

NOTICE to NPDES Permittees and Interested Parties

The United States Environmental Protection Agency (EPA) unilaterally terminated the longstanding joint NPDES permitting agreement between EPA and MassDEP through a written 10-day notice to MassDEP on June 10, 2020. The agencies' joint permitting arrangement will end effective June 20, 2020.

MassDEP is working to ensure that permittees will have clear guidance on the state's permitting procedures and to ensure separate state permitting is carried out in an efficient and transparent manner. MassDEP intends to continue to work collaboratively with EPA on the federal permits to the extent possible and consistent with the state's authorities. The following describes the state permitting process. MassDEP is committed to working with permittees, stakeholders, and the public in carrying out MassDEP's responsibilities under the state Clean Waters Act.

Application

- Permittees are required to submit EPA's NPDES permit application to EPA 180 days prior to permit expiration. Applicants shall also submit a copy of this application at the same time to MassDEP along with the state permit application form (the current application form MassDEP has used for joint permitting). Non-municipal permittees will pay appropriate application fees.

Site Visits and Pre-Permitting

- A site visit and pre-permitting meeting will be held with the permittee to begin the permit renewal process. If EPA is amenable to conducting this process jointly, the agencies will arrange for one such meeting. If this process is not conducted jointly, MassDEP will conduct its own separate site visit and meeting.
- EPA prepares a draft federal permit and sends it to MassDEP for review. MassDEP has 21 days to review the draft permit and provide comments.

Public Comment

- EPA will issue public notice of the draft federal permit by posting it on EPA's website.
- MassDEP will review the draft permit issued by EPA and prepare the state permit, which if necessary, will include any additional conditions to meet state water quality requirements and ensure compliance with appropriate state laws.
- MassDEP will issue public notice of the draft permit. The public notice will include notice of the opportunity to provide comments for consideration on MassDEP's 401 water quality certification (WQC) for the federal permit and on the draft state permit.
- If EPA agrees to hold a joint public hearing, then MassDEP would conduct a joint public hearing with EPA. If EPA does not hold a public hearing, and either the applicant requests a public hearing or if the Department determines a public hearing to be in the public interest, then the Department will schedule and conduct a public hearing in a community affected by the discharge or facility.

401 Water Quality Certificate and Final Permit

- At the same time that EPA provides public notice of the draft NPDES permit, EPA sends MassDEP a letter requesting a 401 WQC for the draft federal permit. Under federal requirements, the EPA letter triggers a 60-day deadline for MassDEP to make a decision on a WQC.
- If MassDEP determines that it has sufficient information to determine that the draft permit meets state water quality requirements and other appropriate requirements of state law, MassDEP will issue the WQC and send it to EPA.
- If MassDEP determines that sufficient information is not available to make a determination, MassDEP may deny certification.

Final Federal and State Permit Decisions

- EPA prepares a Response to Comments (RTC) and proposed final federal permit and sends it to MassDEP for review. MassDEP has 21 days to review the RTC and proposed final federal permit and provide comments.
- EPA issues its final permit.
- MassDEP issues its final permit in accordance with MassDEP's rules.

Appeals

- If the federal permit is appealed, the appeal follows the EPA process.
- If the state permit or WQC is appealed, the appeal is processed by MassDEP's Office of Appeals and Dispute Resolution (OADR).

Compliance and Enforcement

- After a state permit is issued, it is enforceable by MassDEP under state law.