

HOUSE No. 4254

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
· , MA

KARYN POLITO
LIEUTENANT GOVERNOR

April 29, 2016

To the Honorable Senate and House of Representatives,

I am filing for your consideration a bill entitled “An Act to Enable the Commonwealth’s Administration of the Massachusetts Pollutant Discharge Elimination System.” This legislation is necessary to enable Massachusetts to receive federal delegation of the National Pollutant Discharge Elimination System (“NPDES”). NPDES is a water quality program mandated by the federal government that includes permitting, compliance and enforcement activities relating to the discharge of pollutants.

The federal government enacted the Clean Water Act in 1972. Under the Clean Water Act, the United States Environmental Protection Administration (“EPA”) administers a number of programs to ensure water quality across the United States, including NPDES. States have the option of applying to EPA for authorization to administer the programs themselves, subject to oversight by EPA. Forty-six other states have already received EPA’s permission to administer NPDES. It is time for Massachusetts to join them.

Administration of NPDES by the Commonwealth rather than by EPA will significantly improve the permitting process. Under NPDES, EPA issues stormwater permits to over 250 cities and towns across the Commonwealth, and hundreds of additional permits to industrial users and municipal wastewater treatment plants. State control over the permitting process will result in permits being written and issued in a timely fashion to keep pace with changing environmental conditions. Compliance with permits can be very costly for Massachusetts

municipalities and businesses; a program administered by Massachusetts would allow for increased flexibility, based on sound science, to meet permit requirements.

The Commonwealth, through the Department of Environmental Protection, has a decades-long history of effectively and successfully administering other federal environmental programs in the areas of drinking water, hazardous waste, and clean air. Adding the NPDES program to the Department's portfolio will promote an integrated process in which a single agency can work with communities that have requirements in wastewater, stormwater, and other water resource programs. Using sound science, current water quality information, and the Department's close working relationship with cities and towns, the Commonwealth will be able to protect our water quality as well or better than EPA while minimizing the number of permit appeals and legal challenges.

This legislation, when enacted, will be an essential part of the request the Commonwealth will submit to EPA to receive authority to administer the NPDES program. The Act makes a series of technical changes to the Massachusetts Clean Waters Act to bring our statute into conformity with federal requirements for NPDES delegation. Without these changes, we cannot apply. The legislation also gives the Department explicit authorization to apply for NPDES delegation.

NPDES delegation will empower state government to work cooperatively with our cities and towns to preserve and protect our environmental resources. I urge your prompt enactment of this legislation.

Respectfully submitted,

Charles D. Baker,
Governor

HOUSE No. 4254

Message from His Excellency the Governor recommending legislation relative to enabling the Commonwealth's administration of the Massachusetts Pollutant Discharge Elimination System.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to enable the Commonwealth's administration of the Massachusetts Pollutant Discharge Elimination System.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 26A of chapter 21 of the General Laws, as so appearing, is hereby
2 amended by striking out the definition of "Person" and inserting in place thereof the following
3 definition:-

4 "Person", any agency or political subdivision of the commonwealth or the federal
5 government, any public or private corporation or authority, individual, partnership or association,
6 or other entity, including any agent or employee thereof and any officer of a public or private
7 agency or organization, upon whom a duty may be imposed by or pursuant to any provision of
8 sections 26 to 53, inclusive.

9
10 SECTION 2. Said section 26A of said chapter 21, as so appearing, is hereby further
11 amended by striking out the definition of "Public entity" and inserting in place thereof the
12 following definition:-

“Public entity”, any city, town, special district, or other existing governmental unit eligible to receive a grant for the construction of treatment works from the United States Environmental Protection Agency pursuant to Title II of the FWPCA, as amended, regardless of whether such entity has actually received such a grant.

SECTION 3. Section 27 of said chapter 21, as so appearing, is hereby amended by striking out paragraph (3) and inserting in place thereof the following paragraph:-

(3) Take all action necessary or appropriate to secure to the commonwealth the benefits of the Federal Water Pollution Control Act, Public Law 92-500, as amended, and other federal legislation pertaining to water pollution control, including, without limitation, all actions necessary to receive authorization from the United States Environmental Protection Agency to administer and enforce the National Pollutant Discharge Elimination System permit program in the commonwealth.

SECTION 4. Said section 27 of said chapter 21, as so appearing, is hereby amended by striking out paragraphs (6) and (7) and inserting in place thereof the following 2 paragraphs:-

(6) Prescribe effluent limitations, permit programs, including without limitation pretreatment permits, watershed-based permits, and other permits for the preservation or restoration of water quality, and procedures applicable to the management and disposal of pollutants, including, where appropriate, prohibition of discharges.

