



June 23, 2010

Mr. Mark Voorhees
Office of Ecosystem Protection
5 Post Office Square, Suite 100, Mail Code: OEP 06-4
Boston, MA 02109-3912

Subject: Comments on the Draft General Permit for Residually Designated Discharges

Dear Mr. Voorhees,

The Massachusetts Coalition for Water Resources Stewardship (“the Coalition”) has reviewed EPA’s draft General Permit for Residually Designated Discharges issued to the Town’s of Franklin, Bellingham and Milford. This letter provides our comments for consideration.

The Coalition recognizes the importance of stormwater management to the environmental health of Massachusetts waterways and the maintenance of designated uses. With the Clean Water Act (CWA) long focusing on point sources alone, we applaud the efforts of the Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) over the last decade to incorporate non-point source pollutant reduction into the CWA regulatory program.

The regulatory agencies and the regulated communities share a common mission – to ensure the health and quality of our cities and towns and their natural resources. In order to accomplish these goals, communities must balance environmental programs with other needs and responsibilities they have and implement them in a fashion that is both feasible, cost effective and financially responsible. In this context, the Coalition offers the following comments on the Draft Permit.

1. As proposed the permit places significant time and financial burden on both private and municipal entities at a time when communities can least afford it.
2. The overall compliance costs are enormous

3. The benefits are grossly overstated and do not justify the expense.

Burden on Municipalities

The proposed requirements include the development and implementation of a comprehensive Stormwater Management Plan and a Phosphorus Reduction Plan that are intended to assure that stormwater from a permittee's designated discharge do not cause or contribute to violations of Massachusetts water quality standards. A Designated Discharger is a private entity that has two or more acres of impervious surfaces located in the Charles River Watershed; in whole or in part in Milford, Bellingham, and Franklin, MA; and it is on a single lot or two or more contiguous lots owned by the same person. The EPA estimates that there are approximately 180 permittees in these three communities. The assumption is that the municipality will create and manage a Certified Municipal Phosphorus Program (CMPP) as part of the Phosphorus Control Plan for the NPDES Phase II General Permit.

In the Fact Sheet, the EPA acknowledges that a municipality will need to undertake "complex and time-consuming technical analyses once they receive site suitability analyses." The EPA also predicts that 60 to 80 percent of the Designated Discharger sites may require permits from the Conservation Commission for structural BMPs. Assuming 60 permittees per community, up to 48 permittees (80 percent) may need to appear before the Conservation Commission in one year, which will be a significant burden for the municipality. Providing construction inspection for 60 construction projects over the course of the year will also be highly burdensome to the municipalities. Overall, this effort will stretch the already limited resources of these municipalities.

The EPA has not decided on final standards for approval of CMPPs, but it is seeking comments from the affected parties. The EPA has decided that the CMPP must be established and managed by a municipal government, a group of municipal governments, or by any legal entity established under state law. The CMPP will have the legal authority to take actions to achieve the required phosphorous load reductions. It is apparent that the effort to manage this program will be time-consuming and costly for municipalities.

Overall Compliance Costs are Enormous

Although the current residual designation applies only to the three communities in the upper Charles River watershed, in order to meet EPA's water quality objectives, the approved TMDL study shows that it will have to be applied to the entire Charles River basin. In its presentations, EPA has provided a set of construction costs per impervious acre to treat stormwater to the 65% phosphorus reduction

level, ranging from \$13,000 to \$118,000 per acre. Using \$50,000 per acre as an average, and information on community by community impervious areas from EPA's website, the estimated compliance costs for those portions of the 35 communities in the Charles River Basin is approximately \$1.7 Billion! If similar controls are eventually required in those parts of the same communities in adjoining basins, either to control phosphorus or other contaminants, such as bacteria, then the cost for the 35 communities rises to \$3.2 Billion! A community by community listing of the costs of compliance is included in the attached table on page 6.

By way of information, EPA's website indicates that there are approximately 350,000 acres of impervious surface in the state that will be subject to EPA's stormwater regulations. It is likely that virtually all of the receiving waters to which these stormwaters discharge will be the subject of TMDLs, either for phosphorus or for bacteria. In this case, the total cost of compliance with EPA's stormwater rule statewide would approach \$20 Billion!!! In most cases these regulations will serve to protect "primary contact recreation" – swimming – and mostly at a time when it is raining. *The Coalition would suggest that before we embark on a pilot program in the three communities of the upper Charles River watershed, and attempt to solve these problems in the next 5 to 10 years, we should ask, "do we actually have a real problem that compels an expenditure of this magnitude?"*

The Benefits are Grossly Overstated and Do Not Justify the Expense

The TMDL that causes the phosphorus reductions to be imposed on the communities and dischargers in Charles River Basin is designed to achieve three objectives:

- To mostly eliminate "aesthetic impairment" of the Lower Charles Basin
- To increase the visual clarity of the water to enhance swimming
- To reduce the potential for skin irritation, arising from exposure to certain types of so-call "Toxic Algae"

These "impairments" are not an everyday occurrence. According to data available from the Charles River Watershed Association, the river presently meets the EPA criteria 60% of the time in the summer, and implementation of the TMDL will raise this by 30% to 90% of the time.

