

Regulators and Environmental Groups Differ on How to Address Stormwater Contribution to Algae Blooms in Charles River

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The battle over phosphorous in the *Charles River* and its resultant toxic algae blooms is heating up again, with **EPA** finalizing its MS4 permit targeting municipalities and their stormwater runoff into the river and environmental groups renewing their lawsuit against regulators, claiming that EPA is improperly ignoring the stormwater contribution of commercial, industrial, institutional and high density residential sites in the Charles River Watershed.

Issuance of Final MS4 Permit Targets Municipalities for Phosphorous Reduction

Much to the frustration of the Conservation Law Foundation and the Charles River Watershed Association, EPA remains focused on regulating stormwater from municipalities through its General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts (known as MS4 systems). As confirmed by EPA Regional Stormwater Coordinator Thelma Murphy at a Boston Bar Association meeting this week, EPA expects to issue a final stormwater permit in March after a [five-year effort](#) to develop a successor to the 2003 MS4 General Permit under the National Pollutant Discharge Elimination System (NPDES) program.

The 2003 permit expired in 2008 and was administratively continued; EPA proposed a successor permit in 2010, and has spent the intervening years collecting and responding to comments and drafting the final permit. The MS4 General Permit covers small storm water systems operated by municipalities and cities located in urbanized areas. A [map](#) showing the urban areas covered by the MS4 program following the 2010 Census is located on the [EPA Region 1 web site regarding the MS4 permitting](#).

As reported in the [Boston Globe](#) without mention of the actual permit at issue, the communities contributing stormwater to the Charles River are likely to face increased regulation of their stormwater to help control phosphorous contamination in the Charles River, which is blamed for blooms of toxic algae caused by cyanobacteria and other contaminants.

Murphy reported that EPA has compiled its responses to the approximately 1,200 comments that it received during the public comment period that ended in February 2015 into a document of more than 500 pages. The requirements numerous communities to address Total Maximum Daily Loads

(TMDLs) in the Charles River Watershed and elsewhere have drawn “significant comments” according to EPA. As proposed in the Draft Permit, communities ranging from Ashland and Mendon to Cambridge and Somerville to Dover and Sherborn will need to develop and implement phased plans over the next 20 years to address phosphorus in the Charles River Watershed. Other communities (Auburn, Charlton, Dudley, Gardner, Grafton, Granby, Hadley, Harvard, Hudson, Leicester, Ludlow, Millbury, Oxford, Shrewsbury, Spencer, Springfield, Stow, Templeton, Wilbraham, and Winchendon) will need to develop plans to reduce phosphorus in lakes and ponds by as much as 65 percent.

In response to concerns about costs to municipalities and timing of implementation, Murphy said that the permit will not be effective upon issuance but will begin at least six months after its release. The delay is expected to assist municipalities address funding for compliance activities within their normal fiscal calendar.

Murphy also stated that EPA had concluded a study of the potential costs for compliance. A consultant retained by EPA determined that for small communities (less than 15,000 people), the costs would range between \$39,000 and \$92,000 annually; for medium communities (between 15,000 and 50,000 people), the costs would range from \$91,000 to \$212,000 annually; and for large communities (greater than 50,000 people), the costs would range from \$216,000 to \$492,000 annually.

Whether the Massachusetts Department of Environmental Protection will agree with the permit as issued remains to be seen, particularly in light of the extensive [public comments](#) delivered by MassDEP last year in response to the Draft Permit.

CLF and CRWA Renew Lawsuit to Compel Action against Other Stormwater Actors

At nearly the same time as EPA prepares to issue the MS4 permit addressing stormwater into the Charles River from municipalities, environmental groups [announced](#) that they are refiling their lawsuit alleging that EPA has failed to take legally required steps to enforce provisions of the Clean Water Act against commercial, industrial, institutional and high density residential sites discharging to the Charles River watershed.

The original lawsuit by the Conservation Law Foundation and the Charles River Watershed Association was withdrawn in August 2015 in pursuit of a negotiated settlement with EPA. Having failed to “find common ground” with EPA according to a joint press release by CLF and CRWA, the groups refiled their [lawsuit](#) on February 25, 2016 alleging that EPA was required to notify commercial, industrial, institutional, and high density residential dischargers responsible for stormwater runoff in the Charles River watershed that they must apply for NPDES discharge permits based on the determination contained in the TMDL for the Charles River pursuant to 40 CFR § 124.52(b).

CLF said it also refiled its lawsuit in Rhode Island on the same basis seeking to protect the Mashapaug Pond, Spectacle Pond, Bailey’s Brook, North Easton Pond, and Sakonnet/Cove, and Lawton Brook watersheds.

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