

## **314 CMR 16.00 Notification Requirements to Promote Public Awareness of Sewage Pollution**

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#### 16.01 Purpose, Authority and Applicability

The Massachusetts Department of Environmental Protection promulgates these regulations pursuant to the authority of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53, including but not limited to Sections 27 and 43A, and Section 2 of Chapter 322 of the Acts of 2020. 314 CMR 16.00 establishes requirements and procedures for notifying the public of sewage discharges and overflows into the surface waters of the Commonwealth to protect and preserve public health. The provisions set forth at 314 CMR 16.04, 314 CMR 16.05, 314 CMR 16.07, and 314 CMR 16.09 shall take effect on July 6, 2022. All other provisions of 314 CMR 16.00 shall take effect on the date these regulations are promulgated, unless the context clearly indicates otherwise. Compliance with these regulations does not relieve a person of any other obligations under state or federal law.

#### 16.02 Definitions

The following words shall have the following meaning in these regulations, unless the context clearly indicates otherwise:

Blended Wastewater - wastewater conveyed to a Publicly Owned Treatment Works (POTW) receiving flows from combined sewer systems which is, in part, intentionally diverted around secondary treatment units during wet weather conditions, and then recombined with flows from the secondary treatment units, as a measure to minimize and mitigate water quality impacts of discharges of combined sewer overflows, and to prevent adverse impacts to the secondary treatment facilities. For the purposes of 314 CMR 16.00, blended wastewater is considered to be a type of partially treated wastewater.

Combined Public Advisory Notification - the issuance of a single communication to inform the public that more than one of a permittee's outfalls are discharging to the same water body or waterway.

Combined Sewer Overflow or CSO – any discharge of untreated or partially treated wastewater to a surface water of the Commonwealth from an outfall that is connected to a combined sewer system.

Combined Sewer System – a sewer system designed to collect and convey storm water runoff and wastewater in shared piping.

Commissioner – the Commissioner of the Department of Environmental Protection or his or her designee.

Department – the Department of Environmental Protection.

Discharge or Discharging – a release or diversion of sewage, industrial waste or other effluent, which is untreated or partially treated, including from a combined sewer system overflow, that is emitted from an outfall directly or indirectly into surface waters of the Commonwealth.

Discovery – the time when a permittee obtains actual knowledge, or when a person acting in a reasonably prudent manner would have obtained such knowledge, based on the facts and circumstances surrounding a particular event. In determining whether a person has acted in a reasonably prudent manner, any specialized knowledge or training possessed by that person and the circumstances surrounding the fact or facts in question shall be taken into account.

Diversion - the intentional redirection of wastewater flows to a surface water of the Commonwealth, including through means other than an outfall.

Environmental Justice Population – a neighborhood that meets one or more of the following criteria: (i) the annual median household income is not more than 65 percent of the statewide annual median household income; (ii) minorities comprise 40 percent or more of the population; (iii) 25 percent or more of households lack English language proficiency; (iv) minorities comprise 25 percent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 percent of the statewide annual median household income; or (v) a neighborhood designated by the Secretary of the Executive Office of Energy and Environmental Affairs (EOEEA) as an environmental justice population in accordance with the EOEEA 2017 Environmental Justice Policy (2021 Update). Neighborhoods are identified in the MassGIS Environmental Justice Viewer.

EPA - the United States Environmental Protection Agency.

Model – a mathematical tool used to simulate various outcomes for the purpose of planning, analysis, and design of a system.

NPDES - the National Pollutant Discharge Elimination System permit program established by 33 U.S.C. § 1342, which regulates point source discharges of pollutants to surface waters of the United States.

Outfall – an outlet designed for the purpose of allowing a discharge that is part of, or connected to, a combined sewer system, sanitary sewer system, or treatment works, including a connection

to any such system or facility intended to allow wastewater to divert or bypass treatment by a wastewater treatment facility.

