

October 5, 2017

Dear Senator,

We write to ask that you oppose H.2777, *An Act to Enable the Commonwealth's Administration of the Massachusetts Pollution Discharge Elimination System*, a bill filed by Governor Baker on March 8, 2017.

Background. Currently, the 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 referred to as NPDES (National Pollutant Discharge Elimination System) permits and are co-issued by MassDEP. The Governor's legislation seeks to shift the primary responsibility from EPA to MassDEP, giving the state agency "primacy" to issue the permits with EPA oversight. This program is critical to safeguarding public health and the environment. This proposed transfer would be permanent.

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 the proposed delegation of the NPDES permitting program to MassDEP for the following reasons:

1. The funding proposed for the NPDES program is insufficient and vulnerable to future budget cuts. The NPDES permitting program is expensive and its transfer to the state would burden our already tight state budget. The program does not come with any new federal funding. The state would have to find new money to fund the program.

- The funding proposed for a delegated NPDES program is inadequate. A MassDEP 2013 feasibility study¹ estimated the annual cost to the state at \$9-10M. Yet Governor Baker has proposed to dedicate just \$3.2M in new funding for MassDEP staff, with an additional \$1.5M for contractors.
- The only funding mechanism proposed, an annual legislative appropriation, would leave the program vulnerable to funding cuts. Fee assessments directed to a dedicated fund would be a more secure and fair source of funding. MassDEP proposed this idea in the past but abandoned it in response to pushback from polluters.
- The Trump administration has proposed a 31% budget cut in Clean Water Act (section 106) federal assistance to states. This would be slightly over \$1M in Massachusetts. While the magnitude of this cut is still uncertain, it is likely that federal funding for MassDEP's clean water programs will *decline* in the near term.
- It makes no sense to transfer a federally-funded program to the state with budgets this tight. This is an unnecessary state expense and MassDEP has far more pressing fiscal needs.

¹ Massachusetts Department of Environmental Protection Report to the General Court of the Commonwealth on the Topic of NPDES Authorization, July 1, 2013.

2. MassDEP lacks staff to meet its existing Clean Water Act obligations and should not take on an additional program at this time.

- MassDEP has lost 30% of its staff since 2009 due to budget cuts and early retirements. With just 655 full-time employees, the agency is at its lowest staffing level since 2005.
- As a result of chronic underfunding and understaffing, MassDEP is unable to meet programmatic goals and struggles with:
 - A backlog in issuing water supply permits and conducting five-year permit reviews;
 - Multi-year, even *multi-decade*, delays in monitoring, assessing and reporting;
 - Discontinued development of pollution control plans; and
 - Weak and inconsistent enforcement and compliance for water pollution rules.
- MassDEP should fulfill its existing obligations before pursuing delegation.

3. Water quality would suffer in Massachusetts.

- Proponents of delegation hope that MassDEP will be more “flexible” with pollution control requirements. This is code for allowing more pollutants to enter waterways and for longer time periods, harming both the environment and public health.
- MassDEP is more vulnerable than EPA to political pressure from permittees to weaken permits.
- A recent disappointing decision by MassDEP on the state’s general stormwater permit (MS4) dashed hopes that the state would stand up for water quality in the face of federal inaction. When EPA headquarters chose to delay implementation of the permit for one year, MassDEP could have implemented this permit on its own. Instead, the state instituted its own delay, arguing that they would prefer to wait for EPA to take action first.²
- While forty-six states have taken primacy of the program, chronic problems due to insufficient funding or lack of political support have led to 49 legal petitions to take back or “de-delegate” the program in 31 states. EPA has never done so.

