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January 18, 2023

Mr. Ken Moraff, Water Division Director
EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Dear Mr. Moraff,

On behalf of the 495/MetroWest Partnership, please accept our thanks for your presentation to our Water Resources Committee on November 1, 2022, regarding EPA's decision to exercise its residual designation authority under the Clean Water Act in the Charles, Mystic, and Neponset river watersheds. Our stakeholders found the presentation informative, and we appreciate your willingness to engage directly regarding this process.

On Tuesday, December 13, 2022, the Partnership gathered regional stakeholders representing the private sector, municipal officials, and environmental organizations for an open discussion of stakeholder views, questions, and concerns regarding this process. While different stakeholders have different concerns and interests regarding this process, and while each may opt to express themselves individually during EPA's permit development and public comment processes, what emerged from our discussion was a set of common questions and viewpoints.

Below, please find a listing of these questions and views as identified during our discussion. While we understand that EPA will conduct a public process before permits are finalized, including publication of a draft permit and an opportunity to comment, we would appreciate any insight you and your team can provide into these matters, as well as your consideration of the concerns outlined. We understand that some matters discussed below cannot be fully addressed until permit development has been completed, though any relevant information or insight is welcomed.

QUESTIONS:

- How will success for this program be defined and measured?

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- How will the Mystic and Neponset watersheds be treated differently from the Charles during this process? Will a TMDL be created for the Mystic and Neponset watersheds?
- How will this new authority differ from projects already being required under the Massachusetts Stormwater Management Standards to have a Stormwater Pollution Plan (SWPPP) under the Construction General Permit (standard 8) and an ongoing operation and maintenance plan (standard 9)?
- What role will municipalities be expected to play in compliance and/ or enforcement of new permit requirements by private property owners located within their jurisdictions?
- Will this process trigger any updates to municipal NPDES/ MS4 permits in impacted communities?
- Does EPA plan to produce or offer supportive resources to municipalities regarding this initiative?
- Will guidance or informational materials be prepared for local Conservation Commissions? Some local Conservation Commissions require applicants to have completed all state and federal environmental requirements before appearing before the commission.
- What role will the Massachusetts Department of Environmental Protection (MassDEP) play in enforcement?
- Will EPA hire or designate staff whose responsibility is to respond to property owner questions and concerns? Will EPA have designated staff leads/ coordinators by watershed?
- Which entity will determine which specific parcels are impacted, and which entities will communicate with impacted property owners?
- What type of communications will be sent directly to impacted property owners?
- What federal funding streams may be made available, or currently exist, to support property owners with compliance efforts? Do any existing federal grant programs or other funding streams exist, available to private entities, which would be applicable?
- Will municipalities be required or encouraged to alter their operations for compliance purposes? For example, by lowering parking minimums for property owners. Are there sample codes or local bylaws available to municipalities looking to bring local requirements into compliance?

- Is it possible that permit requirements might require a private property owner, in order to come into compliance, to run afoul of local zoning requirements? For example, if a property owner is required to eliminate parking areas to achieve compliance, but as a result falls short of minimum parking requirements imposed by the municipality.
- Will permit requirements only be triggered by site work, or is it expected that there will be a date certain by which all identified properties must be in compliance?
- How long will impacted property owners have to achieve compliance, and will there be differences in timeline based on property type or size?
- Will requirements include a “to the extent feasible” clause for smaller property owners, those only marginally at or over the size minimums, where compliance options are limited due to site constraints?
- Where there are severe site constraints, will there be an option to pay into a compensatory mitigation fund or do mitigation offsite?
- Impacted property owners may opt or plan to renovate their parcels prior to EPA permits being issued; understanding that the permits are not yet developed or in effect, does EPA have guidance for property owners on advance steps they could take which would support compliance?
- Will there be an opportunity for impacted property owners/ properties to work together or collectively to address permit requirements, as opposed to individual parcels only each having to meet requirements?
- Does the EPA have data or research which examines the impact of pollutants from roofing as opposed to parking surface area?

COMMON VIEWPOINTS

Stakeholders participating in our December 13th discussion were largely aligned on the following matters:

- The need to send clear communication to impacted property owners, which will be accessible and prepared in lay terms.
- The need to identify specific EPA staff points of contact for property owners to address questions or concerns regarding the program; concern that confusion among property owners would likely fall onto municipal staff in the absence of clear EPA points of contact.

- The need for clarity around trigger thresholds: at what point must all properties be in compliance, and prior to that point, what types of activities (and at what level) will trigger requirements.
- A desire to create and/ or highlight existing funding streams that may support compliance efforts.
- Though EPA may be limited in its ability to “get ahead” of the process by outlining specific requirements, a desire for advance guidance for property owners regarding early steps that could be taken, and guidance for those considering or planning renovations/ site work before permits take effect. Participating private sector entities noted a desire to consider potential future requirements when planning upcoming site work or updates, so that investments in sites over the coming months and years do not later run afoul of permit requirements.

Thank you in advance for your time and attention to this matter. The 495/MetroWest Partnership will continue to engage our stakeholders in the impacted watersheds on this topic, and to inform our audience regarding EPA’s permit development and public comment process. Please do not hesitate to contact me directly if I can be of any assistance to you; I can be reached by phone during regular business hours at (774) 760-0495, or via email at Jason@495Partnership.org.

Sincerely,



Jason Palitsch
Executive Director
The 495/MetroWest Partnership