The following essential questions that need to be asked are:

1. Do these benefits justify the expenditure of almost \$2 Billion over the next 10 Years?

2. Do we really know enough about the costs and effectiveness of phosphorus removal technologies for stormwater?
3. Do we understand what would be required in more highly urbanized areas, rather than in suburban communities?
4. Are there other ways to achieve the same objectives that have not yet been evaluated?

The lower Charles Basin is an asset to Greater Boston. Indeed, the wide variety of activities that take place day in and day out would leave one to be hard-pressed to characterize the River as “aesthetically impaired.” But, it is not a natural feature of the landscape; it owes its existence to the dams found throughout the river basin. If the dams were not there, the “problems” the TMDLs serve to correct would not exist either. The river would be able to “flush” itself on a regular basis as nature intended. Without a doubt, this natural flush would significantly reduce the quantities of phosphorus that pool in the river that may impair the Charles River at times. Charles River Watershed Associations has also stated that they would like to see the removal of dams throughout the Charles River Basin – so doesn’t this warrant investigation?

In conclusion, while the Coalition agrees with the regulation of stormwater inputs to maintain water quality, this Draft Permit as presented do not take into account time and budget constraints that affect these three communities. The costs to achieve compliance with this permit are enormous and the benefits of the investments have not been demonstrated.

The Coalition believes there might be approaches that are less burdensome on the communities, easier to implement, and more likely to improve water quality in the watershed including:

- Restrictions on some of the uses and sources of phosphorus that can be easily regulated. For example, the removal of phosphorus in fertilizers, detergents, fuels, etc.
- Investigation of the removal of the Dams in the Charles River and the impact that would have on phosphorus loading and bacteria counts.
- Low-cost nonstructural BMPs to enhance phosphorus controls on new sites that are developed or existing sites are re-developed.
- Implementation of EPA funded full-scale trial facilities of the preferred technologies in both suburban and urban settings to improve our understanding of the cost and effectiveness of these technologies.



We appreciate the opportunity to submit comments on the Draft General Permit for Residually Designated Discharges issued to the Town's of Franklin, Bellingham and Milford. Please do not hesitate to contact me with any questions. I can be reached at 508-799-1430 or at moylanr@worcesterma.gov.

Sincerely,

MASSACHUSETTS COALITION FOR WATER RESOURCES STEWARDSHIP, INC.

A handwritten signature in black ink, appearing to read "Robert L. Moylan, Jr.", is placed below the organization's name.

Robert L. Moylan, Jr. P.E., President

cc: Massachusetts Federal Delegation
Massachusetts State Senators and Representatives
Mr. H. Curtis Spalding, Regional Administrator, USEPA
Mr. Stephen Perkins, USEPA
Ms. Laurie Burt, Commissioner, MassDEP
Mr. Glenn Haas, MassDEP
Mr. Jeffrey D. Nutting, Town Administrator, Town of Franklin
Mr. Robert A. Cantoreggi, Town of Franklin DPW

**Phosphorus Removal Construction Costs for Stormwater Control For Runoff
Producing Areas in the Charles River Watershed Communities**

Community	Regulated Impervious Acres	Cost for Whole Community \$ Million	% of Community in Charles River Watershed	Cost for Charles River Portion \$ Million
Arlington	1,441	72	7%	5
Ashland	1,148	57	5%	3
Bellingham	1,237	62	51%	31
Belmont	1,051	53	28%	15
Boston	17,374	869	47%	407
Brookline	1,697	85	99%	84
Cambridge	2,643	132	35%	46
Dedham	1,407	70	67%	47
Dover	295	15	83%	12
Foxborough	1,705	85	0%	0
Franklin	1,912	96	90%	86
Holliston	1,007	50	98%	49
Hopedale	529	26	20%	5
Hopkinton	1,047	52	12%	6
Lexington	2,242	112	3%	4
Lincoln	569	28	57%	16
Medfield	912	46	77%	35
Medway	938	47	100%	47
Mendon	346	17	2%	0
Milford	1,593	80	84%	67
Millis	439	22	99%	22
Natick	2,099	105	59%	62
Needham	1,744	87	97%	85
Newton	4,121	206	98%	202
Norfolk	738	37	97%	36
Sherborn	129	6	78%	5
Somerville	2,033	102	3%	3
Walpole	1,959	98	11%	10
Waltham	3,174	159	93%	147
Watertown	1,295	65	89%	57
Wayland	800	40	4%	1
Weston	1,398	70	96%	67
Westwood	1,199	60	88%	53
Wrentham	660	33	32%	11
Wellesley	1,648	82	39%	32
Total		3,227		1,759