Partially Treated - a discharge through an outfall from a treatment works where all or a portion of the flow is not conveyed through all treatment units, or where treatment units are bypassed due to a treatment unit failure. Discharges by permittees that utilize seasonal treatment, such as seasonal disinfection, are not considered partially treated provided the permittee is operating its treatment in compliance with its NPDES and surface water discharge permits. Where a treatment works is designed, constructed, and operated only to treat flows from a combined sewer system prior to discharge through a permitted combined sewer overflow, such discharges shall in all cases be deemed as partially treated. For the purposes of 314 CMR 16.00, blended wastewater is considered to be a type of partially treated wastewater.

Permittee – a person granted a permit under M.G.L. c. 21, § 43, and 314 CMR 3.00: *Surface Water Discharge Permit Program*, or the NPDES permit program, to operate and maintain a particular outlet for the discharge of pollutants into surface waters of the Commonwealth; a person operating a sewer system; or a person discharging pollutants from an outlet without a required permit or in violation of the conditions of a valid permit.

Pollutant – any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained, or otherwise introduced into any sewerage system, treatment works, or surface waters of the Commonwealth.

Public Advisory Notification or Notification – the communication a permittee must provide to inform the public of certain discharges or overflows of untreated or partially treated wastewater.

Publicly Owned Treatment Works or POTW – any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a public entity. A POTW includes any sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Reverse 911 Emergency Call System – a public safety communications technology used by municipalities to deliver emergency notifications to its residents through recorded messages, text messages, or email.

Sanitary Sewer Overflow or SSO - any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system. The discharge or overflow of sewage into a building is not considered an SSO under 314 CMR 16.00.

Sewer System – pipelines or conduits, pumping stations, force mains, and all other structures, devices, appurtenances, and facilities used for collecting and conveying wastewater to a wastewater treatment facility.

Surface Water Discharge Permit - a permit issued by the Department, pursuant to M.G.L. c. 21 § 43, and 314 CMR 3.00: *Surface Water Discharge Permit Program*, that regulates discharges of pollutants to surface waters of the Commonwealth.

Treatment Works – any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal.

Wastewater – sewage, industrial waste, other wastes, or any combination of the three.

Wastewater Treatment Facility – any device, process or property, real or personal, used in the collection, pumping, transmission, storage, treatment, and disposal of waterborne pollutants.

#### 16.03 Events Requiring Notification

- (1) A Permittee must issue a public advisory notification for the following events:
  - (a) Any Combined Sewer Overflow;
  - (b) Any discharge of partially treated wastewater, including blended wastewater;
  - (c) Any Sanitary Sewer Overflow that discharges through a wastewater outfall, either directly or indirectly, to a surface water of the Commonwealth;
  - (d) Any SSO that flows into a surface water of the Commonwealth and is the result of the sanitary sewer system surcharging under high flow conditions when peak flows cannot be conveyed to a POTW due to capacity constraints; and
  - (e) Any SSO that flows into a surface water of the Commonwealth and is the result of a failure of a wastewater pump station or associated force main designed to convey peak flows of 1 million gallons per day or greater.
- (2) A permittee is not required to issue a public advisory notification for SSOs that are regulated under 314 CMR 12.00, except for the SSO events specified in 314 CMR 16.03(1)(c) through (e).

#### 16.04 Requirements for Public Advisory Notifications

- (1) A permittee shall utilize metering to determine or discover when a discharge described in 314 CMR 16.03(1)(a) or (b) occurs at its outfall and requires a public advisory notification, unless the permittee requests authorization, and receives written approval from the Commissioner, to utilize another method in accordance with 314 CMR 16.04(2).
- (2) The permittee shall apply to the Commissioner for approval of any method other than, or in addition to metering to determine or discover a discharge described in 314 CMR 16.03(1)(a), within the timeframes established in 314 CMR 16.04 and in accordance with the process described in 314 CMR 16.06. The permittee shall apply to the Commissioner for approval of any method other than, or in addition to metering to determine or discover a discharge described in 314 CMR 16.03(1)(b), within the timeframes established in 314 CMR 16.04, by submitting a request to the Department and providing information to support that request. The Commissioner shall approve the proposed method if the

