

Frequently Asked Questions on the Residual Designation Authority Permitting Action in Massachusetts

(March 2024)

This document contains questions and answers as they pertain to the RDA permitting program in Massachusetts as outlined below.*

1. What is Residual Designation Authority, or an “RDA permit”?	1
2. How did the Residual Designation Authority (RDA) permitting issue arise in Massachusetts? ...	2
3. What is “Impervious Cover?”	2
4. What kinds of improvements to the environment and for communities are expected as a result of this permitting action?.....	2
5. Where can I find background information, technical documents and updates on the RDA process in Massachusetts?	3
6. Who will receive an RDA permit?	3
7. If I am a property owner that requires a permit, what do I need to do?	4
8. What types of notice will permittees receive about their obligations under this permit?	4
9. What types of actions will be required by the permit?	4
10. Do I have to meet other obligations at the local, state and federal level, in addition to what this RDA permit will require?	5
11. What outreach efforts have occurred and what is planned?	5
12. Is there federal funding to help me comply with this permit?	5
13. Who can I contact for more information?	5

1. What is Residual Designation Authority, or an “RDA permit”?

The Clean Water Act (CWA) and related regulations define the specific industrial, construction and municipal stormwater sources that must be authorized by an NPDES permit. The CWA also recognizes that other sources may need to be regulated on a case-by-case or category-by-category basis based on additional information or localized conditions. The authority to regulate other sources based on the localized adverse impact of stormwater on water quality through NPDES permits is commonly referred to as the “Residual Designation Authority,” or simply, “RDA.”

EPA can use its “residual designation” authority to require NPDES permits for stormwater discharges that are not yet regulated when it determines that:

- the discharges contribute to a violation of water quality standards,
- are a significant contributor of pollutant to federally protected surface waters, or

- controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern.

More information on EPA's RDA Authority and related information in New England can be found [here](#).

2. How did the Residual Designation Authority (RDA) permitting issue arise in Massachusetts?

On May 9, 2019, the Conservation Law Foundation (CLF) and the Charles River Watershed Association (CRWA) petitioned EPA to exercise its Residual Designation Authority to regulate certain stormwater discharges from privately-owned commercial, institutional, industrial, (sometimes referred to as "CII properties") and multi-family residential properties of one acre or greater in the Charles River Watershed in Massachusetts. On August 24, 2020, CLF followed this submission with two additional petitions requesting residual designations for the Mystic River and Neponset River Watersheds in Massachusetts.

On September 14, 2022, EPA exercised its residual designation authority in response to the water quality impacts caused by stormwater discharges in all three watersheds and issued a [Preliminary Determination](#) that designated for NPDES permitting certain commercial, industrial, and institutional properties with one or more acres of "impervious cover" or "impervious surface."

3. What is "Impervious Cover?"

"Impervious cover" is defined as "any surface that prevents or significantly impedes the infiltration of water into the underlying soil. This can include but is not limited to: roads, driveways, parking areas and other areas created using non porous material; buildings, rooftops, structures, artificial turf and compacted gravel or soil"¹. For this permitting matter, EPA uses "impervious surface," "impervious area," and "impervious cover" interchangeably.

When rainwater from even small storm events falls onto these impervious surfaces, pollutants are carried into waterbodies such as rivers, lakes and streams.

4. What kinds of improvements to the environment and for communities are expected as a result of this permitting action?

Stormwater remains the last major significant source of water pollution in Massachusetts and throughout New England. Nutrient pollution is the pollution responsible for algal blooms, cyanobacteria outbreaks and other detrimental impacts to our waterbodies and wildlife. Through the work of many, including the EPA, Massachusetts Department of Environmental Protection, watershed groups and others, municipalities, industrial facilities, and wastewater treatment facilities have already taken steps to address other sources of pollution to local waterbodies (by nearly eliminating [combined sewer](#)

¹ 2016 Massachusetts Municipal Separate Storm Sewer General Permit (as amended). Retrieved April 2, 2024, from <https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit>

[overflows](#) and [illicit discharges](#), and by reducing nutrient pollution from wastewater treatment facility discharges).

Municipalities have also been hard at work addressing stormwater pollution and nutrient management as they are required to do under their [2016 MS4](#) permit but until now, they have been responsible for all of the polluted stormwater run-off, even the run-off coming from private properties within their municipal boundaries (as well as other sources that are not targeted for this permitting framework, such as run-off from residential properties). The RDA permit will now distribute the responsibility of stormwater pollution and nutrient management among municipalities and certain landowners whose properties contain an acre or more of impervious cover.

The Charles, Mystic and Neponset River watersheds will become cleaner as a result of this permitting action, while communities may also see additional “co-benefits.” Some of the stormwater controls that will be implemented as a result of permit requirements ([see](#) question #8), may result in better flood management by helping rainwater get absorbed back into the ground or through the use of nature-based solutions such as the planting of rain gardens and trees or the use of tree box filters. Some of these solutions may lead to greener, more beautiful neighborhoods and may even have benefits beyond stormwater control such as a reduction in urban heat islands.