4. EPA has been a good steward of our water.

- Our state has seen dramatic improvements in water quality since the agency was established in 1970; EPA Region 1 has a well-deserved reputation as a national leader in water pollution control. The Charles River, for example, is considered one of the cleanest urban rivers in the country. The Nashua, the Assabet, the Merrimack, the Blackstone, and Boston Harbor have all seen enormous improvements thanks to EPA oversight.
- EPA has been a good steward of our water for nearly fifty years, during both Democratic and Republican administrations, and we should expect that future administrations will again take this important responsibility seriously. Transfer of the program would take several years, and by the time EPA has relinquished control, a new administration would likely be in place in Washington. We should not make a permanent change based on a temporary political situation.

² The last MS4 permit, issued in 2003, expired in 2008. This permit is now *nine* years overdue and progress on cleaning up stormwater, the state’s worst water pollution problem, has stalled in many areas throughout the state.

- Although EPA has primacy, MassDEP and EPA “co-issue” pollution permits in Massachusetts. This has long insured carefully balanced permitting, with weight given to both municipal budgetary concerns and water quality improvements.

Our recommendations:

1. Do not pass H.2777 this session. Delegation is permanent. NPDES program approval is a high-stakes gamble for a state that has struggled to adequately fund water protection programs and certify 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 and there is too much at stake to rush this decision.

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. We urge the legislature to support H. 2139, *An Act to improve water quality and pollution control programs*, which would require an independent analysis be conducted of MassDEP water quality programs to ensure that they meet the goals of the state and federal Clean Water Act.

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 standards.
- 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 with and enforcement of MassDEP permits.
- A robust field-based program of compliance and technical assistance for permittees.

3. Before moving ahead with legislation. A demonstrated increase in state funding and improved performance of MassDEP’s existing water program responsibilities 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, stable, and sustainable 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 to strengthen the state’s water protection programs. Please feel free to contact Gabby Queenan (gabbyqueenan@massriversalliance.org) or Julia Blatt (juliablatt@massriversalliance.org) of the Massachusetts Rivers Alliance if you have any questions.

Sincerely,

Julia Blatt
Executive Director
Massachusetts Rivers Alliance

Andrew Gottlieb
Executive Director
Association to Preserve Cape Cod

Jane Winn
Executive Director
Berkshire Environmental Action Team
(BEAT)

John Reed
President
Blackstone Headwaters Coalition

Rachel Calabro
President
Blackstone River Coalition

Korin 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

Elizabeth Saunders
Massachusetts Director
Clean Water Action

Caitlin Peale Sloan
Staff Attorney
Conservation Law Foundation

Ben Hellerstein
State Director
Environment Massachusetts

Nancy Goodman
Vice President for Policy
Environmental League of Massachusetts

William J. Pastuszek, Jr.
Chapter 2017 President
Greater Boston Chapter of Trout Unlimited

Marcia Cooper
President
Green Newton

Heather McMann
Executive Director
Groundwork Lawrence

Matthew Miller
Executive Director
Hoosic River Revival

Steve McMahan
Executive Director
Hoosic River Watershed Association

Frank Lyons
President
Hop Brook Protection Association, Inc.

Dennis Regan
Berkshire Director
Housatonic Valley Association

Wayne Castonguay
Executive Director
Ipswich River Watershed Association

Pine duBois
Executive Director
Jones River Watershed Association, Inc.

Mary Ann Ashton
Co-President
League of Women Voters of Massachusetts

Joseph Callahan
President
Taunton River Watershed Alliance

Karen Heymann
Legislative Director
Mass Audubon

Lexi Dewey
Executive Director
Water Supply Citizens Advisory Committee

Rusty Russell
Executive Director
Merrimack River Watershed Council

Deborah Weaver
Executive Director
Westport River Watershed Alliance

Patrick Herron
Executive Director
Mystic River Watershed Association

Elizabeth Ainsley Campbell
Executive Director
Nashua River Watershed Association

Ian Cooke
Executive Director
Neponset River Watershed Association

Frederic B. Jennings Jr., Ph.D.
President
Nor'East Chapter of Trout Unlimited

Alison Field-Juma
Executive Director
OARS

George Comiskey
Director
Parker River Clean Water Association

Ravel Calabro
Narragansett Bay Riverkeeper
Save the Bay

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