

OPPOSE H. 2777

An Act to enable the Commonwealth's administration of the Massachusetts Pollutant Discharge Elimination System

This bill would delegate the water pollution permitting program (National Pollutant Discharge Elimination System or NPDES) from the federal Environmental Protection Agency (EPA) to the Massachusetts Department of Environmental Protection (MassDEP), **a high-stakes gamble for a state that is failing to adequately fund its water protection programs.**

The Massachusetts Rivers Alliance and the majority of our members are opposed to 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.

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.

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

- 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.
- 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.

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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.