Commissioner determines that the permittee can obtain reliable information by such method about any discharge from its outfall and issue public advisory notifications within the timeframes established in 314 CMR 16.04. If the proposed method or the current discharge detection capabilities of the permittee's outfall will not provide timely or reliable information, the Commissioner may extend the time for a permittee to issue a public advisory notification, provided that such time shall be extended only as necessary and not more than 24 hours after discovery of the discharge. A permittee that has been granted an extension shall make necessary improvements to its outfall, system, or methodology, if any, in the timeframe specified in the Commissioner's approval, to detect or discover an outfall discharge within the timeframes established in 314 CMR 16.04. The Commissioner's approval of an alternate detection method, or extension of notification timeframe may be provided within the approval of a CSO Public Notification Plan, in accordance with 314 CMR 16.06.

- (3) A permittee shall establish and maintain a public website to post public advisory notifications when issued and to receive requests from the public to subscribe to and receive public advisory notifications by email or text message. When a permittee issues a public advisory notification, in addition to the information required to be included in the notification by 314 CMR 16.04(10), the permittee shall include information on its website about any treatment to disinfect pathogens and remove solids and other pollutants from the discharge or overflow, and links to websites providing information on the closure or advisory status of shellfish growing areas, bathing beaches, or other water resource areas potentially affected by the discharge or overflow.
- (4) A permittee required by 314 CMR 16.03 to issue public advisory notifications shall do so as soon as possible, but no later than 2 hours after discovery of a discharge or overflow, unless the Commissioner has approved in writing a longer time period in accordance with 314 CMR 16.04(2).
  - (a) The public advisory notification, and any updates required by 314 CMR 16.04(7) and (8), shall be posted on the permittee's website and issued electronically to: the Department; the U.S. Environmental Protection Agency; the Massachusetts Department of Public Health; the municipal board of health or the health department where the outfall or overflow is located; the board of health or the health department and shellfish constables (if applicable) for any municipality directly impacted by the discharge or overflow; any person who subscribed to receive such public advisory notifications by email or text messaging; the public water supplier(s) where drinking water supplies may be affected; the Massachusetts Division of Marine Fisheries where shellfish growing areas may be affected; the Massachusetts Department of Conservation and Recreation when its water recreation properties may be affected; the Massachusetts Division of Fisheries and Wildlife when its boat ramps and fishing piers may be affected; and operators of any potentially affected bathing beaches, as defined in 105 CMR 445.00: *Minimum Standards for Bathing Beaches (State Sanitary Code: Chapter VII)*.

- (b) The public advisory notification, and any updates required by 314 CMR 16.04(7) and (8), shall also be issued to at least the two largest news organizations that report on local news in municipalities near the outfall. In municipalities with environmental justice populations, if neither of the two largest news organizations specifically serves the environmental justice populations, at least one additional news organization that primarily serves the environmental justice population(s) within the impacted municipalities must be notified.
- (5) A permittee shall take adequate, appropriate, and timely actions in accordance with the permittee's approved Public Notification Plan, as applicable, to determine or discover that a discharge or overflow from its outfall or sewer system is occurring each time the permittee receives information from a flow meter, model run, or other Commissioner-approved method for monitoring, detecting, or simulating a discharge or overflow from its outfall or sewer system. Such actions shall include the following:
- (a) CSO outfalls.
1. For a CSO outfall that is monitored with metering equipment, each time a permittee receives communication of a potential discharge from the meter deployment, the permittee shall take all actions set forth in the permittee's Department-approved CSO Public Notification Plan to confirm the occurrence of a discharge, including, without limitation, review of meter data, site inspection, or other approved methods. In no event shall a permittee spend longer than 2 hours to confirm a discharge, commencing from the time a communication is sent by a meter deployment, if the permittee has operational staff on site 24 hours per day, 7 days per week. In no event shall a permittee spend longer than 4 hours to confirm a discharge, commencing from the time a communication is sent by a meter deployment, if the permittee does not have operational staff on site 24 hours per day, 7 days per week. If a permittee is unable to confirm that a discharge occurred within the timeframes established herein, it shall presume that a discharge has been discovered.
  2. For a CSO outfall where modeling is used to predict the occurrence of a discharge, a permittee shall be deemed to have discovered a discharge when results of model simulations indicate the occurrence of a discharge or when model-developed thresholds have been triggered for rainfall data, sewer system flow data, or other information that predicts a potential CSO discharge will occur or is occurring.
  3. For a CSO outfall where the Commissioner approves a method other than metering or modeling for predicting the occurrence of a discharge, the method shall be described in the CSO Public Notification Plan and implemented as approved by the Department.
- (b) SSO discharge or overflow. A permittee shall determine or discover the occurrence of an actual SSO discharge or overflow, or the potential for a SSO discharge or overflow requiring a public advisory notification described in 314 CMR 16.03(1)(c) through (e) based on information reasonably available to the permittee, such as a report of a discharge or an overflow made by any person, site

