

CENTER FOR REGULATORY REASONABLENESS

Review of EPA Small MS4 Permit

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Mission Statement

Dedicated to *Protecting* Municipal Interests, *Ensuring* Good Science and *Cost Effective* Public Expenditures

Recent Actions

CRR v. EPA – Illegal rulemaking post-*Iowa League* decision

CRR v. EPA – Arbitrary approval of MN Riverine Nutrient Standards

Oversight Committee request on EPA junk science

FOIA challenges to disclose basis for unadopted rule mandates

Congressional Committee on Science, Space, & Technology June 2016

“This Committee’s investigations have revealed EPA *intentionally chooses to ignore* good science. EPA *cherry-picks* the science that *fits its agenda* and *ignores the science that does not support its position*. When the science falls short, EPA resorts to a *propaganda campaign designed to mislead the public*.”

Federal Regulatory Tsunami Impacting New England

- Nutrients (All waters) – no cause and effect necessary
- Wet weather/collection systems – zero overflows
- Dictating plant design/operation – blending prohibition
- Copper-Aluminum – Regulating non-toxic metals
- Antidegradation Rule Modification (“Practicable” def’n)
- Flow Limitations
- TMDLs mandating runoff to pre-European levels

These actions will bankrupt New England communities unless you stop them

Charles River TMDL Case Example

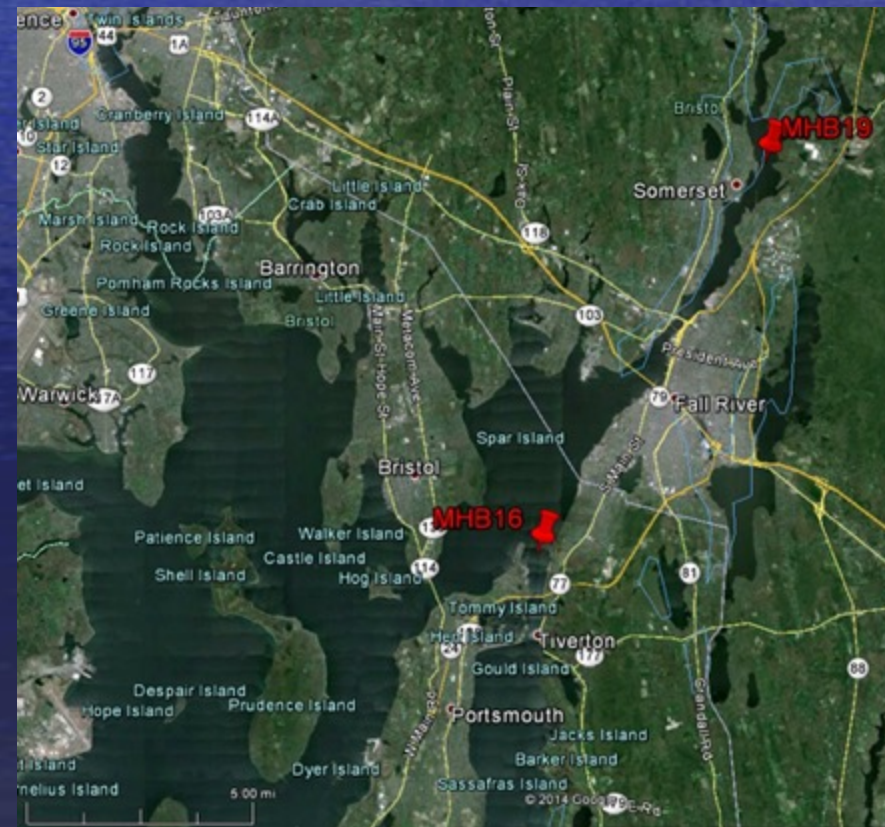
- Used outdated WQS and clearly unnecessary ecological criteria
- Used incorrect timeframe for analysis
- Created extreme POTW and MS4 Reduction Requirements for TP
- Compliance essentially unattainable

EPA R1 “Sentinel Method”

Taunton Estuary, MA

A “Junk Science” Primer

- 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



Key Issues with MS4 Permit

- Unattainable regulatory prohibitions
- Presumed WQ impairment
- Unattainable schedule of compliance
- Compliance beyond MEP

None of these provisions are in the adopted rules

Creates “Cause or Contribute” Prohibition for MS4s

“[p]ursuant to Clean Water Act 402(p)(3)(B)(iii), this permit includes provisions to ensure that discharges from the permittee’s small MS4 do not cause or contribute to an exceedance of water quality standards, in addition to requirements to reduce the discharge of pollutants to the maximum extent practicable.”

This Authorizes Immediate Citizen Suits by Enviro –
Ohio Valley Env. Coal v. Foal Coal (4th Cir 2017)

Presumed Need for WQ-Based Limit

- *“[i]n the absence of a defined pollutant reduction target and where no approved TMDL has been established, this permit part and Appendix H define an iterative approach addressing pollutant reductions to waterbodies where the permittee’s discharge is causing or contributing to an excursion above water quality standards due to nutrients (Total Nitrogen Total Phosphorus), solids (TSS or Turbidity), bacteria/pathogens (E. Coli, Enterococcus or Fecal Coliform), chloride, metals (Cadmium, Copper, Iron, Lead or Zinc) or oil and grease (Petroleum Hydrocarbons or Oil and Grease).”*

Illegally shifts burden to prove not causing/contributing to WQS violation

Impossible Compliance Schedule

*“In those situations where a discharge of stormwater results in an exceedance of water quality standards due to the discharge of other stormwater constituents (not included in part 2.2.2) **that cannot be resolved within 60 days, an enforcement order** may be the best means for addressing the cause of the discharge.”*

Response to comments 88-91

No Schedule of Compliance

Authorizes Unilateral Modifications

*“If an applicable MassDEP approval specifies additional conditions or requirements, **then those requirements are incorporated into this permit by reference.**”*

Section 2.1.2.a of permit

The permit cannot appropriately incorporate by reference something that does not exist as of the date of permit issuance.

Anti-deg Compliance

“Any increased discharge, including increased pollutant loading(s) through the MS4 to waters of the United States is subject to Massachusetts antidegradation regulations at 314 CMR 4.04. The permittee shall ...obtain authorization for increased discharges where appropriate. Any authorization of an increased discharge by MassDEP shall be incorporated into the permittee's SWMP. ...The permittee must comply with all such requirements.”

Applies requirements beyond MEP

Real World Impact of MS4 Permit

- All need consent decrees
- TMDL/303(d) compliance >> billions
- Outdated WQS/nutrients >> billions
- Road icing, mosquito vector issues
- Construction ban/growth moratorium

*Environmental Advocacy Group's Dream Come True
On Controlling Local Growth*

So, Where Are We?

- General permit appeal is ongoing and should be supported
- Challenge illegal amendments to federal rules
- Update bad science (MassDEP)

If this document goes final, you will be in perpetual non-compliance

Recommendations

You need to control your future and you need a plan that will work, not a longer rope to hang by

Join CRR and Initiate a Comprehensive Statewide
Regulatory Update



For Further Information

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