



# Water Supply District of Acton

693 MASSACHUSETTS AVENUE  
P.O. BOX 953  
ACTON, MASSACHUSETTS 01720

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## Board of Water Commissioners

### Meeting Agenda

Monday, November 14, 2022 @ 7:00 PM

**Due to the COVID-19 Pandemic, meetings are being held virtually via Zoom**

Please click the link below to join the webinar:

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Webinar ID: 892 1295 4711

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- **Comments from the public**
- **Approve minutes from the meeting of 10/17**
- **Appoint one Commissioner to approve warrants while conducting meetings virtually**

### **OLD BUSINESS:**

- Peter Bay of EDF Renewable for update on the Knox Trail Solar array project
- Town of Acton's Open Space and Recreation Plan (OSRP)
- Per- and Polyfluoroalkyl Substances (PFAS)
  - Current sample data, if available
- Update on the Assabet #3 project
- Follow-up discussion of scheduling the next meeting

### **NEW BUSINESS:**

- Review Administrative Consent Order (ACO) for the Clapp/Whitcomb Backwash system

**EXECUTIVE SESSION:** --To consider the purchase, exchange, lease of real property as an open meeting may have a detrimental effect on the negotiating position of the District

Board of Water Commissioners  
Meeting Minutes  
Acton Water District  
693 Massachusetts Avenue, Acton, MA  
Monday, October 17, 2022

**AGENDA**

- A. Representatives of Powers & Sullivan for annual audit report
- B. Comments from the public
- C. Approve minutes from the meeting of 10/3
- D. Approve Executive Session minutes from 2020, 2021 & 2022
- E. Release Executive Session minutes of 12/10/18, 10/5/20 & 11/5/20 as public record
- F. Appoint one Commissioner to approve warrants while conducting meetings virtually

**G. OLD BUSINESS:**

- 1. Per- and Polyfluoroalkyl Substances (PFAS)  
Current sample data, if available
- 2. Update on PFAS action plan

**H. NEW BUSINESS:**

Any agenda item(s) which did not come to the attention of the Board of Water Commissioners 48 hours prior to this meeting and were not reasonably anticipated

**EXECUTIVE SESSION:** --To consider the purchase, exchange, lease of real property as an open meeting may have a detrimental effect on the negotiating position of the District.

Due to the Covid-19 stay-at-home order by Governor Charles Baker, the Board of Water Commissioners meeting was not held at the Acton Water District Office; instead, the meeting was held via Zoom Webinar and was recorded. The meeting was called to order at 7:00 PM on Monday, October 17, 2022, by Mr. Stephen Stuntz.

**Present at Tonight's Meeting:**

Commissioners: Erika Amir-Lin, Barry Rosen, Stephen Stuntz (Chair)  
District Manager: Chris Allen  
District Treasurer/Collector: Mary Jo Bates  
Assistant District Treasurer: Christine McCarthy  
District Counsel: Mary Bassett  
Assistant District Manager: Matthew Mostoller  
Finance Committee: Bill Guthlein  
Commissioners Secretary: Lynn Protasowicki

**Public Present:**

Kim Kastens

**A. Representatives of Powers & Sullivan for annual audit report**

Jim Powers and Laura Stone representing Powers & Sullivan.

Laura Stone stated that the process went smoothly for their first year and thanked Mary Jo and Christine.

Financial statements look different than in years past. Another difference is that last year WR Grace fund was reported as a fiduciary fund, but it acts more like a stabilization fund, so it is recorded as part of business type activities, and it is included with the combining schedule. She walked through each section of the report explaining the report.

Pages 1-3 are the audit opinion. It highlights what the auditor's responsibilities are and the management responsibilities. It is a clean opinion, which is the best kind of opinion you can get.

The next couple pages relate to the management discussion and analysis. This area talks about the prior year and current year. Nothing changed over the two years. The biggest difference is that there was an investment loss this year, which is in line with the market changes.

The rest of the financials (page 9-11) are the business type activities those are GAPA (generally accepted accounting principles) based financial statements. We break that out into further details in the combining schedule.

