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Massachusetts Coalition for
Water Resources Stewardship

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June 13, 2016

The Honorable Anne Gobi
The Honorable Paul Schmid
Joint Committee on Environment, Natural Resources and Agriculture
State House, Room 473F
Boston, MA 02133

RE: Bill H.4254 – An Act to enable the Commonwealth's Administration of the Massachusetts Pollutant Discharge Elimination System

Dear Chairs Gobi and Schmid, and Members of the Committee:

I am writing on behalf of the Massachusetts Coalition for Water Resources Stewardship (MCWRS) to urge you to support House Bill 4254 – *An Act to Enable the Commonwealth's Administration of the Massachusetts Pollutant Discharge Elimination System*. This legislation would begin the process to have the Massachusetts Department of Environmental Protection (MassDEP) seek delegation of the National Pollutant Discharge Elimination System (NPDES) permitting authority for the Commonwealth. Currently, the US Environmental Protection Agency (EPA) administers the program in Massachusetts while 46 other states manage their own NPDES permitting. The Legislature's Joint Committee on Environment, Natural Resources and Agriculture held a hearing on May 17, 2016 to gather public input on the proposed legislation. The hearing was well attended by supporters and opponents of the legislation. My testimony is enclosed for your reference.

As you consider the legislation, please keep in mind that voting to delegate authority to MassDEP does not remove the EPA from the permit process. The agency continues to monitor performance and, it can withdraw its authorization if it feels MassDEP is not meeting its obligations to the environment and public health. Additionally, MassDEP already has delegated authority for drinking water, air quality and other programs that it is managing with great success. There is no reason to think that it can't do the same with NPDES permitting.

EPA's one-size-fits-all approach to permitting does not consider location-specific environmental, social, and economic factors. Being attuned to local issues, as MassDEP would be, is critical for sustainable environmental regulation. MassDEP's oversight would provide greater opportunity for municipalities to successfully implement integrated water resources planning and address multiple regulatory requirements and community infrastructure needs, all while maintaining affordable water and sewer rates. Local MassDEP staff, unlike regional EPA staff, have the local knowledge and existing relationships on which to build successful partnerships that protect the environment and public health without bankrupting communities. Having MassDEP manage the program would also ensure consistency with other state-run environmental initiatives.

Massachusetts is already among the nation's most progressive states in protecting the environment so it has always been puzzling why the Commonwealth has avoided the administration of this critical program. MassDEP Commissioner Martin Suuberg has identified the resources needed to successfully run the NPDES program and has committed \$4.7 million annually to do so.

EPA argues that it is flexible and responsive to municipal concerns. Recent examples point to the contrary. One such example was the recent process to issue the Final Massachusetts Small Municipal Separate Storm Sewer Systems (MS4) General Permit. More than 150 individuals and groups submitted over 1,300 comments. In issuing the Final General Permit, EPA could point only to increasing the timeline for communities to submit their Notices of Intent as one of the changes made to respond to communities' concerns.

Continually ratcheting down limits without providing financial relief for the millions of dollars of new infrastructure and programs communities will be responsible for is unreasonable and unsustainable. If given the choice to fund police and fire protection and schools or pay for unproven treatment processes that do little in terms of additional environmental benefit, on which would you have your constituents spend their scarce dollars? Additionally, EPA fails to look holistically at all water resources programs, forcing communities to compete between environmental and infrastructure projects. For example, communities are often pushed to lower nutrient levels in wastewater plant discharges, with huge costs and unclear environmental benefits, while 100 year old sewers collapse due to lack of funding.

Many of the arguments against delegating authority to MassDEP have little merit. Responses to the main arguments are below.

- 1) *MassDEP does not have funding or staff to manage the program.* The Governor's legislation provides adequate funding for all related activities, including hiring 40 additional full-time employees to work on permits, science, and community/permittee relations. The funding is included in the state budget, as it should be. All citizens benefit from clean water, so it's not fair for local ratepayers to bear the entire burden. The proposal would result in more DEP staff than is currently working in Massachusetts for EPA.
- 2) *MassDEP will relax water quality standards, making permits less stringent than EPA.* For years, EPA has based permits and regulations on outdated and generalized science. MassDEP is more familiar and in tune with the various regions, watersheds, and ecosystems in Massachusetts. Its water quality standards would be more site-specific and based on current scientific knowledge, making permits more cost effective and protective of the environment.
- 3) *MassDEP will not be able to issue permits in a timely manner.* In reality, EPA is years behind schedule in issuing almost all of its permits. In recent cases where a state has assumed NPDES authority, such as Maine, the state has eliminated permit backlog, and with fewer staff than EPA.
- 4) *MassDEP will be more susceptible to political pressure.* MassDEP has shown in other programs that it too can be overly restrictive and at times unreasonable in its approach to regulation of municipalities. There is no expectation that MassDEP would be a pushover in terms of NPDES permits. At worst, a NPDES program administered by MassDEP would be equivalent to that run by EPA – a program that caters extreme environmental views. EPA has shown itself susceptible to political pressure applied by some environmental advocacy groups – many of the same groups so staunchly opposed to MassDEP taking NPDES delegation. We believe with the proper oversight and public involvement by all stakeholders, MassDEP could manage NPDES permitting much more effectively and efficiently and produce a balanced program that protects the environment in an economically sustainable way.

The Massachusetts Coalition for Water Resources Stewardship (MCWRS) is a statewide nonprofit of more than 40 members working to ensure that municipal interests are considered as we work together to protect the environment. I have enclosed MCWRS' Primacy Position Paper for your information. Please review it – and, please carefully consider municipal interests before you cast your vote.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Philip D. Guerin". The signature is fluid and cursive, with the first name "Philip" being more prominent and larger than the last name "Guerin".

Philip D. Guerin
President

Enclosures:

MCWRS Primacy Position Paper

Philip D. Guerin's Testimony at the May 17, 2016 Legislative Hearing on Bill H.4254