Make Your Comments Count!

How Regulators Read Your NPDES Comments

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LIVE FROM EPA
NPDES NEWS NETWORK
BREAKING NEWS
MS4 DRAFT PERMIT RELEASED
16:25
COMMENTS FLOOD EPA; MAIL TRUCKS JAM STREETS; MAYOR URGES CALM

How Often do Comments Result in Changes?

2016-17 MA and NH individual permits:	25
Relax or eliminate limits:	11
Reduce monitoring or add flexibility:	11
Add or lengthen compliance schedule:	9

What Comments Led to Monitoring Changes?

Pointed out logistical challenges:

- Add flexibility in sampling dates due to tidal fluctuations
- Reduce monitoring due to cost and logistical challenges

Made a change at the facility to reduce monitoring need:

- Changed sampling location to achieve more consistent results (reducing number of samples needed)

Argued that frequency was too high in comparison to other facilities:

- EPA compared to general permit requirements for similar facilities and accepted reduced monitoring

What Comments Led to Monitoring Changes?

Demonstrated that monitoring not necessary in winter season:

- Argued that DO monitoring not needed in winter, and N monitoring could be less often in winter

Demonstrated that some outfalls are representative of others:

- Don’t have to monitor all if some are representative

Demonstrated that some outfalls did not have the flows that sampling intended to address

What Comments Led to Relaxed (or Removed) Limits?

Pointed out factual mistakes:

- Correct an error in state WQS classification table

Suggested changes to analysis:

- Recalculate 7Q10 by adding flow from upstream POTW

Demonstrated that limit not necessary in all seasons:

- Made a case that phosphorus limit not needed in winter (this is very case-specific)

Provided additional data:

- More recent monitoring data show limit not needed
- More recent data show background levels are highly variable and more analysis is needed to justify limit

What Comments Don’t Result in Changes?

- Science is incomplete – so it’s impossible to be certain the pollutant contributes to an impairment
- There are data gaps – so we can’t be sure we’ve picked the right permit limit
- Should wait for more data/better model/further studies before setting limit
- Should try a less-stringent limit and see if that works
- Should reduce other sources first
- Should wait for a TMDL

Courts say:

"Nor can EPA avoid its statutory obligation by noting the uncertainty … and concluding that it would therefore be better not to regulate at this time." [MA v. EPA]

"In almost every case, more data can be collected, models further calibrated to match real world conditions; the hope or anticipation that better science will materialize is always present … Congress was aware of this when it nonetheless set a firm deadline for issuing new permits." [Upper Blackstone]

Use expertise to "draw conclusions from suspected, but not completely substantiated, relations between facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as 'fact,' and the like." [Ethyl Corp.]

"There may be no strong reason for choosing [a particular numerical standard] rather than a somewhat higher or lower number. If so, we will uphold the agency's choice of a numerical standard if it is within a 'zone of reasonableness." [Small Refiner]

"…the CWA and EPA regulations provide procedures for the modification of issued permits where…change is warranted." [Upper Blackstone]

What We Must Do

Set limits to achieve WQS (not optional)

- Determine whether there is "reasonable potential" that discharge contributes to an exceedance (not certainty)
- Use best available data (even though it's incomplete)
- Make best judgment even if it's hard to calculate a precise number (can't wait for all scientific questions to be answered)

Policy: Make progress now, rather than waiting for certainty; limits can evolve over time as science develops.

What We Can't Do

Set WQS-based limits only if:

- We're certain that the discharge is a significant contributor to an exceedance
- We have high confidence in the level of reduction needed
- Where there are significant uncertainties, wait for better science before setting limits (or set less stringent limits for now)

Policy: Achieve a high level of certainty before imposing stringent permit limits; wait for more science if necessary.