inspection, pump station or level alarms or other relevant information. In no event shall a permittee take longer than 4 hours to confirm a potential SSO discharge or overflow, commencing from the time a permittee initially receives relevant information. If a permittee is unable to confirm that a potential discharge or overflow actually occurred within the timeframe established herein, it shall presume that a discharge or overflow has been discovered.

- (c) Partially Treated Wastewater. For any discharge of partially treated wastewater from a wastewater treatment facility, a permittee shall issue the required public advisory notification within 2 hours of the time when the permittee begins diverting a portion of the flow around a treatment process, or within 2 hours of the permittee becoming aware of a failure within the treatment process that is resulting in discharge of partially treated wastewater.
- (6) The Department may allow a permittee with a combined sewer system to issue a combined public advisory notification, in the manner required by 314 CMR 16.04, when a wet weather event or other related occurrence involves more than one of the permittee's outfalls discharging into the same water body or waterway. Permittees shall not issue a combined public advisory notification except as authorized in a CSO Public Notification Plan approved by the Department.
  - (7) A permittee shall issue a public advisory notification update 8 hours after the initial public advisory notification is issued. This update: (a) shall clearly indicate that a discharge or overflow is ongoing or has ceased; (b) if it has ceased, shall indicate the approximate time of cessation; (c) shall update any information that has changed since the initial public advisory notification; and (d) shall be issued to all parties required to receive notifications under 314 CMR 16.04(4). If the permittee has reported that the discharge or overflow has ceased at the time of the initial public advisory notification, then an update is not required 8 hours later.
  - (8) For any event for which public advisory notification is required pursuant to 314 CMR 16.03 and is still ongoing 8 hours after the initial public advisory notification is issued, a permittee shall continue to issue public advisory notification updates every 8 hours if the discharge is still ongoing and shall issue a public advisory notification within 2 hours after the discharge or overflow ceases or is projected to cease, to all parties required to receive notifications under 314 CMR 16.04(4), unless the Department requires otherwise. The notice of cessation shall clearly indicate the approximate time of cessation.
  - (9) Within 48 hours of issuing a public advisory notification, if the permittee becomes aware that no discharge or overflow actually occurred, the permittee shall issue a retraction of the public advisory notification to all parties required to receive notifications under 314 CMR 16.04(4).
  - (10) A permittee shall include the following information in the public advisory notification, unless such information is not available despite the permittee's best efforts to obtain the information prior to issuing the public advisory notification:

