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TESTIMONY OF THE NEPONSET RIVER WATERSHED ASSOCIATION

Regarding

**PROPOSED REVISIONS TO SEWER CONNECTION AND EXTENSION
PERMITTING REGULATIONS AND OTHER RELATED REGULATIONS**

My name is Steve Pearlman and I am Advocacy Director for the Neponset River Watershed Association (NepRWA). I am also a member of the Advocates for Wetlands and Watersheds, a coalition of environmental and watershed groups. While I am not speaking on behalf of the Advocates today, we do expect to be submitting written comments on these regulatory proposals.

As you know, I worked for 17 years at the DEP Bureau of Resource Protection dealing with water-related issues, including those involving sewers and sewage treatment plants. I have continued to be actively involved in DEP regulatory issues during my 3 years at NepRWA. In this time, I do not believe I have ever seen such an ill-advised regulatory proposal or one which poses a greater risk to public health and the environment than the one we're discussing today on the permitting of industrial and sanitary sewer connections and extensions.

Nor have I seen a greater retreat by DEP from current environmental protection standards without even going through the mandatory MEPA process for proposals which, in the words of the MEPA regulations, "significantly reduce standards for environmental protection." NepRWA and others will be formally requesting MEPA this week to issue an Advisory Opinion as to whether DEP must file an ENF before going forward with this regulatory revision.

Today, only about 5% of the rivers in Massachusetts are known to be in full "attainment" of state surface water quality standards. While much of the nonattainment is due to historic and nonpoint sources, we don't know the precise role that industrial or sanitary sewage plays in releasing heavy metals and other toxic and conventional pollutants into the aquatic environment. The reality is that DEP is not even monitoring a large percentage of its rivers, and where monitoring has taken place, only a small fraction of our water bodies have been found to be fully meeting water quality standards.

Under these circumstances it is truly extraordinary for DEP to propose the virtual elimination of meaningful state oversight of industrial sewer dischargers, regardless of the level of toxic pollutants in their wastewater; indeed, without even knowing or seeking to ascertain the level of toxic pollutants in their wastewater. DEP is also proposing to eliminate practically all sanitary sewer connection permitting. It is proposing this without determining whether publicly owned treatment works (POTWs) or other relevant municipal agencies are able to handle this

responsibility on their own. Indeed, as I will discuss in a minute, all the evidence is that many if not most are in fact not capable of replacing DEP oversight.

It is true that all sewer discharges end up in POTWs, which then treat the sewage before discharging it into surface waters. POTWs are subject to conditions contained in their NPDES permits that limit the concentration of certain pollutants that they may discharge. In order to meet their discharge limits, POTWs clearly have an incentive to ensure that sewer dischargers limit the amounts of these pollutants in their wastewater. Despite the incentives, however, many POTWs regularly exceed their NPDES limits. More importantly, every NPDES permit sets standards only for a limited number of pollutants, and the POTW need only test its effluent for those pollutants. Thus, if a new industry ties into the sewer, or an existing industry adds to its flow or changes the industrial chemicals in its wastewater, it may be adding dangerous levels of a one or more pollutants for which the NPDES permit sets no limits. That is why it is critical for DEP to review and set discharge limits individually for significant sewer connections and extensions.

Currently, most sanitary sewer discharges and all industrial sewer discharges are required by regulation (314 CMR 7.00) to obtain individual permits, reviewed and signed by DEP, containing strict and often individualized environmental protection standards and conditions. 314 CMR 7.10(2) states that DEP in reviewing all sewer connection and extension permit applications “***shall establish special conditions, as required on a case-by-case basis*** ... These conditions may establish effluent limitations ... pretreatment requirements ... monitoring, recordkeeping and reporting requirements and other conditions when in his opinion said special conditions are necessary to assure that the discharge does not have a deleterious effect upon the treatment works, processes, equipment, or receiving waters and that the project does not pose a threat to public health or the environment or create a public nuisance.” [***Emphasis added.***] Furthermore, permits can be granted only for a limited duration, thus giving DEP the opportunity to add new conditions as necessary to address any changed circumstances.

