

June 20, 2016

Dear Legislator,

The undersigned 36 organizations would like to express serious concerns about H.4254, *An Act to Enable the Commonwealth's Administration of the Massachusetts Pollution Discharge Elimination System*, a bill filed by Governor Baker on April 29, 2016.

The signatories to this letter are organizations across the Commonwealth, large and small, who share a commitment to clean water and healthy rivers. Collectively, we represent over 200,000 Massachusetts individuals, families, and businesses. We urge you to refer H.4254 to a study rather than authorizing MassDEP to take on major new responsibilities.

Background. Currently, U.S. Environmental Protection Agency (EPA) regulates discharges of stormwater, wastewater and industrial pollution under the federal Clean Water Act. The permits granted for these discharges are National Pollutant Discharge Elimination System (NPDES) permits. The Governor's legislation seeks to shift this responsibility from EPA to MassDEP giving the state agency "primacy" to issue the permits.

Steps to primacy. To take over the NPDES program, MassDEP must demonstrate to the EPA that it has:

- A stable and adequate funding source;
- A program plan, with adequate staffing; and
- Laws and regulations that meet Clean Water Act standards

We oppose H.4254 for the following reasons:

1. Funding proposed is insufficient and vulnerable to future budget cuts:

- The amount of funding proposed is inadequate. In a 2013 report, MassDEP estimated the annual cost of the program at \$9 million to \$10 million; in 2015, it halved the proposed FTEs required and estimated the cost at \$7.5 million. Now they propose to dedicate just \$3.2 million in new funding for MassDEP staff, with an additional \$1.5 million for contract assistance.
- The only funding mechanism now being proposed, annual legislative appropriation, is unreliable. Fee assessments directed to a dedicated fund would be a more reliable, and fairer source of funding. MassDEP has proposed this in the past but recently abandoned this idea.
- It makes no sense to replace an existing federally-funded program with a state-funded program when state budgets are this tight. This is an unnecessary expense to the state and MassDEP has far more pressing fiscal needs.

2. MassDEP lacks staff to meet its existing Clean Water Act obligations and shouldn't take on more at this time.

- MassDEP has lost 30% of its staff since 2009 due to budget cuts and early retirements. MassDEP has about 650 employees, down from nearly 1,000 in 2000.
- As a result of chronic underfunding and understaffing, the agency has been unable to meet programmatic goals and has:
 - A backlog in issuing water supply permits and conducting five-year permit reviews;
 - Multi-year delays in monitoring, assessing and reporting on water quality;
 - Discontinued developing pollution control plans; and

- Inconsistently enforced water pollution rules.

The Izaak Walton League of America, a national organization, recently gave our state's water quality program a "D," with failing grades in site-specific information and volunteer engagement. MassDEP should demonstrate that it can meet its existing obligations before pursuing primacy.

3. Water quality would suffer in Massachusetts. Proponents are pushing for this change in hopes that MassDEP will be more "flexible" on pollution control requirements

- MassDEP is more vulnerable than EPA to political pressure to weaken permits.
- It would be more difficult for third party appellants and members of the public to appeal weak permits.
- While forty-six states have taken primacy of the program, there are frequent problems due to insufficient funding or lack of political support for the program. EPA has received 38 legal petitions to take back or "de-delegate" the program, but has yet to do so (although it sometimes steps in to force states to improve water protection).

Our recommendations:

1. Do not act on H.4254 this session. Primacy, or delegation, is permanent. NPDES program approval is a high-stakes gamble for a state that has demonstrated past difficulty funding water protection programs and certifying EPA permits. As MassDEP reported in 2013, "EPA has had a largely successful role in protecting the Commonwealth's waterbodies." There is no pressing need for this change. There is too much at stake to rush this through. Decisions made now on how to protect water will have ramifications far into the future.

2. Fix it First. Restore MassDEP's funding so it can fulfill its existing responsibilities to safeguard water quality and public health and safety in Massachusetts.

Specifically, before seeking to take on this new program, MassDEP should have additional, stable funding to restore and improve its current programs, including:

- A water quality program that meets EPA's highest standard.
- Timely development and implementation of water quality improvement plans.
- Strengthened partnerships with watershed associations, including the ability to incorporate quality-assured third party data into MassDEP's water quality database.
- Improved compliance and enforcement of MassDEP permits.
- A robust field-based program of compliance and technical assistance for permittees.

3. Before moving ahead with legislation: Performance of its existing water program responsibilities with a demonstrated increase in state funding should be a precondition for any future decision to seek delegation. MassDEP needs to provide a clearer description of expected efficiencies and environmental benefits from delegation. In addition, MassDEP's program plan for the NPDES program must insure adequate and sustainable annual funding for this important program, improve the permit appeals process, and shield the agency from political interference.

Thank you for your time and consideration. We look forward to working together with the Legislature and Administration to strengthen the state's water protection programs. Please feel free to get in touch with Julia Blatt from the Massachusetts Rivers Alliance if you have any questions (juliablatt@massrivers.org or 857-445-0208). 3956.

Julia Blatt
Executive Director
Massachusetts Rivers Alliance

John Reed
President
Blackstone Headwaters Coalition

Peter Coffin
Coordinator
Blackstone River Coalition

Korrin Petersen, Esq.
Senior Attorney
Buzzards Bay Coalition

Renata von Tscharnier
President
Charles River Conservancy

Robert Zimmerman
Executive Director
Charles River Watershed Association

Ivey St. John
Steering Committee
Charlestown Waterfront Coalition

Becky Smith
MA Campaigns Director
Clean Water Action

Andrew Fisk
Executive Director
Connecticut River Watershed Council

Veronica Eady
Massachusetts Director
Conservation Law Foundation

Mettie Whipple
President
Eel River Watershed Association, Ltd.

Nancy Goodman
Vice President for Policy
Environmental League of Massachusetts

Ellen Mass
President
Friends of Alewife Reservation

William Pastuszek
Chapter President
Greater Boston Trout Unlimited

Francis T. Lyons
President
Hop Brook Protection Association

Dennis Regan
Berkshire Director
Housatonic Valley Association

Wayne Castonguay
Executive Director
Ipswich River Watershed Association

Pine duBois
Executive Director
Jones River Watershed Association

Joan L. Crowell
President
Leesville Pond Watershed Association, Inc.

Jane Calvin
Executive Director
Lowell Parks & Conservation Trust, Inc.

Karen Heymann
Legislative Director
Mass Audubon

Emily Norton
Chapter Director
Massachusetts Sierra Club

Ed Himlan
Executive Director
Massachusetts Watershed Coalition

Dr. Caroly Shumway
Executive Director
Merrimack River Watershed Council

Ivan Ussach
Director
Millers River Watershed Council

EkOngKar Khalsa
Executive Director
Mystic River Watershed Association

Elizabeth Ainsley Campbell
Executive Director
Nashua River Watershed Association, Inc.

Ian Cooke
Executive Director
Neponset River Watershed Association

Samantha Woods
Executive Director
North and South Rivers Watershed Association

Alison Field-Juma
Executive Director
OARS: For the Assabet, Sudbury, and Concord
Rivers

Jerry A. Mullins
President
Parker River Clean Water Association

Rachel Calabro
Narragansett Bay Riverkeeper
Save The Bay – Narragansett Bay

Anne Slug
Chair
Sudbury, Assabet and Concord Wild and Scenic
River Stewardship Council

Joe Callahan
President
Taunton River Watershed Alliance

Steve Long
Director of Government Relations
The Nature Conservancy, Massachusetts
Chapter

Deborah Weaver
Executive Director
Water Supply Citizens Advisory Committee
(WSCAC)