- (a) Description of discharge or overflow location(s), and outfall number, if applicable;
  - (b) Approximate date and time the discharge or overflow began, and its duration;
  - (c) Estimated volume of the discharge or overflow based on the average discharge or overflow from data reported to the Department and/or EPA for the prior 3 calendar years, taking into consideration historical information for the projected rainfall event, if possible, as set forth in the permittee's CSO Public Notification Plan;
  - (d) Identity of the permittee;
  - (e) Whether, at the time of notification, the discharge or overflow has ceased, and if so, the approximate time and date that the discharge or overflow ended;
  - (f) Waters and land areas, including names of water bodies and municipalities, affected or potentially affected by the discharge or overflow;
  - (g) Precautionary measures to be taken by the public, including the following language: "Avoid contact with these water bodies for 48 hours after the discharge or overflow ceases due to increased health risks from bacteria and other pollutants. See website for more information on whether specific resource areas, such as bathing beaches, are affected.";
  - (h) Link to the permittee's website for additional information on discharges and overflows, and its CSO and/or SSO abatement program(s); and
  - (i) A statement that the discharge or overflow consists, or likely consists, of untreated or partially treated sewage and waste.
- (11) Public advisory notifications shall be translated into, or provide access to translations in, other languages, as appropriate, in municipalities that are directly impacted by the discharge or overflow, and that have neighborhoods identified as environmental justice populations due to lacking English language proficiency.
- (12) Without limitation, public advisory notifications shall be made in accordance with the requirements of 314 CMR 16.00, approved public notification plans, and other Department approvals.
- (13) Compliance with the notification requirements of 314 CMR 16.00 does not relieve a permittee of their obligations under 40 CFR 122.41, 314 CMR 3.19, 314 CMR 12.03(8), or other applicable federal and state laws.

#### 16.05 CSO Permittee Website and Signage Requirements

- (1) A permittee with a combined sewer system shall include, at a minimum, the following information on its website:
- (a) A map showing the locations of the permittee's outfalls including the corresponding outfall numbers in a NPDES or surface water discharge permit, if applicable;
  - (b) A summary of the permittee's Long-Term CSO Control Plan, and status of its implementation, if applicable;



- (c) Instructions on how an interested person can subscribe to receive public advisory notifications;
  - (d) Links to any CSO Reports required to be developed in a NPDES or surface water discharge permit, or as part of any enforcement order, for at least the preceding three calendar years, if applicable; and
  - (e) A compilation of discharge data for each public advisory notification event, updated so that data for each month is posted within 15 days of the last day of the month. Data posted shall include updated information on the estimated duration, frequency and volume of the discharge, rainfall data, and treatment provided for any CSO discharges. The website shall include data for at least the preceding three calendar years, if applicable.
- (2) Each permittee shall install and maintain a warning sign at each of its CSO outfalls in accordance with requirements of its NPDES and surface water discharge permits.
- (3) Each permittee shall install and maintain signage at public access points to waters affected by a potential discharge from a permittee's outfall by the date established in their approved CSO Public Notification Plan. The locations for the signage shall be established in the permittee's approved CSO Public Notification Plan based on consultation with boards of health or health departments in the municipalities directly impacted by the discharge. Each sign shall identify: (a) the existence of the outfall; (b) the permittee; (c) information about weather events that may cause a discharge; (d) a warning of the potential threat to public health by recreating in, or using waters and shores affected by a discharge; and (e) information for the public to subscribe to notifications about discharges in local area waters. Signage shall be developed using a template provided by the Department and be able to provide timely information about ongoing discharges to allow municipal boards of health and health departments to meet the requirements of 16.09(6). For discharges directly affecting neighborhoods identified as environmental justice populations due to lacking English language proficiency, signage shall provide access to translations in the language(s) most appropriate for those neighborhoods and shall utilize universal symbols.

#### 16.06 Public Notification Plans

- (1) On or before May 1, 2022, unless an alternative timeline has been established by the Department under an enforcement order, a permittee with a combined sewer system shall submit to the Department for review and approval a preliminary CSO Public Notification Plan, which shall be implemented as approved, including any conditions of approval. Each preliminary CSO Public Notification Plan shall include:
- (a) A brief description of the method the permittee will utilize for each of its outfalls to determine or discover a discharge described in 314 CMR 16.03(1)(a) or (b), as applicable, within the timeframes established in 314 CMR 16.04;
  - (b) A request to the Commissioner in accordance with 310 CMR 16.04(2) if the permittee seeks preliminary approval to utilize any method other than, or in addition to, metering to determine or discover a discharge; and
  - (c) A brief summary of how a permittee will comply with provisions of 314 CMR

16.04 and 16.05 regarding their website, signage, and public advisory notifications for all applicable discharges and overflows described in 314 CMR 16.03, including, without limitation, a description of measures that the permittee will take to communicate to environmental justice populations.

