

Overview NPDES Permit Issues Impacting New England Permittees: Problems and Solutions

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January 26, 2016

NEWEA Annual Conference

Major Problem Areas

- Nutrients (All waters)
- Wet weather/Collection systems
- Dictating Plant Design/Operation
- Copper-Aluminum
- Antidegradation/Flow/Growth
- Stormwater Permitting

Federal Game Changer

- New Antidegradation Rule Language
- If you can engineer it and afford to construct it you must do it (OMG!!!)

Anyone who still recommends to a client that they agree to limits simply because they can meet them is giving seriously flawed advice

Federal Strategy on Nutrients

- Claim any DO, algal or invertebrate impairment is caused by nutrients
- Use simplified methods – Get “expert” to prepare the reports
- Avoid any meaningful peer review
- Push issues with EAB – 97% “rubber stamp” record

They Know the Deck Is Stacked in their Favor

Coalition Approaches Created Reasonable Outcomes

- 2009 Science Advisory Board Review of Simplified Methods
- Municipal/Commercial Coalition in Florida
- PA Municipal Coalitions obtained Multiple Nutrient TMDL Withdrawals
- 2104 Great Bay Municipal Coalition

Your Engineering Firm (or WEF) CANNOT do this for you; they have difficult conflicts to overcome – only legal action forced reasonable changes

2014 Major Victory in Great Bay

- Multiple lawsuits over 3 mg/1 TN Limits
- State Agreed to Independent Peer Review (EPA Refused to Participate)
- State Withdrew Flawed WQS
- EPA Backing off Permit Issuance – agreeing to “adaptive management”

Moral of the story: If you don't sue to force the use of good science it won't happen (unfortunately)

Recent EPA “Innovations” on MA Permits (No Analysis or Rule)

- Cause and effect not required to set nutrient limits; ignore state WQS
- No impairment listing – who cares; create new narrative criteria interpretation (3-5 ug/l chl a required - ignore CALM)
- Regulate flow as pollutant
- Antidegradation analysis mandate: Emerging Contaminants/ Copper Limits – Excuse for LOT on Nutrients
- CMOM provision for all

Anyone who accepts permits with these unfounded requirements is going to be sorry – so stop it!!!!

Issues with R1 MS4 Permit

- MS4 may not “cause or contribute” to WQS exceedance
- Assume more restrictive BMPs required by 122.44(d) if there is nearby impairment listing
- Major new monitoring and reporting requirements

EPA is Creating Mandates that are not in federal law and are contrary to the adopted rules – you will be in non-compliance forever – a CLF dream

Latest Junk Science to Pick TN WQS “The Sentinel Method”

