

**Minutes**  
**November 14, 2017**

The Wastewater Advisory Committee to the MWRA met at the Waterworks Museum, 2450 Beacon St., Chestnut Hill, MA

**Attendees/Contributors:**

**WAC:** Craig Allen (chair), Karen Lachmayr (vice chair), Adriana Cillo, Wayne Chouinard (Arlington), James Guiod (AB), Dan Winograd, Martin Pillsbury, Mary Adelstein

**Guests:** Wendy Leo (MWRA), Kerry Snider (NePRWA), Belinda Stansbury (PAI), George Atalla (Triumvirate), Joseph Favaloro (AB), Julia Blatt (Mass Rivers), Maria Rose (Newton DPW)

**Staff:** Andreae Downs (WAC)

**FUTURE MEETING DATES/TOPICS**

**NEXT:** **Friday, December 8**, 10:30 am, Thoughts on a New Permit for Deer Island, MAPC, 60 Temple Pl., Boston, MA

**VOTES:** Approved: October Minutes

**MWRA Updates:** MWRA has hired AECOM to do the CSO Monitoring & Assessment—this will be part of the WAC meeting in February. The MWRA and NSTAR have come to an agreement to build a new cable from South Boston to Deer Island, rather than protecting the existing cable—there are refunds involved, and the new cable should last 40-70 years.

**Advisory Board:** New retail rate survey at the Thursday meeting. Outfall monitoring presentation, also. Attempt to give the Authority credit for all the good work it's done. There's a new brochure, which Wendy will bring next meeting.

**PRESENTATIONS & DISCUSSION:**

**Julia Blatt, Mass Rivers Alliance:**

On Delegation—or NPDES Primacy for Massachusetts.

Mass Rivers, a coalition of 68 watershed and other organizations concerned about river water quality, opposes delegation.

What is delegation?

EPA does water pollution permitting, under the Clean Water Act. In Massachusetts, the EPA retains primacy over this program; the program has been delegated in 46 other states. In delegated states, the states pay for the program and are responsible for issuing permits. In non-delegated states, such as Massachusetts, program costs are paid for by EPA.

People who support delegation have argued that it will save municipalities money, avoid duplication of effort, and lead to more flexibility in permit requirements.

Past studies have estimated the annual cost for the state to take on the program (delegation) at around \$10M. The governor's current proposal is for \$5.7M; of this, \$4.2 would be for MassDEP, with an additional \$1.5M for contracted work.

The governor's proposal would fund the entire amount from the state budget as a new line item. This is a concern for all involved, since line items are vulnerable to budget cuts. In addition, many are concerned that the amount proposed is insufficient. The Department of Environmental Protection, which would assume the program, is already understaffed and has been cut repeatedly under the last two administrations.

Once delegation has happened, it is irreversible. However, there have been numerous problems with the program elsewhere. There have been 31 petitions to the EPA to take the program back, in 29 states; none has been successful.

Mass Rivers feels EPA has a good track record of keeping rivers and the harbor clean, and see no compelling reason to shift these tasks to DEP, particularly with its funding cuts and the uncertainty of funding in the future.

They further worry that MassDEP will be less protected from local political pressure to weaken permits.

Damage to EPA programs under the Trump administration is concerning, but because it takes several years to transfer control of the program from the federal government to the state, Mass Rivers feels that it doesn't make sense to make this permanent decision based on the administration currently in power (at either the state or federal level), since this will likely change by the time the transfer is complete.

Mass Rivers' counterproposal is to strengthen and improve the state's own water quality programs, before consideration of taking on new work.

Question of relative cleanliness of the three rivers that drain into Boston Harbor. No clarity on whether one is cleaner than the other.

Martin Pillsbury reminded of John DeVillars' initiative to clean up the Charles, including the stormwater, from before the Harbor Project. Relatively, the Charles is much cleaner than it was, where the other two rivers started out cleaner.

George Attala: worked in several states. Some are more stringent than EPA.

JB: If we felt that would happen here, we'd be more comfortable, but no one has yet suggested that.

MA: why now?

JB: This comes up every few years. The latest push was probably a result of concerns about the statewide stormwater permit.

We have heard many arguments in favor of delegation; however we have yet to hear anyone claim that it would improve water quality, which is the sole purpose of the Clean Water Act.

### **Joseph Favaloro: Advisory Board position**

The Advisory Board generally supports delegation. In this case, we support, BUT—and the but is dedicated funding.

Our lens:

Long term, who is best positioned to issue permits?

In reality, EPA has eroded considerably over past decades. We have not even received our new permit for Deer Island in 17 years, EPA no longer regulates; they litigate.