(2) On or before January 12, 2023, unless an alternative timeline has been established by the Department under an enforcement order, a permittee with a combined sewer system shall submit to the Department for review and approval a final CSO Public Notification Plan, which shall be implemented as approved, including any conditions of approval. At the same time the plan is submitted to the Department, the permittee shall place a public notice in the Environmental Monitor and at least one media outlet that serves the environmental justice population(s) in the municipalities impacted by the discharge. The public notice shall state that a CSO Public Notification Plan has been prepared and submitted to the Department. The public notice shall include a link to a website where an interested party can review the plan and shall specify that written comments on the plan can be submitted to the Department and the permittee for a period of 30 days after the date of publication. The public notice shall be translated into the languages most appropriate for neighborhoods within the impacted municipalities that are identified as environmental justice populations due to lacking English language proficiency. The Department will consider all comments received within the public comment period. The Department may require modifications to a permittee's final CSO Notification Plan when deemed appropriate in view of relevant facts and circumstances. The Department may also approve a plan modification requested by a permittee, based on a showing that the requested modification is appropriate in view of relevant facts and circumstances. Depending on the magnitude of the changes proposed in the modification, the Department may require public notice of the modified plan as described above. The final CSO Notification Plan shall include the following elements:

- (a) Each plan shall establish an efficient, timely, and reliable program for determining when each outfall is discharging, estimating the commencement and cessation times of the discharge, and estimating volume and duration of each public advisory event. The program shall include use of metering and telemetry equipment unless the Commissioner approves an alternative method, such as calibrated sewer system models using rainfall or other system data, or a combination of modeling and metering methods. The program shall also be capable of meeting the notification requirements under 314 CMR 16.04;
- (b) Where metering of discharges is used to quantify commencement and cessation of the discharge, volumes, and duration, the permittee shall calibrate metering equipment on an annual basis, at a minimum, and shall properly maintain metering equipment to ensure that accurate data can be recorded;
- (c) To apply for final approval of any method other than, or in addition to, metering to determine or discover a discharge, a permittee shall include a request in accordance with 314 CMR 16.04(2) in its final CSO Public Notification Plan and provide information to support the request. The Commissioner shall evaluate and

approve or deny the request in accordance with 314 CMR 16.04(2);

- (d) Where sewer system models are proposed and approved by the Department for predicting CSO activation and discharge volume, the permittee shall:
  1. Review and update the model input data as needed to ensure the model properly reflects the current sewer system configuration and elements;
  2. Provide proper maintenance of any data collection equipment, including rain gauges, communications equipment, depth monitors, or other equipment providing critical input to the model;
  3. Assess the model predictions, annually at a minimum, to confirm the model predictions of the CSO activations, volumes, and duration are consistent with other system data available, including any temporary or permanent sewer system flow meters, wastewater treatment facility influent flow data, collection system pump station flow or run time data, or other data that can provide a relationship to CSO event flows; and
  4. Provide a description of the actions taken to comply with the requirements of this provision to the Department in writing on or before March 1 each year; and

- (e) A detailed description of how a permittee will comply with all applicable requirements of 314 CMR 16.04 and 16.05 regarding their website, signage, and public advisory notifications for all applicable discharges and overflows described in 314 CMR 16.03, including, without limitation, a description of measures that the permittee will take to communicate to environmental justice populations.

- (3) On or before July 6, 2022, a permittee without a combined sewer system shall submit to the Department for review and approval, using a form developed by the Department for such purpose, a SSO Public Notification Plan. The Plan shall include a description of how a permittee will comply with all applicable requirements of 314 CMR 16.04 regarding public advisory notifications for all applicable discharges and overflows described in 314 CMR 16.03. The Plan will be presumed approved if the Department does not issue a written approval, conditional approval, denial, or request for further information within 180 days after submittal.