The next couple statements are the fiduciary fund statements. OPEB trust (other -post-employment benefit fund) is money set aside to fund future OPEB liabilities. The fund is currently at \$1.2 million at the end of the year. It did go down from the previous year due to the market.

The next pages are all of the footnotes. A lot of these notes are required. It calls out individual numbers and further details about each of those amounts. Note 5 - short term financing - the District has a loan with the Mass Clean Water Trust of \$11.7 million (it is an interim loan) and at some point that will be permanently financed as long-term debt. So, the footnote is there to explain what the project is for, how much you drew down on the loan, etc.

Two very large footnotes are the Pension footnote and the Other Post Employment Benefit footnote. A lot of that information is provided by actuaries and for Pension, the District is part of the Middlesex County Retirement System. A lot of the information is actuarially provided.

The next few schedules she wanted to highlight is the required supplementary information. The GASPYB requires -10-year schedules to be presented for Pension and OPEB. A portion of that liability is for the district. So, the district's proportion of the Middlesex County Retirement Systems Net Pension Liability is .24%. \$3.2 million is recorded as the District's proportionate share of the net pension liability. OPEB is 118% funded. \$194K with net OPEB assets at the end of 2022.

The combining schedules (pages 48 & 49) - the general fund gets recorded as free cash (healthy general fund); stabilization fund, capital projects fund; budget to actual schedules.

Mary Jo Bates requested to have a cash audit done since she will be leaving, and Christine McCarthy will be taking over. The cash audit will be as of September 30th. This is just to confirm a clean cut off between Mary Jo leaving and Christine coming on board.

Barry Rosen -During the previous audit there was some concern that there was about unfunded liability with Middlesex Retirement. Are there any issues with that? Might we need to worry about it? Jim Powers responded that they have a great audit system and are very well managed and one of the things they do which is unique is they chose to go to an actuarial valuation meaning that you are only being charged for your current employees and retirees and your share of the assets so any of your assets are not commingled with anyone else.

Barry Rosen: Any advice or recommendations for the future? Jim Powers stated that there may be some internal recommendations for Christine but otherwise it was all in good shape.

**B. Comments from the Public**

Kim Kastens: congratulations on the strong audit report. Last week the Acton Community Housing Authority reviewed a proposal for a 320-unit housing development at the west end of the WR Grace property. She would be interested if it raises any issues of water quality or water quantity. Chris Allen stated that he has a meeting with the development team on 10/25.

**C. Approve minutes from meeting of 10/3**

Mr. Rosen motioned to approve the meeting minutes of 10/3/2022. Ms. Amir-Lin seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, and Mr. Stuntz.

**D. Approve Executive Session minutes from 2020, 2021 & 2022**

Ms. Amir-Lin motioned to approve the Executive Session meeting minutes from the years 2020, 2021 and 2022. Mr. Rosen seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, and Mr. Stuntz.

**E. Release Executive Session minutes of 12/10/18, 10/5/20 & 11/5/20 as public record**

Mr. Rosen motioned to release the Executive Session meeting minutes of 12/10/18, 10/5/20 and 11/5/20. Ms. Amir-Lin seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, and Mr. Stuntz.

**F. Approve one Commissioner to approve warrants while conducting meetings virtually**

Mr. Rosen motioned to appoint Erika Amir-Lin as the Commissioner to approve warrants while conducting meetings virtually until the next meeting of the Commissioners. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, and Mr. Stuntz.

**G. OLD BUSINESS:**

*1. Per- and Polyfluoroalkyl Substances (PFAS)*

- Current sample data, if available

Mr. Allen stated that at the last meeting we will be notifying the public of North Acton results from the third quarter of 2022. We are keeping our eyes on Central Acton and will add to the public notice as well.

Currently serving water to the public is South Acton and Central Acton.

The pilot study is ongoing in South Acton. There has been some sampling there. The sampling is producing non-detect results. Assabet 3 will be tested this week for mechanical, electrical and instrumentation controls. Due to go online soon but we do have to conduct a 5-day pump test for Mass DEP before the plant can actually be turned on.

