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**United States v. Metro Dist. Comm'n, No. 85-0489-RGS,
83-1614-RGS, 2005 U.S. Dist. LEXIS 5649 (Mass. Dist. Ct. Apr. 6,
2005)**

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the amount of phosphorus in the water. The court held that the United States had violated the consent decree by not having STA 3/4 operational.

The court held that the United States violated the consent decree due to exceedances and the failure to meet the deadline for making STA 3/4 operational. The court ordered the Special Master to hold a hearing to determine remedies for the violations, and to file a recommendation with the court. It also ordered that while the parties await the court's imposed remedies, the United States and the state agencies should implement their own remedies and provide the court more details about the alleged exceedances as well as create a new schedule for making 3/4 operational.

Jacki Lopez

United States v. Metro Dist. Comm'n, No. 85-0489-RGS, 83-1614-RGS, 2005 U.S. Dist. LEXIS 5649 (Mass. Dist. Ct. Apr. 6, 2005) (holding the Massachusetts Water Resources Authority should submit an amended project schedule after receiving assurances from the United States that an agreement to provide stormwater control on a portion of the project would not be construed as setting precedent).

The Massachusetts Water Resources Authority ("MWRA") filed its Quarterly Compliance and Progress Report ("Quarterly Report") and Combined Sewer Overflow ("CSO") Control Plan Annual Progress Report for 2004 ("Annual Report") on March 15, 2005. The United States and the Conservation Law Foundation ("CLF") brought this action in response. The Annual Report provided a status summary of ongoing CSO control plan projects. The MWRA listed 14 of 25 CSO project components as complete. The MWRA also included a proposed schedule for other project components. Two proposed projects involved stormwater control plans: a storage tunnel in North Dorchester Bay and a Reserved Channel sewer separation project.

Despite the MWRA's inclusion of the proposed schedules in the Annual Report, the MWRA declined to file a motion to amend the main CSO project schedule, Schedule Six, to incorporate the new construction milestones until it reached an agreement with the Environmental Protection Agency ("EPA") and the Department of Environmental Protection ("DEP") on "all outstanding issues" regarding the long term CSO control plan. The MWRA's Board of Directors ("Board") was concerned about the MWRA's agreement to accept responsibility for stormwater control for the North Dorchester Bay and Reserved Channel projects. The MWRA insisted that its acceptance of stormwater control for the North Dorchester Bay and Reserved Channel projects must not be viewed as establishing precedent for its other CSO control projects. The Board requested assurances from the EPA

and DEP that the MWRA would not be obligated to provide stormwater control for any other CSO control projects.

The United States argued that it was inappropriate for the MWRA to condition the incorporation of construction milestones for the North Dorchester Bay and Reserved Channel projects into Schedule Six upon reaching an agreement with the EPA and DEP. However, the United States maintained that it did not consider the MWRA's assumption of responsibility for stormwater control in North Dorchester Bay to be precedent for other CSO projects that remained to be completed. The EPA provided the MWRA with a letter stating the MWRA would not be liable for stormwater control on other project components.

The United States District Court for the District of Massachusetts found the concerns of the Board had been alleviated because no party had contested the MWRA's position that the MWRA was not liable for stormwater control in other CSO projects, and because the EPA provided the Board with written assurance that the stormwater control related only to the North Dorchester Bay and Reserved Channel projects. The Court ordered the MWRA to submit proposed milestones for incorporation into Schedule Six with its next Quarterly Progress Report.

Kevin Kennedy

No Spray Coal., Inc. v. City of New York, No. 005395, 2005 US Dist. LEXIS 11097 (S.D.N.Y. June 8, 2005) (denying motions for summary judgment because issues of material fact existed in determining whether the City of New York discharged a pollutant from a point source into navigable waters without a permit).

No Spray Coalition, Inc. ("Coalition"), a collection of non-profit organizations and individuals, filed a lawsuit in the Southern District of New York against New York City ("City") to enjoin the City from conducting its spraying program, which defends against the spread of West Nile Virus by killing mosquitoes and larvae that carry West Nile Virus. Coalition alleged that the City violated the Clean Water Act ("CWA") by discharging pollutants into the waters in and around the City without a permit. The district court denied Coalition's request for a preliminary injunction, but did not rule on the claims under the CWA. Following discovery, Coalition moved for summary judgment, and the City cross-moved for summary judgment. The district court granted the City's motion for summary judgment, holding that the CWA did not allow Coalition to bring a citizen suit. The Second Circuit vacated the judgment and remanded the case, ruling that the CWA authorizes citizens to file lawsuits to enforce its requirements. Both parties sought to renew their summary judgment motions. The district court denied