#### 16.07 Permittee Reporting Requirements

- (1) In addition to the requirement to issue public advisory notifications to the Department under 314 CMR 16.04(4)(a), (7) and (8), a permittee shall report discharges and overflows to the Department within the required time frames in a format specified by the Department using the Department's specified electronic reporting system. The report shall contain the same information required by 314 CMR 16.04(3) and (10).
- (2) A permittee shall submit a compilation of data from all discharges and overflows in the previous month on the 15<sup>th</sup> of each month in a format specified by the Department using the Department's specified electronic reporting system. Data submitted shall include, without limitation, any updated information on the estimated duration and volume of each discharge or overflow, rainfall data for all discharges and overflows, and treatment

provided for any CSO or partially treated discharges. For CSO permittees, if no CSO discharges have occurred within the previous month, the permittee shall report that no discharge occurred.

- (3) By February 1<sup>st</sup> of each year, a permittee shall submit to the Department any corrections or updates to data submitted for the previous calendar year pursuant to 314 CMR 16.07(2). Data shall be reported using the Department's specified electronic reporting system in a format specified by the Department.
- (4) Compliance with the reporting requirements of 314 CMR 16.00 does not relieve a permittee of their obligations under 40 CFR 122.41, 314 CMR 3.19, 314 CMR 12.03(8), or other applicable federal or state laws.

#### 16.08 Waivers

Upon application by a permittee, the Commissioner may issue a written waiver of any requirement under 314 CMR 16.00 related to a permittee's outfall; provided that: (i) the outfall is decommissioned; or (ii) there has not been significant discharge from the outfall, as determined by the Department, during the preceding 5 years; and provided that the Commissioner determines that waiver will not pose a substantial threat to public health or to the environment. The Commissioner may include specific conditions in any written waivers, which shall be valid for not more than 5 years, or for such shorter period of time as determined by the Commissioner.

#### 16.09 Public Health Warnings

- (1) Boards of health or health departments in municipalities directly impacted by the discharge or overflow shall issue a public health warning to impacted residents of the municipality upon receipt of a public advisory notification if any of the following circumstances applies:
  - (a) For CSO, partially treated, and blended wastewater discharges, if the discharge has a duration longer than two hours;
  - (b) For CSO, partially treated, and blended wastewater discharges, if the board of health or health department determines that a public health warning is necessary to protect public health, regardless of the duration of the discharge; or
  - (c) For any SSO that requires notification pursuant to 314 CMR 16.03(1)(c) through (e).
- (2) Boards of health and health departments shall issue the public health warning using existing emergency notification systems, including if available, a reverse 911 emergency call system.
- (3) When more than one discharge or overflow can occur on a waterbody, the boards of health or health departments shall determine whether the first public health warning is sufficient or whether additional public health warnings are required.

- (4) At a minimum, the public health warning shall identify receiving waters affected and shall include:
- (a) The location, date, and time of the discharge or overflow;
  - (b) A recommendation that the public avoid contact with affected water bodies for at least 48 hours after a sewage discharge or overflow, and during rainstorms and for 48 hours after rainstorms end, due to increased health risks from bacteria or other pollutants associated with urban stormwater runoff and discharges of untreated or partially treated wastewater;
  - (c) Information on where to find the closure or advisory status of shellfish growing areas, beaches, or other water resource areas potentially affected by the discharge or overflow; and
  - (d) Access to translations of the warning, as appropriate for neighborhoods identified as environmental justice populations due to lacking English language proficiency, in the language(s) most appropriate for those neighborhoods.
- (5) When boards of health or health departments issue a public health warning, they shall also post or cause to be posted a temporary sign or use a permanent sign, at conspicuous locations affording public access to the waterbody, as identified by the board of health or health department, in municipalities directly impacted by the discharge or overflow. Temporary signage is not required at permitted bathing beaches or shellfish growing areas that are monitored and posted pursuant to Department of Public Health or Division of Marine Fisheries requirements. Permanent signs installed and maintained by permittees in accordance with 314 CMR 16.05(3) may be used for this purpose.
- (a) If a temporary sign is used, the sign shall read: "WARNING! AVOID CONTACT WITH WATER – MAY CAUSE ILLNESS" and display an infographic showing no fishing, boating, or swimming. In neighborhoods identified as environmental justice populations due to lacking English language proficiency, the sign shall include translation of the text above and provide access to translations of the following information in the language(s) most appropriate for those neighborhoods: text stating that the reason for the warning is inform people about the potential for sewage in surface waters; the requirements specified in 310 CMR 16.04(10)(b); information on where to determine the closure or advisory status of shellfish growing areas, beaches, or other water resource areas potentially affected by the discharge or overflow; and contact information for the board of health or health department.
  - (b) The local board of health or health department, the permittee as specified in 314 CMR 16.05(3), or any other person may install a permanent sign. If used, such a sign must convey the information required by 314 CMR 16.09(6)(a) and must be updated with such information in a timely manner.