5. Where can I find background information, technical documents and updates on the RDA process in Massachusetts?

The EPA [website](#) contains useful information on the RDA permitting program that is being established for the Charles, Mystic, and Neponset River watersheds. Background documents include: the [petitions](#) from the Conservation Law Foundation and the Charles River Watershed Association that initiated this process, EPA’s [Preliminary Determination](#), which sets forth the legal and technical basis for EPA’s decision to move ahead with RDA permitting in the Charles, Mystic, and Neponset, and [updates](#) on our progress and stakeholder development activities. Parcel-level analyses for potentially-impacted properties, which describe the process of how CII properties were identified for permitting and what the resulting environmental impacts of this proposed RDA program will be, are posted for the [Charles](#), the [Mystic](#) and the [Neponset](#). [Municipal-specific fact sheets](#) are also available for each impacted community. EPA is working on the development of other tools and informational materials that it will post on its website.

6. Who will receive an RDA permit?

As stated in its Preliminary Determination, EPA is designating for permitting [stormwater discharges from certain commercial, industrial, and institutional properties with one acre or more of impervious surface](#) in the Charles, Neponset, and Mystic River watersheds. EPA estimates that the total number of properties affected by this decision may be over 3,500. EPA is considering all permitting options, including the possibility that it could require more significant actions by larger landowners first, although all permittees could be required to file a “notice of intent,” the instructions for which would be identified in the final permit.

7. If I am a property owner that requires a permit, what do I need to do?

Landowners who are subject to permitting will need to reduce the pollutants that are carried by stormwater coming off their property (although EPA notes that some landowners may already be engaged in some of the actions that will now be required by the RDA permit). EPA plans to release a draft of the Residual Designation Authority Permit in the Fall 2024, where specific requirements will be identified. While the exact actions that will be required by permittees are still being developed, the goal of the RDA permit is to reduce the flow of polluted stormwater run-off from privately owned commercial, industrial, and institutional properties. When the draft permit is released, EPA will seek comment on the conditions of the draft permit and the preliminary RDA determination, at which time any party, including all potentially affected property owners, can review the draft language and submit comments to EPA. More information about the exact issuance date and how you can submit comments will be forthcoming and will be posted on the EPA [website](#).

8. What types of notice will permittees receive about their obligations under this permit?

EPA will publish a notice of availability of the draft RDA general permit, RDA determination, and supporting documents on the EPA website and in the Federal Register for public comment. EPA will consider all significant public comments before it issues a final permit, a final RDA determination and a response to the public comments it received. As is the practice for other NPDES general permits, EPA generally does not individually notify each potential entity that may be covered by a general permit. However, through information contained in the Federal Register, as well as EPA's significant outreach, potential permittees will have notice of their potential obligations pursuant to this permit.

9. What types of actions will be required by the permit?

EPA is still determining the types of actions that will be required by the permit and what choices permittees will have in selecting how they will best meet their permit obligations and will be seeking public comment on these actions, as well as all permit terms. The goal of the permit, however, is to reduce stormwater run-off and associated pollution (including bacteria and/or nutrients) from properties that are designated for permitting. EPA expects to create a menu of stormwater control options that permittees can use to make decisions about which stormwater controls are best suited for their property type. Examples of stormwater control measures include building green infrastructure and other measures that capture and treat runoff. Examples can be found [here](#). Other pollution prevention practices that include education or good housekeeping measures, are outlined [here](#).

EPA wants to ensure that permittees can find stormwater controls that work for their site, knowing that there may be site constraints due to limited space, high groundwater, contaminated soils, or other challenges that make the placement of some stormwater controls challenging. EPA also acknowledges that the implementation of structural controls, like the ones mentioned above, is not always feasible due to site constraints or cost. This is why it is important to consider other pollution prevention practices, such as street sweeping, that will also achieve important pollutant reductions and could be part of an overall plan to meet permit requirements.

10. Do I have to meet other obligations at the local, state and federal level, in addition to what this RDA permit will require?

The RDA permit does not replace or supersede any other local, state or federal regulations.

11. What outreach efforts have occurred and what is planned?

In late 2020, EPA convened focus groups with a variety of stakeholders focused on the Charles River petition (since EPA had not yet received petitions for the other two watersheds) to hear from stakeholders. The summary of those sessions is set forth in the [Charles River Stormwater Permitting Residual Designation Authority Focus Group Sessions Summary](#). Since January 2024, EPA has been engaged in additional public stakeholder outreach; a list of presentations is available on the [website](#). Through these efforts, EPA hopes to educate stakeholders about the environmental benefits that will result from this permitting action and hear more from stakeholders about the ideas, challenges, and potential solutions that they have with how these permit(s) will be implemented. In the upcoming weeks and months, EPA plans to have additional focused conversations on permit implementation challenges. EPA will also be reaching out to communities with environmental justice concerns. Please contact EPA at: R1.RDA@epa.gov if you have questions or ideas about additional outreach.

12. Is there federal funding to help me comply with this permit?

Currently, EPA is not aware of any specific federal funding opportunities that could be utilized by private landowners to help fund actions required by this permitting program.

13. Who can I contact for more information?

If you have any questions related to the permit, feedback on any proposed permit requirements, or other questions related to the program you can reach out to R1.RDA@epa.gov. Any comments submitted through these channels does not take the place of submitting formal comments on the record for this permitting process. See [EPA's website](#) for updates on that process.

*The numbers, graphics, and technical conclusions in EPA's website and all materials concerning this permitting matter are pre-decisional, subject to change, and may be different than the final calculations relied upon in the draft and final permits. EPA will publish the availability of the draft RDA permit and RDA determination in the Federal Register for public comment and will consider all significant public comments.