Barry Rosen: It appears that even with reduced pumping, North Acton seems to stay greater than 20 nanograms. Chris Allen stated that we do not know that, but we are modifying the schedule and utilizing Kennedy 2 well. We have been seeing about a 5-7 PPT reduction in the ultra-filtration system.

Erika Amir-Lin: where are we at with North Acton with treatment? Chris Allen stated that we are at 90% design and should review it within the next two weeks. Then once approved we apply to SRF for emergency funding. Once approved it goes to bid; approve award; so, looking around start of 2023.

Barry Rosen: have we received any ARPA funds from the Town yet? Chris Allen stated that we have not. Christine McCarthy and Mary Jo Bates met with the Treasurer and staff, and they asked questions. There has been some streamlining of the federal requirements and we anticipate it should be soon.

*Update on PFAS Action Plan*

Chris Allen stated that he was disappointed to hear that a member of the Town's Selectboard thinks that we do not have a PFAS action plan. Chris does not think that is the prevailing philosophy. The District does have a PFAS action plan and has been planning and executing over the past two years. He is confused as to why they think we have no PFAS Action Plan.

Barry Rosen: he suggests that Steve Stuntz speak with our liaison on the Selectboard and explain to her that she should explain to her Selectboard colleagues that the District does have an action plan, it is in process, we have asked the Town for the ARPA funds to help actuate the action funds because it does cost money (lots of money), including the bottled water program, the way we are pumping our wells, and completed a pilot, and we have design in place for the North Acton plant to satisfy the regulations.

*Other Old Business:*

Steve Stuntz has one more old business item: It came up that Mary Jo Bates would like to have her sick leave accrual paid in the next calendar year. It is OK with Steve but wants to make sure it is OK with the other Commissioners. Christine has already checked, and it can be done.

Mr. Rosen motioned to approve the delay of Mary Jo Bates final pay out of sick leave time until January 2023. Ms. Amir-Lin seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, and Mr. Stuntz.

Kim Kastens: has some thoughts on the ARPA conversation which she attended. She wrote to the Selectboard after that discussion and stated that she did not think that the decision between MWRA and local treatment of PFAS should not be handled in a couple minute discussion in the middle of the night on a long agenda with other things. She got a response back from Fran who appears sympathetic. If you watch the video tape Himaja (Selectboard member and liaison to the District) was beat up over another issue and so it was no surprise that she was not able to defend the group to which she is liaison. Another thought to include when you speak with the Selectboard liaison is that FinCom is undertaking a comparison of the cost of MWRA and local treatment of PFAS.

Barry Rosen: should we as Commissioners sit down with the Selectboard and explain where we are at, what we are doing, why it may seem slow to them, the extreme expense to treat PFAS, and that we are looking at the MWRA. They refer to us as the Water Department and not as the Water District. It would be good to explain to Himaja that we are a District, and it would be good to explain that to the Selectboard.

Erika Amir-Lin: she is not opposed to a future joint meeting, but it would be good to lay the groundwork first, and that it would be good for Steve and Himaja to meet.

Matt Mostoller: please convey to Himaja that we are looking at MWRA and that permitting of the bedrock wells is something that will help with PFAS mitigation.

*Other Old Business:*

Steve Stuntz cannot make the 11/7 meeting so could we move it to 11/14 and we can move the 11/21 meeting to 11/28. Erika can make the 11/14 meeting. Erika cannot make the 11/28 meeting unless we can move it to 7:30PM. We will not make a change to the 11/28 meeting and will discuss it on 11/14.

*Mr. Stuntz motioned to adjourn the open meeting and move to Executive Session at 7:45 PM to discuss the purchase, exchange, lease of real property as an open meeting may have a detrimental effect on the negotiating position of the District. Ms. Amir-Lin seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, and Mr. Stuntz.*

**Next Meeting: November 14, 2022**

DRAFT

## Acton Water District A.P.

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**From:** Stone, Marielle (DEP) <marielle.stone@state.ma.us>  
**Sent:** Monday, October 31, 2022 5:30 PM  
**To:** Matt Mostoller; Chris Allen  
**Cc:** Boyer, David (DEP); Bostwick, Robert (DEP)  
**Subject:** RE: Acton - Revised Draft ACOP - Clapp Whitcomb  
**Attachments:** ACOP Clapp Whitcomb (Acton)-2022-10-31.pdf

Good afternoon Matt and Chris,

Attached is a revised draft ACOP regarding the backwash discharge from the Clapp Whitcomb Water Treatment Plant. We made edits to the document to address AWD's comments provided to MassDEP on September 13, 2022.

