be kept confidential, that it will be securely protected and inaccessible to potential hackers, and that it will not be used for other purposes. This is an added barrier for people who want to sign up to receive notifications. MWRA should be required to revise its system so that no more than an email address is required to sign up for CSO email notifications.

The Problem of Inadequate Staffing is Not Addressed

In their Final Public Notification Plans, all the Alewife CSO permittees stated that metering will be used to detect a CSO discharge. Our experience tells us that metering technology usually works adequately. Once an overflow is detected, the permittees are allowed a short period of time to verify the discharge and issue the required public advisory. The weak link in the system is inadequate staffing during this time. Only MWRA has 24/7 staffing. Both Cambridge and Somerville have identified responsible parties, but neither have sufficient staffing to guarantee the posting of a Public Advisory within the required time-frame. These are *not* small communities; it is reasonable to expect more from them. As DEP noted in its Response to Comments on the Draft Regulation:

“Even under shorter staffing conditions, either an alert notification or report of a discharge event warrants prompt attention, and response actions can and must satisfy the regulatory provisions for discovery and public notification.”

An Enhanced Public Notification System Would Work Better

Save the Alewife Brook believes that technology has matured enough to allow an enhanced public notification system. As an example, CSO Event Indicator Lights are required on the Potomac River[1]. Along the Alewife a similar system should be required. The locations identified by municipal health authorities[2] should be equipped with warning lights to indicate that a Public Health Warning is in effect. Save the Alewife Brook believes that an automated system would be less burdensome for municipal Health departments and provide more accurate information to the public. For 20 years community groups along the Alewife, including the East Arlington Good Neighbor Committee, Coalition for Alewife, and the Mystic River Watershed Association, have requested an enhanced public notification system[3]. In total fewer than 500 people receive email notifications about

discharges from the 3 CSO permittees[4]. The existing email system wastes resources and fails to reach most of the people actually using the Alewife Brook.

Alarming Events Along the Alewife Brook in the Last Week of January

A CSO activation occurred at 2 AM Thursday, January 26, 2023, and the CAM401A outfall discharged untreated sewage for over 2 hours. This outfall is at the head of a rip-rap ditch running behind the abandoned MBTA garage ramp on Cambridge Park Drive. On Friday, the 27th, a Cambridge Health Department Public Warning was seen on a traffic drum off the Fitchburg Cut-off Rail Trail near the outfall. Thankfully, the warning was in several of the many languages spoken in Cambridge; unfortunately, the main warning message in English was obscured by the tape attaching the sign to the drum.

This warning was not visible on the MBTA footpath or the Alewife Greenway leading toward Arlington. Most users were unaware that a sewage discharge had occurred. This is a problem. To illustrate this fact, in the days immediately following the 2+ hour discharge, a member of Save the Alewife Brook spoke with an enthusiastic visitor to this State Park who had been walking along the Alewife through Arlington into Cambridge, drinking the water from the brook. He had no idea that large volumes of raw, untreated sewage had recently been dumped there. The effort taken by Permittees to post advisories to an email list of subscribers is laudable, but if the goal is to provide public notification that there is sewage in the water, it is obviously failing.

The discharge at CAM401A on January 26, 2023 is an example of how the public notification system fails to work for someone who has not “opted in” to the email notification system – the vast majority of people along the Alewife.

Public Health Warnings Must Meet Legal Requirements

To supplement electronic notification required by the law, [5] DEP required municipal health authorities to identify public access locations and then authorized them to place permanent warning signs as a substitute for posting advisories [6]. This substitution violates the requirements of the law[7]. The law authorizes DEP to require municipal Boards of Health to issue a public warning about “a discharge.” A public health warning that is not connected to a particular discharge is inadequate under the law.

An active discharge, like the one at CSO Outfall CAM401A on January 26, 2023, required the CSO Permittees to issue a public advisory. Municipal health authorities impacted by the discharge are required to issue a public health warning if a CSO discharge exceeds 2 hours[8]. The January 26, 2023 discharge lasted more than 2 hours, which triggered the requirement for Arlington's Health Department to issue a Public Health Warning **and** to post that warning in a conspicuous place[9]. Arlington's permanent sign has no nexus with specific discharges. It tells people to avoid contact with the water when there's an Advisory. Arlington didn't physically post anything warning the public that an advisory had been issued, as the law required.

Pursuant to DEP regulations, municipal health authorities have identified places where posting a warning would be effective. Some, like Arlington, have put up permanent signs. Once they are required to post a Public Health Warning, that warning must comply with the law, and that means the Public Health Warning must specify the time, location, volume and duration of a **discharge**. In practice this means using the template provided by DEP and posting a temporary sign. Yes, it is burdensome to put up a temporary paper sign. It takes staff time to put it up, and further time to remove it once the advisory ends. However, that is a reasonable reading of what the law requires, and

it would have given fair notice to anyone using the Alewife Brook in Arlington after the January 26th discharge that there was untreated sewage in the water.