(7) Require dischargers, as the director shall reasonably require for purposes of carrying out the provisions of this chapter, to (i) install, use, and maintain such monitoring equipment or methods, including, where appropriate, biological monitoring methods, (ii) sample such effluents in accordance with such methods, at such locations, at such intervals, and in such manner as the

director shall prescribe, (iii) establish record-keeping and reporting procedures, and (iv) prepare reports and submit to the director data and other information. As provided in sections 1 through 18 of chapter 66 of the general laws, any records, reports, or information obtained under this chapter shall be available to the public. Notwithstanding any provision of any law to the contrary, a copy of each permit application and each permit issued under this chapter shall be available to the public. Any information submitted to the director pursuant to this chapter may be claimed as confidential by the submitter, except that claims of confidentiality for the following information shall be denied: (i) the name and address of any permit applicant or permittee; (ii) information required by permit application forms provided by the director, including any information submitted on the forms themselves and any attachments used to supply information required by the forms; and (iii) effluent data. Any claim of confidentiality must be asserted at the time of submission in accordance with regulations promulgated by the director. Records, reports, or information determined by the director to be confidential in accordance with applicable statutes and regulations shall not be available to the public. If no claim is made at the time of submission, the director may make the information available to the public without further notice. Nothing herein shall prohibit the director or an authorized representative of the director, including any authorized contractor acting as a representative of the director, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., as amended, or when relevant in any proceeding thereunder.

SECTION 5. Said chapter 21, as so appearing, is hereby further amended by striking out section 40 and inserting in place thereof the following section:-

Section 40. The director, the director's authorized representatives, or personnel of the department of conservation and recreation or of the Massachusetts Water Resources Authority, may enter at reasonable times any property, public or private, for the purpose of investigating or inspecting any condition relating to the discharge or possible discharge of pollutants into waters of the commonwealth, including, without limitation, to access and copy any records, inspect any monitoring equipment or method required by the terms of any permit issued under this chapter, or to sample any effluents and to make such tests as may be necessary to determine the existence and nature of any discharge; provided, however, that personnel of the department of conservation and recreation may investigate or inspect only such conditions as affect the watershed system under the care and control of the department, and provided, further, that personnel of the Massachusetts Water Resources Authority may investigate or inspect only such conditions as affect the sewer and waterworks systems under the care and control of the Authority.

SECTION 6. Said chapter 21, as so appearing, is hereby further amended by striking out section 42 and inserting in place thereof the following section:-

Section 42. (a) Whoever, directly or indirectly, throws, drains, runs, discharges or allows the discharge of any pollutant into waters of the commonwealth, except in conformity with a permit issued under section 27 or 43; or violates any provision of this chapter, any valid regulation, order or permit prescribed or issued by the director thereunder; or who knowingly makes any false representation in an application, record, report or plan, or falsifies, tampers with or renders inaccurate a monitoring device or method required under this chapter, (i) shall be punished by a fine of not less than \$2,500 nor more than \$50,000 for each day such violation occurs or continues, or by imprisonment in the house of correction for not more than one year, or both, or (ii) shall be subject to a civil penalty not to exceed \$50,000 per day of such violation,

which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. This subsection shall not apply to sections 34B and 34C.

(b) Nothing in this chapter shall be construed as adversely affecting the rights of any person to secure judicial relief against actual or potential waste dischargers under other rules or provisions of law.

(c) Any person having an interest which is or may be adversely affected in any civil action brought by the attorney general under this chapter, or in any administrative enforcement proceeding brought by the director to enforce this chapter, regulations promulgated by the director, or orders or permits issued under this chapter, shall be allowed to intervene in such action.

SECTION 7. Section 43 of said chapter 21, as so appearing, is hereby amended by striking out paragraphs (2), (3) and (4) and inserting in place thereof the following 3 paragraphs:-

(2) No person shall discharge pollutants into waters of the commonwealth nor construct, install, modify, operate or maintain an outlet for such discharge or any treatment works, without a currently valid permit issued by the director, unless exempted by regulation of the director. No person shall engage in any other activity that may reasonably be expected to result, directly or indirectly, in the discharge of pollutants into waters of the commonwealth, nor construct, effect, maintain, modify or use any sewer extension or connection, without a currently valid permit issued by the director, unless exempted by regulation of the director. No such exemption shall be adopted by the director for any discharge to surface waters of the commonwealth if inconsistent with the FWPCA and regulations promulgated thereunder.

102 (3) The director shall adopt regulations with respect to permit proceedings and
103 determinations, including individual and general permits issued under this section. Applications
104 for permits shall be submitted within times and on forms prescribed by the director and shall
105 contain such information as the director may require.

