From:	James Boyd
To:	Michael B. Hogan
Cc:	Mike McGiveney
Subject:	DEM authority to issue wastewater treatment facility discharge permits
Date:	Thursday, March 7, 2024 2:39:29 PM

Hi Mike,

I'm proving you some information as a follow up to our conversation at the adjournment of Tuesday afternoon's Joint Quahog Commission meeting regarding DEM's authority.

DEM issues wastewater discharge permits under the authority of the Rhode Island Pollution Discharge Elimination System (RIPDES) program, as DEM is a delegated authority by the U.S. Environmental Protection Agency pursuant to the federal Clean Water Act. In addition, R.I. General Laws 46-12 designates DEM as the state water pollution control agency and provides the authority to regulate water pollution in the state.

As I stated in my presentation to the Commission on Tuesday, DEM can modify any of the conditions or limits within a DEM-issued wastewater treatment facility (WWTF) discharge permit without needing any new authority. For example, if the Commission agrees and determines that DEM should modify any WWTF discharge permits to allow higher levels of nutrients during winter months, it is not necessary for the General Assembly to pass legislation authorizing DEM to do so.

Following the August 2003 Greenwich Bay fish kill, the General Assembly enacted legislation that required RIDEM to "implement measures to achieve
an overall goal of reducing nitrogen loadings from wastewater treatment facilities by fifty percent (50%) by December 31, 2008." See R.I. Gen. Laws § 46-12-2(f). Accordingly, DEM implemented a wastewater limit of 5 mg/L nitrogen during May-October (so called summer season) to achieve the 50% reduction of nitrogen. Over the last decade plus since implementation of this limit, however, DEM has gone well beyond 50% and current WWTF nitrogen loadings are about 78% lower than in 2004. Hence the problem with the reduction in quahogs within the Bay as we presented. In addition, the DEM WWTF discharge permits require off-season (Nov-April) nitrogen reduction to the maximum extent practicable. Thus, there is no mechanism in the DEM permits for the WWTF operators to permissibly increase the level of nitrogen discharge during winter months. The question is, should the operating statute be amended to provide WWTF operators with flexibility or is there another mechanism?

The bottom line is that the DEM WWTF discharge permits (at least NBC and East Prov.) need modification to allow higher levels of nitrogen discharge to support winter-spring phytoplankton blooms to enhance quahog conditions. The question is how best to achieve that.

Regards -Jim

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