Instead of…

- Science is incomplete – so don't set a stringent limit

- Data gaps mean we can't be certain the limit is the right one

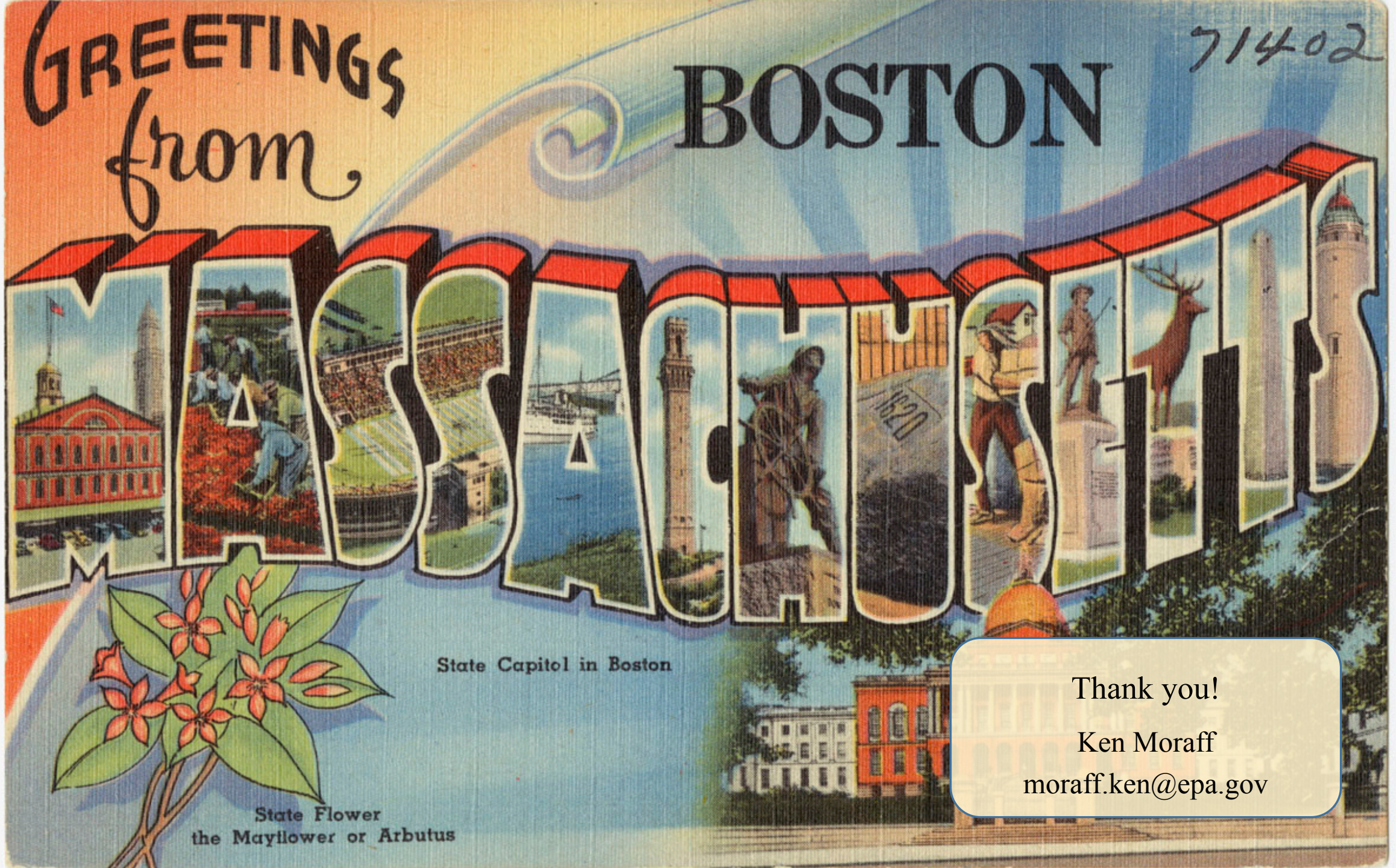
- Wait for more data/better model/ further studies

What about:

Factor X should get more weight and factor Y should get less, for these reasons…

Data should be analyzed differently, as follows…

Less-stringent limit Z is likely to meet WQS, for these reasons…



Thank you!

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