

# Residual Designation/Stormwater: Conservation Law Foundation Petitions Addressing Two Massachusetts Watersheds



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The Conservation Law Foundation (“CLF”) filed two petitions for a determination related to the Neponset River Watershed and Mystic River Watershed:

. . . for a determination that certain commercial, industrial, institutional, and multi-family residential property dischargers contribute to water quality standard violations. . . and that NPDES permitting of such properties is required . . .

The petitions were submitted to the United States Environmental Protection Agency Region 1 (“EPA Region 1”) office.

Privately owned commercial, industrial and institutional (“CII”) sites may include shopping centers, malls, employee parking lots, office buildings, etc. Stormwater can be generated in such an urban environment. This may include rain falling on impervious surfaces (i.e., concrete and asphalt) which becomes runoff. The runoff mobilizes pollutants as it flows in storm sewer systems and waterways.

Section 402(p) provides the EPA Regional Administrator, on a case-by-case basis, the authority to designate certain stormwater discharges as requiring a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit. Such designation requires that the EPA Region determine that stormwater discharges contribute to a violation of applicable water quality standards. This Clean Water Act Authority is designated the “residual designation authority.”

Any person may petition EPA to request that a stormwater discharge be required to obtain a NPDES permit. CLF petitioned EPA to require NPDES permits for CII sites discharging into the referenced watersheds. They argue that EPA must exercise its residual designation authority to require such permits because the CII sites are contributing to the impairment of the watersheds’ water quality.

The CLF petitions argue that stormwater has contributed to excessive amounts of pathogens in the waterbodies. The alleged impact on the public is stated to be associated with recreational waters, ingestion of drinking water, and consumption of filter-feeding shellfish. TMDL reports are cited as documentation in the petitions.

In addition, CLF alleges that various segments of the rivers fail to meet Massachusetts’ water quality standards.

The petitions argue that the residual designation should include:

. . . as a class, all existing non-permitted commercial, industrial, institutional, and certain large multi-family residential property dischargers with one or more acres impervious surface area within the waterbody.

A copy of the two petitions can be downloaded [here](#).