

April 21, 2017

Dear Representative,

The undersigned organizations would like to express our concerns regarding Amendment #355 to H.3600, *National Pollutant Discharge Elimination System (NPDES)*, filed by Representative Thomas Golden.

The signatories to this letter are organizations across the Commonwealth who share a commitment to clean water and healthy rivers. We urge you to reject Amendment #355 in its current form because we do not support the proposed delegation of the National Pollutant Discharge Elimination System (NPDES) to the Department of Environmental Protection (MassDEP). However, MassDEP desperately needs additional funding, and we strongly support the addition of \$1.41M to the agency's budget for water quality programs. We urge you to replace the amendment language ("for the commonwealth's establishment, administration, and implementation of the federal National Pollution Discharge elimination system program pursuant to section 402 of the federal Clean Water Act") with wording directing the agency to use the funds "to protect and improve the commonwealth's water quality in accordance with the federal Clean Water Act."

Below is background on the NPDES delegation issue and the reasons we oppose it at this time.

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 NPDES permits. Governor Baker recently refiled legislation, H.2777, to shift this responsibility from EPA to MassDEP. This change would authorize MassDEP to seek "primacy" (i.e. the final say) to issue these NPDES permits.

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 funding level 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.

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

- The only funding mechanism proposed, an annual legislative appropriation, is unreliable. 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 recently abandoned this proposal.
- It makes no sense to replace an existing federally-funded program with a state-funded program when 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 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. MassDEP currently has about 660 full-time employees, its lowest staffing level since 2005.
- As a result of chronic underfunding and understaffing, MassDEP is unable to meet programmatic goals and currently struggles with the following issues:
 - i. A backlog in issuing water supply permits and conducting five-year permit reviews;
 - ii. Multi-year, even multi-*decade*, delays in monitoring, assessing and reporting on water quality;
 - iii. Discontinued development of pollution control plans; and
 - iv. Weak and inconsistent enforcement and compliance for water pollution rules.
- MassDEP should demonstrate that it can 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.
- MassDEP is more vulnerable than EPA to political pressure to weaken permits.
- While forty-six states have taken primacy of the program, frequent problems due to insufficient funding or lack of political support have led to 39 legal petitions to take back or “de-delegate” the program. 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 the 1970s; 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.
- Although the current federal administration has proposed major budget cuts to the EPA, they have also pledged to retain “core programs,” such as water pollution

control. EPA Region 1 will likely continue to have staff to issue NPDES permits, even during this presidential administration.

- Though 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. Revise Amendment #355.** Replace the current amendment language with language directing the agency to use the funds “to protect and improve the commonwealth’s water quality in accordance with the federal Clean Water Act.”
- 2. Support Amendment #1196.** We urge you to support Amendment #1196, *Department of Environmental Protection Administration and Compliance*, filed by Representative Dave Rogers. This \$5.6M budget amendment would help restore the ability of this critically important and severely underfunded agency to protect our environment and public health, without taking a step forward towards NPDES delegation.
- 3. Support Amendment #1198.** We ask you to support Amendment #1198, *Improving Water Quality and Pollution Control Programs*, filed by Representative Dave Rogers. While MassDEP clearly lacks resources to fulfill its current Clean Water Act responsibilities, it is less clear how the agency could rebuild an adequate, or even excellent program, or what this would cost. This amendment would require a gap analysis of water quality programming at MassDEP and recommendations for improvements to the programs, including identification of a sustainable funding source. This information is key to rebuilding the state’s water quality programs, and to helping legislators make an informed decision on delegation.

Thank you for your time and consideration. We look forward to working with you to find ways to better protect our water resources. Please feel free to contact Gabby Queenan, Policy Specialist at the Massachusetts Rivers Alliance, if you have any questions (gabbyqueenan@massriversalliance.org or 857-445-0208).

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