106 (4) Public notice of every permit proceeding, including proceedings under paragraph
107 (10), shall be given in the manner provided by section 3 of chapter 30A. The director shall
108 circulate information received concerning the matter pending in accordance with the provisions
109 of paragraph (7) of section 27 and may hold a public hearing if the director deems such hearing
110 to be in the public interest. If the applicant or permittee requests a hearing, the director shall hold
111 a public hearing on the matter in a community within the affected area of the discharge, at least
112 30 days after giving notice thereof. The director may, upon request of a permittee, revise a
113 schedule of compliance in an issued permit if the director determines that good and valid cause,
114 for which the permittee is not at fault, exists for such revision, and in such cases the provisions of
115 this paragraph for public notice and hearing shall not apply unless otherwise required by the
116 applicable provisions of the FWPCA and regulations promulgated thereunder. The director may
117 also suspend this paragraph for public notice and hearing by promulgating regulations
118 establishing a process for renewal of a previously issued permit where renewal of such permit
119 does not require significant changes. If the director has proposed to suspend or revoke a permit,
120 in whole or in part, pursuant to paragraph (10), and if the permittee requests an adjudicatory
121 hearing under section 45 on the proposed determination, the requested hearing may be held as
122 part of the public hearing to be afforded under this paragraph.

123 SECTION 8. Said section 43 of said chapter 21, as so appearing, is hereby further
124 amended by striking out paragraph (7) and inserting in place thereof the following paragraph:-

(7)(a) A permit shall specify effluent limitations, interim and final deadlines as appropriate for compliance, the term for which the permit is issued, which shall not be in excess of 20 years, as prescribed by the director by regulation for each category of permits and such requirements of proper operation and maintenance, monitoring, sampling, recording, reporting and inspection as the director may prescribe; provided, however, that the term for permits issued for wastewater discharges of 10,000 gallons per day or more to ground waters of the Commonwealth, and wastewater discharges to surface waters shall not be in excess of 5 years. Permits may specify additional requirements as the director deems necessary to safeguard the quality of the receiving waters or to comply with pertinent provisions of the laws of the commonwealth or of federal law, including technical controls and other components of treatment works to be constructed or installed and provisions for insuring payments of user charges.

(b) Notwithstanding any other provision of this section to the contrary, when a permit for a discharge to surface waters is renewed or reissued, the effluent limitations, standards and conditions must be at least as stringent as the effluent limitations, standards and conditions required by the previous permit unless the director determines that an exception is warranted and consistent with the applicable provisions of the FWPCA and regulations promulgated thereunder.

(c) No permit shall be issued pursuant to this section for which the Regional Administrator of the United States Environmental Protection Agency has objected in writing under 40 C.F.R. § 123.44.

(d) This chapter shall be construed in a manner consistent with obtaining and maintaining authorization from the United States Environmental Protection Agency to administer and enforce the National Pollutant Discharge Elimination System permit program in the commonwealth.

SECTION 9. Said section 43 of said chapter 21, as so appearing, is hereby further amended by adding the following paragraph:-

(11) Permits for discharges associated with industrial activity shall meet all applicable provisions of this chapter. Permits for discharges from municipal storm sewers -

(a) may be issued on a system- or jurisdiction-wide basis;

(b) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(c) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the director determines appropriate for the control of such pollutants.

Nothing herein shall restrict the director from carrying out the authority to certify federal permits and licenses under 33 U.S.C. § 1341, as amended.

SECTION 10. Section 44 of said chapter 21, as so appearing, is hereby amended by striking out paragraph (1) and inserting in place thereof the following paragraph:-

(1) Whenever it appears to the director that there is a violation or threat of violation of any provision of this chapter or any permit, order, approval, regulation, standard or plan issued or adopted thereunder, or in contravention of any permit, order, approval, regulation, standard or plan issued or adopted by the director, the director may order the person responsible to apply forthwith for a permit, or for a new permit, or to take other appropriate action under rules and regulations adopted by the director subject to the provisions of chapter 30A, and to cease and

desist beyond a specified date until compliance with the order is fully achieved. Issuance of an order under this paragraph shall not preclude, and shall not be deemed an election to forego any action to recover damages, or to seek civil penalties or criminal punishment under this chapter or civil administrative penalties under section 16 of chapter 21A.

SECTION 11. Section 45 of said chapter 21, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:-

Any proposal to suspend or revoke a permit, in whole or in part, issued under this chapter, including any proposed reduction in an authorized discharge, and any cease and desist order issued pursuant to paragraph (1) of section 44, shall inform the person to whom it is issued of the person's right to request, within 30 days, a hearing under the provisions of chapter 30A. If the person fails to make such a request, the person shall be deemed to have consented to the order. If a timely request is submitted, the director shall within a reasonable time hold a hearing under the provisions of chapter 30A.