Frankly who would you rather work with?

That said, the proposal brought forward by DEP is disingenuous. There is no such thing as a dedicated line item in the state budget. But it's also disingenuous to say the EPA budget will stay the EPA budget will stay safe.

I'd rather be part of something I have a little more control over, and that will be DEP with a fee structure to pay for it.

As part of our Comments and Recommendations, the Advisory Board developed a fee structure which included public treatment works, private treatment works, stormwater, and septic fees.

### **Discussion:**

How successful has it been in the delegated states?

JB: Depends on who you ask. We are alarmed by the number of states where there have been petitions to de-delegate.

AC: Everything, it is true, is eventually political. But perhaps more local control means more negotiation. It might be better.

JB: Concern we have is that the pressure on DEP is more successful than pressure on EPA.

JF: Frankly, I am not a fan of DEP or EPA, and it's not that likely that DEP will succumb to pressure more often.

AC/WC: Can work on both sides—we can elect representatives who are committed to protecting the environment and put pressure on DEP to be more stringent.

JB: I wish my experience supported what you are saying.

What data does WAC want?

Other states' experience with delegation—are they stricter, are they better funded, whether they can implement programs that are immune from pressure—RI, CT, WA, OR

JB: done some of that homework.

BS: DEP is so overwhelmed, they often refer me to EPA Region 1.

MA: seems to me that way bill is configured, nobody is in favor of it, and WAC should be able to oppose it as it is.

Current bill is likely to die in committee—consensus

MP: Would it be useful to look at Drinking Water Act, which is already delegated, with a fee system in place to fund at least in part.

AD: Lexi told me not all of the fee money designated for the DWA is going toward it.

JF: Clearly, problem is fee structure in place, but reality haven't raised the fees in years. Have to do that. How MWRA funds the Watershed Division off budget is an example of how funding should work.

AD: but are there any examples besides those that flow through MWRA?

JF: Hope Natural Resources is really studying how this should be done, not just putting it to study to kill the bill.

The concerns of the environmental committee are perfectly valid, and should be addressed.

JB: we'd be happy to have that conversation, and not just have this keep coming back with all the attendant questions.

MP: State created the Water Infrastructure Finance Commission to look into water finance with all the stakeholders. Perhaps the Legislature could do something similar, give them a year or two.

JB: This is a good idea, as long as someone completely objective directs the research. Right now we all have taken positions, including the state. It's hard to do that.

WL: Wasn't there a commission that looked at NPDES delegation, and this was the structure that came out of it?

JB: Not, exactly—the funding structure MassDEP proposed to us included wastewater and stormwater, but fees would have come from wastewater alone, or at least primarily. MWRA objected, saying they have no control over stormwater, and yet others, who contribute to stormwater pollution, would be paying nothing, MWRA would be paying the bulk. And they were right—that wasn't a fair fee structure. My understanding is that many of the towns covered under the stormwater permit didn't want to pay. The Baker administration just decided to fund it from the state budget and stop refereeing that discussion.

Also they went from 10 million to 7.5 million to 4.7 million without any input. I think they couldn't solve the problem, so they just gave up.

JF: that's a fair description.

WL: so what would another commission accomplish?

JB: DEP is struggling now. We thought the question should be how do we improve water quality programs at DEP, not whether or not to delegate.

DW: I would like to look at other states and how they are doing with their water enforcement and monitoring. Also of the 39 appeals, can we look into that.

What is the nature of the appeals?

JB: They were all brought forward by environmental groups. None resulted in de-delegation. Some program changes were made as a result. In some states, the state environmental organization was just re-issuing the old permits—so no backlog, but no improvement in water quality—a variety of issues. Other problems included weak standards and conflicts of interests with program heads.

MR: From NJ, don't see a great deal of water quality issues there—so think is working. Also fewer watershed organizations to sue EPA or the state—wonder if the program just runs better there, and thus no need to advocate for rivers?

MA: mentioned a bill we should support?

JB: H 2139: a gap analysis between what DEP is doing and what they would like to be. Their budget is so opaque that we don't know how they are doing; how big their backlog is for some of their tasks, how they are doing on monitoring and compliance, etc. It's difficult to know how much money they actually need to do an excellent job in protecting our waters.

DW: Any objective study of how water quality has changed in the delegated states—are they improving on specific rivers?

JB: we tried to look at that, and ended up using a proxy for that. Most have been delegated for many years. Many have had budget cuts, other issues. It's apples to oranges comparisons. But we did hear that states are better at working with towns.

It's a tough research question.