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:

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

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

SECTION 2. Said section 26A of said chapter 21, as so appearing, is hereby further amended by striking out the definition of “Public entity” and inserting in place thereof the 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.
(3) The director shall adopt regulations with respect to permit proceedings and determinations, including individual and general permits issued under this section. Applications for permits shall be submitted within times and on forms prescribed by the director and shall contain such information as the director may require.

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

SECTION 8. Said section 43 of said chapter 21, as so appearing, is hereby further 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
water pollution abatement, sewer or stormwater services, whether established under general law or special act.

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

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

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