SECTION 12. Said chapter 21, as so appearing, is hereby further amended by striking out section 46 and inserting in place thereof the following section:-

Section 46. The attorney general may, upon request of the director, bring an action for injunctive relief against any person violating any provision of this chapter, or of any permit, order, regulation or determination issued thereunder, or any threat of such violation, and the superior court in equity shall have jurisdiction to enjoin the violation or threat and to grant such further relief as it may deem appropriate. Notwithstanding any other provision of this chapter, if the director finds that a discharge or combination of discharges presents an imminent and substantial threat to the health, welfare or livelihood of any persons, the director shall request the

attorney general to bring suit, and the attorney general may bring suit in the superior court to enjoin forthwith the discharges causing such a threat or to require the offending person to take such other action as may be necessary.

SECTION 13. Said chapter 21, as so appearing, is hereby further amended by striking out section 46A and inserting in place thereof the following section:-

Section 46A. (1) Except as provided by paragraph (2) of this section, any person aggrieved by an order, permit determination or other action of the director, other than an order consented to, may obtain judicial review by filing an application for review in the superior court within 30 days after receipt of notice of the final decision of the director. The superior court shall have jurisdiction in equity to enforce any order, decision or determination of the director, and any provision of sections 26 to 53, inclusive, or regulation issued thereunder.

(2) Any interested person may commence an action in the superior court to obtain judicial review of a permit determination issued by the director under a state permit program approved by the United States Environmental Protection Agency pursuant to 33 U.S.C. § 1342(b) within 120 days from the date of such determination, or after such date only if such application is based solely on grounds which arose after such 120th day.

(3) The procedures prescribed in section 14 of chapter 30A shall be applicable to such review.

SECTION 14. Chapter 83 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 10 and inserting in place thereof the following section:-

Section 10. A city, town or district may, from time to time, prescribe rules and regulations regarding the use of common sewers to prevent the entrance or discharge therein of any substance which may tend to interfere with the flow of sewage or the proper operation of the sewerage system and the treatment and disposal works, for the connection of estates and buildings with sewers, for the construction, alteration, and use of all connections entering into such sewers, and for the inspection of all materials used therein; and may prescribe civil penalties, not exceeding \$5,000 for each day of violation of any such rule or regulation. A city, town or district may from time to time prescribe rules and regulations for the use of main drains and the management of stormwater to prevent the discharge of sediment and pollutants therein which may tend to degrade wetlands, streams, other surface water bodies, and groundwater and to inspect the facilities for the collection and infiltration of stormwater in order to reduce flooding and improve the quality of and decrease the quantity of stormwater runoff; for the connection of estates and buildings with main drains; for the construction, alteration, and use of all connections entering into such main drains; and for the inspection of all materials used therein, and may prescribe civil penalties, not exceeding \$5,000 for each day of violation of a rule or regulation. Such rules and regulations shall be published once in a newspaper published in the city or town, if there be any, and if not, then in a newspaper published in the county, and shall include a notice that said rules and regulations shall be available for inspection by the public, and shall not take effect until such publication has been made. For purposes of this section, a district includes any county, regional or local district, commission, board or other political subdivision or instrumentality of the commonwealth, howsoever named, which is authorized to provide itself or through an officer, board, department or division thereof local

233 water pollution abatement, sewer or stormwater services, whether established under general law
234 or special act.

235 SECTION 15. Subsection (i) of section 8 of chapter 372 of the acts of 1984, is hereby
236 amended by striking out the first paragraph and inserting in place thereof the following
237 paragraph:-

238 The Authority and the division shall be subject to the provisions of, and to regulation by
239 the department of environmental protection and any division thereof as may be duly exercised
240 over an independent public authority of the commonwealth pursuant to sections 14, 27, 30A to
241 34C, inclusive, 37, 40 and 42 to 46A, inclusive, of chapter 21 of the general laws, sections 4, 6, 7
242 and 9 of chapter 21C of the general laws, sections 3, 6, 7, 9 and 10 of chapter 21E of the general
243 laws, chapter 91 of the general laws and sections 2B, 2C, 5E, 5G, 17, 31D, 142A to 142E,
244 inclusive, 150A, 150B, 160, 160A, 160B, 162 and 165 of chapter 111 of the general laws.

245 SECTION 16. Regulations adopted, and orders and permits and approval issued, and
246 contracts and grants made by the director under the authority of the laws amended by this act and
247 in effect prior to the effective date of this act shall continue in full force and effect following said
248 effective date. No suit, action, cause of action or other proceeding arising or brought under the
249 provisions of said sections or regulations adopted or orders, permits or approvals issued
250 thereunder shall abate or be impaired by reason of the passage of this act.