



NPDES Delegation Presentation to WAC

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What is NPDES?

Water Pollution Control



- National Pollution Discharge Elimination System (NPDES) provided for by federal Clean Water Act (1972)
- Based on premise that “no one has a right to pollute.”
- NPDES regulates surface water pollution from
 - wastewater
 - stormwater, and
 - industrial discharges.



+ Background

- EPA has delegated authority for the NPDES program to 46 states; MA is one of 4 states where EPA still has primacy.
 - Also: New Hampshire, New Mexico, and Idaho.
- In non-delegated states, EPA issues NPDES permits & **covers the cost of the program.**
- In delegated states, the states issue the permits, and **pay for the program.** EPA retains oversight.
- Joint permits in MA, EPA has primacy.
- Governor Baker filed legislation last year, and again this year to begin process for our state to take over this program.

+ Why do some people want delegation?

- Some believe MassDEP better equipped to understand local conditions, has better relationship with municipalities.
- Some would prefer one permitting authority rather than two; less duplication of effort.
- Some hope DEP will implement “integrated water planning,” prioritizing capital expenditures for permittees.
- Some hope DEP permits will save municipalities money.
- Many argue that we should do this because 46 other states have already done it.





If 46 states have done this, why haven't we?



- 1996 MA DEP commissioned a report on benefits to state
 - Estimated cost at \$6.5-6.9M/year
 - 42-59 FTE's needed
 - Recommended against assuming NPDES responsibility – “would shift cost to state w/limited benefits”
- 2013 MA DEP did feasibility study at request of legislature
 - Put cost at \$9-10M/year.
 - Possible funding: permit fees, general legislative appropriations, wastewater assessment fee
 - Due to expanded program, 102 FTE's now needed
 - Needs included science support, permitting staff, IT
 - No recommendation, Patrick administration did not pursue



+ What happened in 2016?

- Joint Committee on Environment, Natural Resources and Agriculture considered the governor's bill, and sent it to study.
 - Concerns about cost and funding
 - Administration proposed only \$3.2M for DEP, \$1.5M for contractors
 - Administration proposed a line item in state budget, no dedicated source of funding
 - Opposition from the environmental community
 - Concerns that water quality could suffer



How can the state seek primacy?



- State can request authority from EPA to administer the NPDES permit program.
 - State must show that it has ability to administer the program:
 - Legal authority to issue permits that comply with fed standards
 - Adequate resources to run the program
- State program must meet minimum federal standards.
 - EPA has never withdrawn authorization – despite 39 legal petitions in 41 states.
- Process takes several years.





Why is environmental community concerned?



- EPA has been a good steward of the environment – Rivers around the state much cleaner than the 1970's, Charles one of the cleanest urban rivers in the world. Boston Harbor restored.
- MassDEP not managing current workload – delays and backlogs.
- Funding proposal severely inadequate.
- Protection of the Commonwealth's waters could be compromised.





MassDEP can't manage its existing workload.

- MassDEP has lost 30% of its staff since 2008 due to budget cuts and early retirements: 941 → 660.
- In 2013 had a backlog of 1500 TMDLs (water pollution improvement plans).
- Currently have a backlog of 140+ water supply permits
- Unable to monitor, assess and report on water quality across the state; much of the data is old or nonexistent.
- Not enough staff to implement permit compliance and enforcement functions.
- Federal funding for MassDEP will likely decline in the near term.



+ Funding proposal is severely inadequate.

- Past estimates for the annual cost of this program were:
 - 1997: \$6.5-6.9M
 - 2013: \$9-10M
 - In 2015, Commissioner Suuberg said it could be done for \$7.5M
 - **This proposal is for \$3.2M for DEP staff and \$1.5M for contractors.**
- Original proposal was for new fees; current proposal is to fund this entirely through a new budget line item.
 - This would be vulnerable to future budget cuts.
- EPA provides this program at no cost to the state budget.



+ Water quality could be compromised.

- Why this push for primacy so soon after MassDEP looked at in in 2013?
 - Permit holders are pressuring Baker administration
 - Hoping to save money in hopes DEP will be more flexible on pollution control requirements.
- DEP less protected from local pressure to weaken permit requirements.
- Currently, NPDES permit appeals decided by EAB, whose members have expertise in Clean Water Act. Appeals process under state program would go to DEP, then to state court.

These problems should be resolved before primacy moves forward.

+ We are asking the wrong question...

- **Rather than asking “should we delegate or not?” We should be asking, “How can we best protect and restore water quality in Massachusetts? What will it cost? And how should we pay for it?”**
 - Support H.2139 *An act to improve water quality and pollution control programs*
 - Directs the Water Resources Commission to conduct a gap analysis of the federal and state water pollution control programs in Massachusetts





...and investing in the wrong solutions.



- **“Fix it first.”** Rather than spending limited state dollars to duplicate a federal program, Invest taxpayers’ money in programs that will improve water quality throughout the Commonwealth: Restore MassDEP’s funding so it can do its job of protecting water quality, public health, and public safety in Massachusetts.