Please let me know if you have additional comments and/or questions or would like to further discuss.

If the document is acceptable to the AWD as presented, please print out two copies, sign and return them both to MassDEP to be fully executed. Once executed, we will provide you with one original and keep one for MassDEP's records.

Thank you.

Marielle Stone  
Deputy Regional Director  
Bureau of Water Resources  
MassDEP - Central Regional Office  
8 New Bond Street  
Worcester, MA 01606  
Cell: 508 713 3528

**From:** Matt Mostoller <Matt@actonwater.com>  
**Sent:** Tuesday, September 13, 2022 11:39 AM  
**To:** Stone, Marielle (DEP) <marielle.stone@mass.gov>; Chris Allen <Chris@actonwater.com>  
**Cc:** Boyer, David (DEP) <david.boyer@mass.gov>; Bostwick, Robert (DEP) <robert.bostwick@mass.gov>  
**Subject:** RE: Acton - Draft ACOP - Clapp Whitcomb

**CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.**

Good Morning Marielle,

Thank you for giving the District the opportunity to review the ACO. We offer the following feedback for consideration.

Section 4 – should we use 680 Mass. Ave for the address of the plant? No PFAS sampling has been conducted on the backwash effluent, therefore I am not sure it is fair or appropriate to state the backwash contains residual PFAS contaminants. Additionally, PFAS are already prevalent in the environment and any potential contribution from this facility is likely negligible.

## Section 5

Sub Section A – MassDEP did not observe the backwash occurring. Please see page 28 of the 2018 Sanitary Survey report for an accurate accounting of how this issue was identified and what the observed conditions are, including the presence of rip rap and a berm in the woods to dissipate the discharge over the land surface. The ground area surrounding the discharge pipe was observed by MassDEP to have black carbon media which resulted from a blow out of media, that issue was previously resolved and unrelated to the ongoing backwash process.

Sub Section C – Please consider replacing the last sentence with the following and moving it to Sub Section D:

Respondent was unable to install a frac tank as proposed due to a lack of responsive vendors for new frac tanks.

Sub Section D – MassDEP did not observe the backwash occurring. AWD personnel offered to the inspector the challenges we were having in obtaining a new frac tank and the need to utilize this facility to meet water demand.

Sub Section F – Please consider replacing the last sentence with: The high number of bags needed to effectively complete a backwash, in addition to supply chain issues related to the ongoing pandemic in getting the bags in a timely manner, the bag filters were bypassed during backwashing to maintain the operational capacity of the treatment plant and meet the demand for water while other facilities were unusable or constrained due to PFAS contamination.

Sub Section G – MassDEP did not observe the backwash occurring. AWD personnel had a conversation with the inspector about the issues noted in the proposed revisions to Section F, and MassDEP's need to escalate the enforcement of the ongoing backwash discharge to the environment.

Sub Section I – The second to last line appears to be an incomplete thought “discharge of pollutants *to if due* to an emergency”.

## Section 8

Sub Section A – The word “of” needs to be added in the 3<sup>rd</sup> sentence between the words “implementation and the”.

Sub Section B – The District requests a 60 day period from the signing of the ACO to submit the Corrective Action Plan. As you are aware, we have a number of projects underway or on the horizon in our system and we want to ensure the District and its engineer have adequate time to respond.

Section 9 – Will the MassDEP Drinking Water Program be involved in the ongoing administration of this ACO? Should a DW Program contact be included as we believe DWP would need to sign off on any proposed improvements?

Section 20 – This section should clarify that a violation is related to the backwashing process and not the general use and operation of the facility.

Please reach out if you or your staff wish to discuss or clarify anything.