The CSO Permittees failed to define the land areas impacted by CSO discharges

The law requires CSO Permittees to identify land areas affected by CSO discharges[10]. The Alewife CSO Permittees Plans failed to meet this requirement. The attachments and descriptions they submitted are vague and unsupported by any evidence. DEP stated that “the approach for defining the impact area should be included in the permittee’s CSO Notification Plan” and also that “MassDEP’s expectation is that permittees will use Best Professional Judgment in defining the impact area.” [11] That judgment must include a consideration of reasonably available data. None of the Permittees provide any supporting evidence for their reliance on Best Professional Judgment in making a determination of the land areas affected. This is unfortunate because there is existing information that is reasonably available. None of the CSO Permittees cited climate change flooding maps, though Cambridge has an excellent one:

https://www.cambridgema.gov/-/media/Files/CDD/Climate/vulnerabilityassessment/newdocumentsapril2017/sealevelriseandstormsurgeclimateprojections_20170426.pdf

Nor did any of the Permittees cite existing hydrological studies. Not even a Flood Insurance Rate Map. Perhaps most troubling, MWRA and Cambridge did not support their submission with data from the 2001 *Revised Alewife Brook Long-Term CSO Control Plan*, a document they produced, which contained detailed information about impacts in East Arlington[12] (See NPC Attachment F, Figure ES-3; pages ES20-30).

Land areas affected by CSOs are “sensitive use areas”

DEP has noted that LTCPs are also required to identify any “sensitive use resource areas which could be impacted” and further, “Where it is documented in implementation of the Notification Plan that an area of impact is not encompassed in the notification program” action would be required[13].

The process of developing a new long-term CSO Control Plan for the Alewife Brook is underway. The issue of CSO permittees conducting a survey of places where contact with planned CSO discharges might occur in the context of a long-term control plan was raised during the schedule extension request[14]. The Department says the sensitive use determination in the LTCP is the forum where the determination of “affected areas” is to be raised. When can we expect DEP to take regulatory action regarding the scope and timing of the sensitive use determination in the revised LTCP for Alewife Brook?

SSO Notification

The Alewife CSO Permittees routinely suggest that overflows are necessary to prevent sewers from discharging into basements. These discharges would be characterized as SSOs because they are not discharges from permitted CSO outfalls. We ask, where is the documentation of these SSO prone areas in the Final Public Notification Plans?

Also lacking is a description of the areas where sewer systems will back up, should a failure of a CSO regulator occur, or places where the level of service necessary to prevent surface flooding requires a CSO regulator to remain open[15].

A search of 2 years of Somerville plumbing permits (about 1000 records) yielded 20 permits for sewer backflow preventers. Of these only one was for a basement backflow preventer (in Teele Square near Alewife Brook). The others lacked information to distinguish them from backflow preventers on boilers.

It's reasonable to ask the CSO Permittees to look a little harder at where their combined sewers discharge before accepting the assertion that overflows to Alewife Brook are necessary to prevent sewer back-ups in basements. The Plans are deficient without this information. The upcoming Sensitive Use Determination for the LTCP would also be an appropriate forum for such a survey.

Save the Alewife Brook asserts that none of the CSO Permittees Public Notification Plans can be approved in their current form.

Save the Alewife Brook requests that DEP require more information from the CSO Permittees prior to approval of the Final Public Notification Plans. We note that this is a notice and comment process and respectfully request that the issues raised in this comment letter receive a specific and timely response. As individuals impacted by untreated sewage discharges to the Alewife Brook, we are passionate about this topic. DEP has been quiet during the public process for the revised Alewife Brook LTCP. We want open dialog between the Permittees, regulators, and the public. To that end we request that DEP meet with Save the Alewife Brook and other community organizations to discuss the Public Notification Plans and other issues raised by the Schedule Extension Request and development of the Draft LTCP.

Sincerely,

Kristin Anderson, Eugene Benson, Gwendolyn Speeth, David Stoff, David White

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Save the Alewife Brook

CC:

Catherine Daly Woodbury, City of Cambridge
Kathy Watkins, City of Cambridge
Rich Raiche, City of Somerville
Lucica Hiller, City of Somerville
David Coppes, MWRA
Christine Bongiorno, Arlington Board of Health

Footnotes

[1] [https://www.dewater.com/css; NPDES Permit No. DC002I 199, Part 1, sec.E\(2\)\(h\).](https://www.dewater.com/css; NPDES Permit No. DC002I 199, Part 1, sec.E(2)(h).)

[2] 314 CMR 16.09(5)

[3] "Although lights or some other additional notification of CSO activation could be useful and the EPA encourages the City to consider additional options to alert the public to CSO discharges, EPA believes that the requirements in the final permit, which are consistent with the variance extension, are adequate and appropriate at this time." EPA response to public comments, Somerville NPDES permit, MA0101982, 2012, response B4.

[4] MWRA-201; Cambridge-209; Somerville-70.

[5] General Law, chapter 21 sec 43(A) (f)

- [6] 314 CMR 16.09(5)
- [7] General Law, chapter 21 sec 43(A) (f)
- [8] 314 CMR 16.09 (1)(a)
- [9] 314 CMR 16.09(5)
- [10] “waters and land areas affected or expected to be affected by the discharge” Chapter 21 sec. 43A(b) (iv); “Waters and land areas, including names of water bodies and municipalities, affected or potentially affected by the discharge or overflow” 314 CMR 10(f).
- [11] DEP Response to Comments on the Draft Regulations 314 CMR 16.06
- [12] See, Maps of flooding impacts East Arlington, Revised Alewife Brook LTCP, 2001, Attachment F, Figure ES-3; pages ES20-30.
- [13] DEP Response to Comments on the Draft Regulations pg. 11.
- [14] Comments on the Extension Request, David Stoff, December 2022,
- [15] See, City of Somerville, Citywide Drainage and Water Quality Master Plan
<https://voice.somervillema.gov/citywide-drainage-and-water-quality-master-plan>