#### 16.10 Enforcement, Violations, and Right of Entry

- (1) The Department may take enforcement action pursuant to applicable law to enforce the provisions of M.G.L. c. 21, § 43A, and 314 CMR 16.00. Such action may include, without limitation, the following:

- (a) Issuing such orders as necessary to aid in the implementation and enforcement of M.G.L. c. 21, § 43A, and 314 CMR 16.00, or to take any other action necessary to protect public health. Such orders may include, but shall not be limited to, orders requiring permittees or municipal boards of health or health departments to cease and desist any activity that is in violation of M.G.L. c. 21, § 43A, or 314 CMR 16.00, or to carry out such activities necessary to bring such permittee, municipal board of health or health department into compliance;
  - (b) Requiring a permittee or municipal board of health or health department to provide information, within a timeframe specified by the Department, to enable the Department to determine whether such permittee or municipal board of health or health department is subject to, in violation of, or has violated M.G.L. c. 21, § 43A, or 314 CMR 16.00;
  - (c) Assessing civil administrative penalties pursuant to M.G.L. c. 21A, § 16, and M.G.L. c. 21, § 42; or
  - (d) Referring the suspected violation to the Attorney General or appropriate District Attorney for injunctive relief and/or civil or criminal enforcement.
- (2) It shall be a violation of M.G.L. c. 21, § 43A, and 314 CMR 16.00 to:
- (a) Fail to issue any public advisory notification to the permittee's website when required and in the format required, within the timeframes established by 314 CMR 16.04;
  - (b) Fail to include all information required by 314 CMR 16.04(10) or a permittee's CSO Public Notification Plan in any issued public advisory notification;
  - (c) Fail to provide public advisory notifications to all entities, including news organizations, as required by 314 CMR 16.04(4) or a permittee's CSO Public Notification Plan;
  - (d) Fail to establish and maintain a public website as required by 314 CMR 16.05;
  - (e) Fail to install and maintain signage as required by 314 CMR 16.05 or a permittee's CSO Public Notification Plan;
  - (f) Fail to establish and implement a permittee's Public Notification Plan as approved by the Department and required by 314 CMR 16.06;
  - (g) Fail to report any information required by the Department pursuant to 314 CMR 16.07;
  - (h) Fail to provide any information required by the Department pursuant to 314 CMR 16.10(1)(b);
  - (i) Fail to issue a public health warning or otherwise comply with the requirements of 314 CMR 16.09; or
  - (j) Fail to comply with any other term, requirement, or provision of 314 CMR 16.00, an approved CSO Public Notification Plan, or other Department approval.
- (3) Without limitation, the Department may conduct inspections to verify compliance with or investigate a suspected violation of M.G.L. c. 21, § 43A, 314 CMR 16.00, approved Public Notification Plans or other Department approvals, or administrative orders issued pursuant to M.G.L. c. 21, §§ 26-53, in the following manner:
- (a) The Department may examine any records pertaining to the operation of a sewer system or wastewater treatment facility, in accordance with M.G.L. c. 21, § 40.

- (b) The duly authorized agents and employees of the Department, at all reasonable times, may enter and examine any property, facility, operation or activity in accordance with M.G.L. c. 21, § 40. The owner, operator or other person in charge of the property, facility, operation or activity, upon presentation of proper identification, shall give such agents and employees free and unrestricted entry and access in accordance with M.G.L. c. 21, § 40.

#### REGULATORY AUTHORITY

314 CMR 16.00: M.G.L. c. 21, §§ 26-53, and Section 2 of Chapter 322 of the Acts of 2020