-Matt

### **Matthew Mostoller**

Assistant District Manager  
Water Supply District of Acton  
693 Massachusetts Avenue  
P.O. Box 953 Acton, MA 01720  
P 978-263-9107 F 978-264-0148

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**From:** Stone, Marielle (DEP) <[marielle.stone@state.ma.us](mailto:marielle.stone@state.ma.us)>

**Sent:** Thursday, September 1, 2022 3:52 PM

**To:** Chris Allen <[Chris@actonwater.com](mailto:Chris@actonwater.com)>; Matt Mostoller <[Matt@actonwater.com](mailto:Matt@actonwater.com)>

**Cc:** Boyer, David (DEP) <[david.boyer@state.ma.us](mailto:david.boyer@state.ma.us)>; Bostwick, Robert (DEP) <[robert.bostwick@state.ma.us](mailto:robert.bostwick@state.ma.us)>

**Subject:** Acton - Draft ACOP - Clapp Whitcomb

Chris,

Attached is the draft Administrative Consent Order and Penalty regarding the backwash discharge from the Clapp Whitcomb Water Treatment Plant. This document has been prepared as a follow up to our discussion on May 18, 2022. Please review the document and provide me with any comments or concerns you may have as soon as possible so we can discuss and address. If the document is acceptable to the AWD as presented, please print out two copies, sign and return them both to MassDEP to be fully executed. Once executed, we will provide you with one original and keep one for MassDEP's records.

I appreciate your cooperation regarding this matter.

Please feel free to contact me with any questions.

Thank you.

Marielle Stone  
Deputy Regional Director  
Bureau of Water Resources  
MassDEP - Central Regional Office  
8 New Bond Street  
Worcester, MA 01606  
Cell: 508 713 3528

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**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:  
Water Supply District of Acton

Enforcement Document Number:  
00013362  
Issuing Bureau: BWR  
Issuing Region/Office: CERO  
Issuing Program: WPC  
Primary Program Cited: WPC  
Subpgm(s) Cited: DWP  
FMF/Program ID: PWS #2002000

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY  
AND  
NOTICE OF NONCOMPLIANCE**

**I. THE PARTIES**

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 8 New Bond Street, Worcester, MA 01606.
2. Water Supply District of Acton ("Respondent") is a water district established by Chapter 326 of the Acts of 1912 for the purpose of supplying parts of Acton with water. Respondent's principal offices are located at 693 Massachusetts Avenue, Acton, Massachusetts. Respondent's mailing address for the purposes of this Consent Order is P.O. Box 953, Acton, Massachusetts, 01720-0953.

**II. STATEMENT OF FACTS AND LAW**

3. MassDEP is responsible for the implementation and enforcement M.G.L. c. 21, §§ 26-53, the Surface Water Discharge Permit Regulations at 314 CMR 3.00 and the Ground Water Discharge Permit Regulations at 314 CMR 5.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent is a registered public water supply (PWS #2002000) and owns and operates the Clapp Whitcomb Water Treatment Plant located at 680 Massachusetts Avenue in Acton, Massachusetts. The water treatment plant treats water from the two Clapp Wells and the

Whitcomb Well for corrosion control, VOC removal, color, and disinfection. Granular activated carbon filters comprise a portion of the water treatment plant and require backwashing approximately every ten days for a total monthly volume of approximately 75,000 gallons. The plant has no means to store the backwash which contains residual iron, manganese, and arsenic.

