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Massachusetts Coalition for
Water Resources Stewardship

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Testimony from May 17, 2016 Legislative Hearing on House Bill 4254- *An Act to enable the Commonwealth's Administration of the Massachusetts Pollutant Discharge Elimination System*

Philip D. Guerin, President Massachusetts Coalition for Water Resources Stewardship

The Massachusetts Coalition for Water Resources Stewardship (MCWRS) represents some 40 communities, districts, engineering companies, and law firms with a mission to advocate for scientifically based and fiscally responsible approaches to realize environmental and community goals. MCWRS supports the Commonwealth seeking delegation of the NPDES program and believes it to be a sound move that will benefit municipalities, residents, businesses, and the environment of Massachusetts. MCWRS asks the Committee to report favorably on H4254.

The first question that should be asked relative to this matter is not, why should Massachusetts seek designation for NPDES permitting, but, why wasn't this done decades ago? It is rather embarrassing that Massachusetts, of all states, does not play this critical role as a key part of its environmental program. There are 46, soon to be 47, other states that have figured out how to do this, yet, Massachusetts defers this responsibility to the federal government. This historical stance by the Commonwealth is baffling and illogical and not at all in keeping with its image as an environmental leader. Program administrative costs are often cited as the major impediment yet that argument falls flat. How is it too costly for the 6th wealthiest state in the nation, while Mississippi, generally regarded as the poorest state in the U.S., has managed to implement an EPA-approved NPDES program?

It is the responsibility of the states to protect the health of their citizens and environment. Massachusetts has taken on air pollution control, hazardous waste site management, and drinking water oversight. These are very well respected programs, ably administered by DEP for many decades.

It is time for Massachusetts to grow up and take on this responsibility so that it can provide a program consistent with other state initiatives. So that it can

allow communities to pursue effective integrated planning for all water resources management and so that a partnership between the state and its cities and towns can grow and continue to make strides toward improving our water resources in an environmentally and economically sustainable way.

The second question you must ask is how well is the current system working? If something isn't broken you don't need to fix it. Are there any of you on the Committee who believe the current NPDES program administered by EPA Region 1 is working well? The Clean Water Act NPDES program as implemented by EPA Region 1 was incredibly effective at one time and was largely responsible for the greatest environmental improvement ever witnessed in our nation. It took horribly polluted rivers like the Blackstone, Nashua, and Charles and turned them into havens for fish and wildlife and centers of recreation. This all occurred when a partnership existed between EPA and communities – a partnership that included federal grant funding to pay for wastewater treatment plant upgrades. Once the federal government pulled the plug on funding, the partnership disintegrated and left us today with an EPA that continues to pile on the costly mandates oblivious to community cost constraints. They demand hundreds of millions of dollars of local spending to achieve miniscule environmental improvement based on the weakest of science. You would be hard pressed to find many communities who speak highly of their dealings with EPA Region 1. For most, it is torture and that is not meant to reflect on the current or past regional administrators. It is simply a fact of dealing with a huge bureaucracy with a system in place that makes it autonomous, inflexible, and believing in its infallibility.

Is the current system working? NPDES permits have 5-year terms yet most permits go well beyond 5 years before reissuance, and it is not unusual to have permits that are 10, 15, or even 20 years old before renewals. EPA Region 1, which divides its staff between MA and NH (another non-delegated state), does not have the workforce to keep up with permitting across the two states. MassDEP's proposal is to have more staff than EPA currently has and all would be dedicated to MA.

Is the current system working? One of the major criticisms of EPA permitting is the weak science behind its permit limits. Discharge limits are often based on methods that fail to withstand basic scientific scrutiny. Making things worse, EPA rarely accepts valid scientific input from others if it does not support their agenda. DEP's proposal includes \$1.5 million in funding for science and monitoring, including funding to support water quality studies by third parties and academia.

Is the current system working? You can dismiss my take on DEP primacy for NPDES permits if you wish, but what of the “environmental community?” You have/will hear from many of them today opposing this legislation and speaking so highly of EPA’s program administration. Please ask them why, if EPA has done such a fabulous job of permitting, do the very groups so staunchly supportive of the status quo keep suing EPA? While I don’t have statistics to support it I would venture that CRWA and CLF have together sued EPA more often than all the communities in Massachusetts combined. CRWA and CLF are currently taking EPA to task for “failing its legal obligation under the Clean Water Act” pursuant to RDA in the upper Charles. This is just the most recent instance of EPA being sued over Clean Water Act issues by the very organizations that want them to retain NPDES permitting in MA. Are these indicators of a working system? Unless there is some sort of collusion between these groups and EPA, one can only surmise that the current system has also failed the environment. A program that requires continuous legal intervention does not sound like a success.

These same environmental groups here today to support the status quo have also been screaming in your ears for decades about the failing water resources of Massachusetts. They have maintained that things continue to get worse in terms of water quality with nutrients and bacteria and a host of contaminants. Now, they are presented with an opportunity to change things up, have the state take control of the NPDES program, yet they desire a continuation of the same failed system.

Most of the testimony you have heard in opposition to this bill suggests that DEP is understaffed and under-budgeted. The proposal being offered would add more staff and increase the budget. It addresses the very heart of the criticism being tendered by opponents. The legislation and implementation plan will result in a stronger, more effective and more efficient DEP.

I don’t get it but what I do get, and what I hope you will consider, is that the current system does not work and that Massachusetts has a responsibility to manage the NPDES program and it’s high time we took on that duty. This is a low-risk proposal before you. The worst that could happen is that under DEP there would be a continuation of the same failed system currently in place-the letters DEP would just replace EPA. The best case, and what I am optimistic will be the outcome, is that Massachusetts would set the bar for discharge permitting and create a strong, effective and efficient program based on sound science, local interests and flexibility-a program that would be environmentally and economically sustainable.