In place of this current regulation, DEP is proposing to require a permit application only from sewer connection projects which discharge over 50,000 gallons per day (gpd), and then only if those discharges represent more than 5% of the flow going to the sewage treatment plant (POTW). A permit application would also be required of sewer extensions of 1,000 feet or greater. However, these permits would be granted automatically if DEP didn't act on the application within 45 days. Other dischargers would either be totally exempt, be required to comply only with “general permit” conditions, or be made to do a one-time certification of compliance with general regulatory standards (certifications would be presumptively approved if DEP did not act on them within 60 days). In extremely few cases would DEP establish individualized effluent limits or pretreatment requirements, as current regulations require for all permits when necessary to protect the environment.

Current regulations already provide DEP with the power to stop issuing connection and extension permits when a POTW can handle the job itself. Under 314 CMR 7.16, DEP may delegate permitting to any publicly owned treatment works it finds has the ability to “ensure that

existing levels of environmental protection are maintained or enhanced.” This delegation authority, in fact, is specifically given to DEP by the MA Clean Water Act, M.G.L. c. 21 sec. 43(8). So how many POTWs has DEP found to have adequate ability to deserve delegation? Since MWRA received it decades ago, not a single POTW has gotten delegation from DEP. But instead of adopting standards for delegation and then evaluating the abilities of individual POTWs to handle the job, the Department is instead proposing a wholesale move to virtually eliminate state sewer connection and extension permitting.

DEP is proceeding under the myth that state sewer connection and extension permitting is duplicative of, and adequately regulated by, federal, regional and local permitting. Far from making a reasoned evaluation based on hard evidence, DEP either doesn't know if this is true or, in some instances, DEP staff has concluded that it is not true. Let me give a few examples:

- About three or four years ago, the DEP staff person with the most experience working with POTWs retired from the Department. He had concluded that in many, and perhaps most cases, POTW laboratories were incapable of accurately determining the concentration of pollutants in their effluent and thus whether they were truly in compliance with their NPDES limits. At the request of the Department, this staffer gave a seminar to a dozen or more DEP employees before he left on this problem.
- When I was at DEP, I helped draft a methodology to evaluate the capabilities of POTWs to meet current regulatory mandates. This methodology was pilot-tested on a number of POTWs. Even those POTWs which Department staff had previously rated as doing an excellent job were found in fact to be violating numerous requirements. This included POTWs with EPA-certified Industrial Pretreatment Programs (IPPs).
- When DEP first came up with the idea of eliminating state permitting of most sanitary sewer connections, its own engineers and analysts, many of whom had decades of experience in sewer connection permitting, were virtually unanimous in saying that a large number of town DPWs and Sewer Departments were incapable of doing basic sewer connection permit evaluations, especially for connections requiring pump stations.
- DEP has never identified all the industrial sewer users discharging to each POTW or what pollutants are in their waste streams. Nor have they compared industrial sewer discharges to violations of surface water quality standards in the receiving waters. In clear violation of its statutory responsibilities, DEP has failed to issue permits for practically any industrial sewer dischargers in the last 8 to 10 years. DEP simply doesn't know which contaminants are going into sewers in what amounts or whether these discharges are “passing through” POTWs and adversely affecting surface water quality.

NepRWA believes that the revisions which DEP is proposing represent not only an abuse of its regulatory authority but also a violation of the state Clean Water Act. Although the Clean

Water Act gives the Department the authority to grant exemptions from permitting, the wholesale exemptions that it now seeks fly in the face of the Act's requirement that direct and indirect surface water discharges "conform to ... receiving water standards" and that the Department act "to safeguard the quality of the receiving waters" and ensure compliance "with pertinent provisions of the laws of the commonwealth or of federal law."

NepRWA intends to do everything we can to ensure the proposal, as currently written, never goes into effect. We have received assurances from other environmental organizations that they will join us in this effort. We urge the Department to withdraw these proposed regulations until it has demonstrated through the MEPA process that they will be written so as not to significantly reduce current regulatory standards for environmental protection.

Thank you very much for your consideration.