5. The following facts and allegations have led MassDEP to issue this Consent Order:
  - A. On October 20, 2015, during a Sanitary Survey inspection, MassDEP personnel observed evidence of backwash water residuals from the Clapp Whitcomb Water Treatment Plant on the ground near wetlands bordering Inch Brook without a permit. The backwash is discharged to the ground with riprap and berm in the woods and discharges to the ground and surface water.
  - B. On February 2, 2016, MassDEP issued a Notice of Noncompliance (NON-CE-16-5D001) (“NON”) to Respondent for discharging the backwash to a surface water body without a permit, in violation of 314 CMR 3.03, and required a corrective action plan and schedule to return to compliance.
  - C. On June 3, 2016, Respondent responded to the NON stating it would evaluate options and install a frac tank by October 1, 2016, to settle solids in the backwash water with a surface discharge. Respondent failed to install the frac tank as proposed.
  - D. On October 18, 2018, during a Sanitary Survey inspection, MassDEP personnel observed evidence of backwash water residuals from the Clapp Whitcomb Water Treatment Plant continuing to be discharged to the ground and flow into a nearby wetland resource area bordering Inch Brook. Respondent reported that they were unable to install a frac tank as proposed due to lack of responsive vendors for new frac tank.
  - E. On January 22, 2019, MassDEP issued a NON (NON-CE-19-00006277) to Respondent for continuing to discharge the backwash to a surface water body without a permit, in violation of 314 CMR 3.03, and required a revised corrective action plan and schedule to return to compliance.
  - F. On August 22, 2019, Respondent responded to the NON stating it would install a six-bag filter vessel on the discharge line from the GAC vessel to capture solids in the backwash water during the backwash cycle. Respondent purchased the cartridge filter vessel, but found it interrupted the operation of the backwash with repeated bag replacement. The use of the bag filters was discontinued.
  - G. On July 22, 2021, during a Sanitary Survey inspection, MassDEP personnel observed evidence of backwash water residuals from the Clapp Whitcomb Water Treatment Plant continuing to be discharged to the ground and flow into a nearby wetland resource area bordering Inch Brook. The ongoing discharge of pollutants from the backwash to surface waters and groundwaters of the Commonwealth

from the Clapp Whitcomb Water Treatment Plant without a valid permit is a violation of 314 CMR 3.03(1) and 314 CMR 5.03 (1), respectively.

- H. On May 18, 2022, MassDEP and Respondent met to discuss the violations and corrective measures. Respondent reported to MassDEP that the Clapp Whitcomb Water Treatment Plant has been offline since November 2021 and agreed to provide a corrective action plan to eliminate the unpermitted discharge to surface waters and groundwaters of the Commonwealth if there is an immediate/emergency need to use the water treatment plant until a longer-term interim and permanent solution could be implemented.
- I. On June 24, 2022, Respondent submitted the June 15, 2022 Memorandum Immediate Corrective Action Plan – Backwash Management prepared by Wright-Pierce to MassDEP stating that they would continue not to use the Clapp Whitcomb Water Treatment Plant and purchase bag filters to have available to utilize the temporary bag filter system to filter backwash and prevent a discharge of pollutants if due to an emergency they needed to utilize the facility to meet the water demand of the public water system.

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

- 6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
- 7. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.
- 8. Respondent shall perform the following actions:
  - A. Immediately notify MassDEP in writing of any re-activation of the Clapp Whitcomb Water Treatment Plant. Any re-activation of the Clapp Whitcomb Water Treatment Plant shall require the implementation of the Immediate Corrective Action Plan – Backwash Management measures as described in the June 15, 2022 Wright Pierce Memorandum submitted to MassDEP on June 24, 2022 and prevent the discharge of pollutants to surface and groundwaters of the Commonwealth. Respondent shall ensure an adequate supply of bag filters are always on hand to implement the Immediate Corrective Action Plan.

- B. Within 60 days of the executed date of this ACOP, Respondent shall submit an Interim and Long-Term Corrective Action Plan (“CAP”) to MassDEP for review and approval. The CAP shall provide a comprehensive means to prevent any backwash from reaching nearby groundwater and surface waters of the Commonwealth through ceasing the discharge, obtaining a groundwater discharge permit, or implementing measures to be eligible for exemption of a groundwater discharge permit pursuant to 314 CMR 5.05(17). The CAP shall include a schedule for installation of any capital improvements.
- C. The CAP shall be implemented in accordance with the approved schedule and any condition set by MassDEP. Failure to comply with the CAP as approved by MassDEP shall be considered a violation of this ACOP subject to stipulated penalties.

9. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

David Boyer, Section Chief  
MassDEP-CERO  
8 New Bond Street  
Worcester, MA 01606  
Or by email: [David.Boyer@mass.gov](mailto:David.Boyer@mass.gov)

AND

Robert Bostwick, Section Chief  
MassDEP-CERO  
8 New Bond Street  
Worcester, MA 01606  
Or by email: [Robert.Bostwick@mass.gov](mailto:Robert.Bostwick@mass.gov)

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

11. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent’s noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

12. Respondent shall pay to the Commonwealth the sum of fourteen thousand seven hundred twenty dollars (\$14,720.00) as a civil administrative penalty for the violations identified in Part II above. MassDEP hereby agrees to suspend payment of the entire penalty amount; provided, however, that if Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within one year of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the full amount of fourteen thousand seven hundred twenty dollars (\$14,720.00) within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

13. Force Majeure - General

- A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.
- B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.
- C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.
- D. If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by

the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

- E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

14. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

15. This Consent Order may be modified only by written agreement of the parties hereto.

16. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

19. This Consent Order shall be binding upon Respondent, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

20. In addition to the penalty set forth in this Consent Order, if any (including any suspended penalty), if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

21. The Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended; or stipulated penalties and/or any associated fees. **The Respondent has four options for payment;**

- Option 1:** certified check;
- Option 2:** cashier's check;
- Option 3:** on-line payment using a credit card;
- Option 4:** electronic transfer.

**Option 1 and 2:**

Certified or cashier's checks must be made payable to the Commonwealth of Massachusetts and received **within 30 days of the effective date of this Consent Order.**

If payment is made by certified check or cashier's check, the Respondent shall clearly print on the face of its payment Respondent's full name, the enforcement document number appearing on the first page of this Consent Order, and Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

**(IMPORTANT NOTE: DO NOT INCLUDE THE SIGNED ACOP WITH PAYMENT BY CHECK)**

**Option 3:**

On-line Payment Using Credit Card

Your prospective BILL will contain information necessary to pay on-line by credit card.

When you receive your BILL:

LOG ONTO THE MassDEP e-PAYMENT WEB SITE AT:

[HTTPS://WWW.MASSPAYS.COM/dep](https://www.masspays.com/dep)

On-line payment using credit card is due **within 30 days of the effective date of this Consent Order.**

**(If a BILL (invoice) is not received within 10 days of the effective date of the consent order, you should contact The Revenue Department at 617-292-5668 to obtain a copy of your BILL (invoice))**

**Option 4:**

Electronic Funds Transfer

Respondent must complete the enclosed form "Electronic Funds Transfer Request" found on the last page of this document and, **within 10 days of the effective date of this**

**Consent Order**, submit payment request to Director, BAS Division of Fiscal

Management via Facsimile at the MassDEP Revenue Number: 617-556-1049 or via mail to:

Department of Environmental Protection  
Attn: Revenue Unit  
1 Winter Street, 4th Floor  
Boston, MA 02108

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Clapp Whitcomb Water Treatment Plant for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

24. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

25. This Consent Order shall become effective on the date that it is executed by MassDEP.

**SPECIAL INSTRUCTIONS:**

Your two **signed copies of the Administrative Consent Orders with Penalty (ACOP)** must be delivered, for execution (signature) by MassDEP, to the following address:

Marielle Stone, BWR DRD  
MassDEP  
8 New Bond Street  
Worcester, Massachusetts 01606

MassDEP will return **one signed copy** of the ACOP to you after MassDEP has signed, provided you have followed the above instructions.

Payment will be due, pursuant to the instructions outlined within the ACOP after you receive your fully executed copy.

**PLEASE DO NOT INCLUDE YOUR PAYMENT WITH THE SIGNED ACOPs SIGNED ACOPS ARE TO BE SENT TO THE ABOVE ADDRESS.**

Please call Marielle Stone at 508-767-2827 if you have questions regarding payment and/or instructions.

**Consented To:**  
**WATER SUPPLY DISTRICT OF ACTON**

By: \_\_\_\_\_  
[Print Name]  
[Title]  
[Address]  
Federal Employer Identification No.:

Date: \_\_\_\_\_

**Issued By:**  
**MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: \_\_\_\_\_  
MaryJude Pigsley, Regional Director  
Central Regional Office  
8 New Bond Street  
Worcester, MA 01606

Date: \_\_\_\_\_