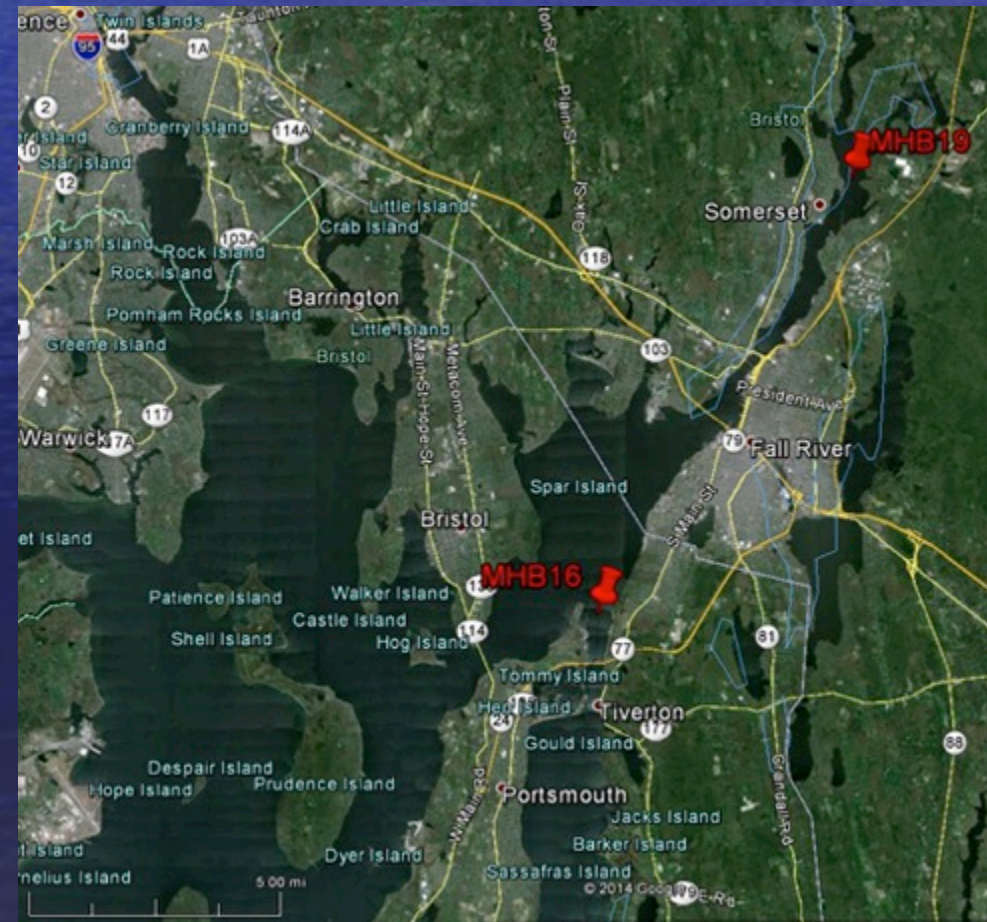
Taunton River Estuary, MA

EPA determined DO standard met at MHB16 but not MHB19

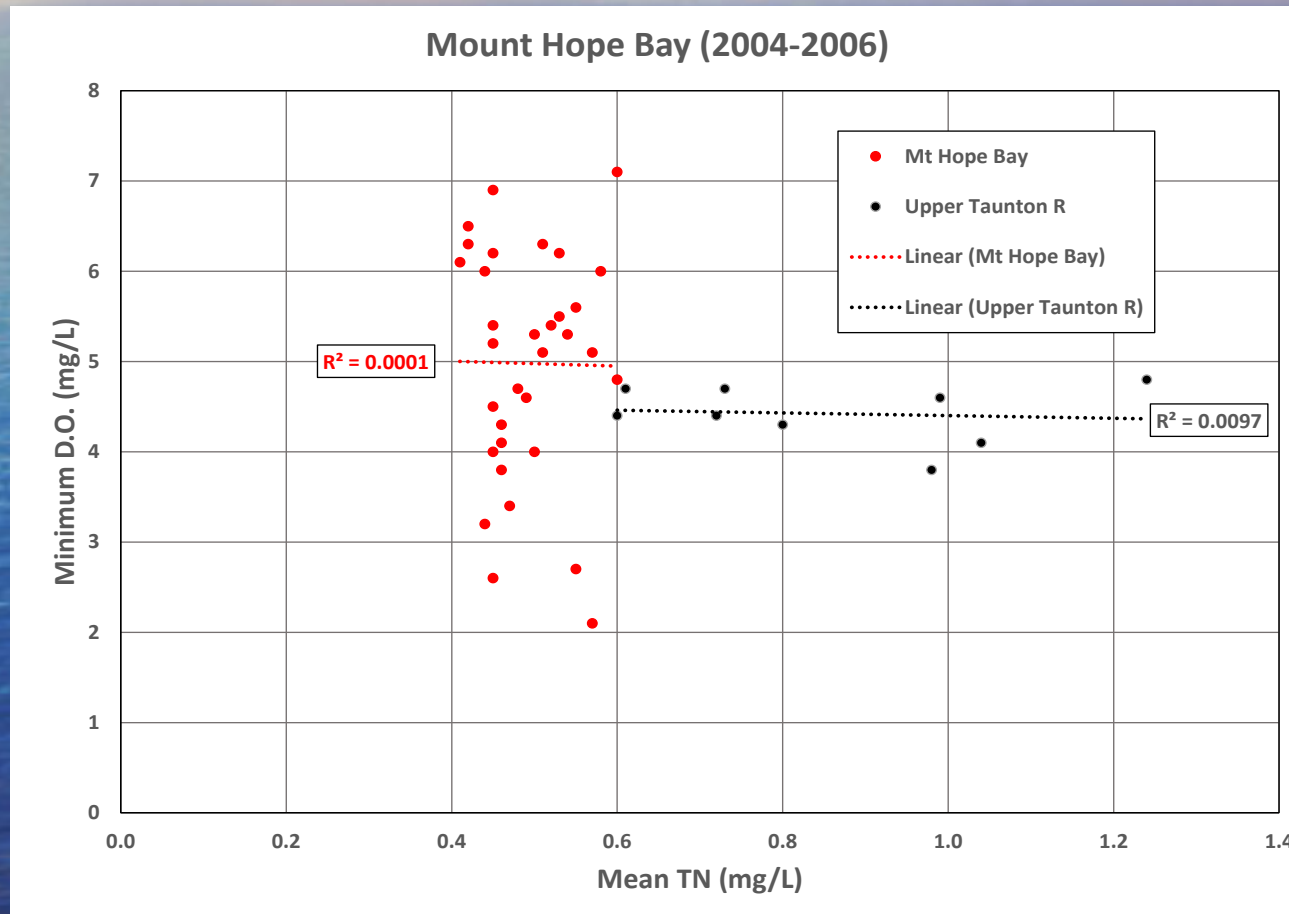
EPA *assumed* TN at MHB16
required to meet DO WQS at
MHB19 (10 mi upstream)

No modeling or consideration
of hydrodynamic differences

Lower algal level in TE!!!



Taunton Estuary Data Confirm Approach is Plainly Wrong



R1 Response: Can't Use the Data to predict "stressor-response"

Experts and EPA HQ FOIA Responses Confirmed Error

Drs. Howes, Chapra and Swanson Expert Opinions identified fundamental scientific flaws (All ignored)

FOIA: No records in EPA possession confirming approach is “scientifically defensible and an acceptable approach for generating numeric nutrient criteria and/or establishing numeric nutrient limits under 40 CFR 122.44(d)”

Would any rational person proceed in face of this information?

R1 response “EAB should ignore that information”

What to Do, What to Do?

- **Lawyer Up** – as recommended by Warren Zevon
- **Appeal every arbitrary decision** to make them listen to you – *DO NOT BECOME A CARPET!*
- **Demand expert peer reviews** of junk science
- **Form local coalitions** (Like Taunton Estuary Coalition) – political leverage/state help

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