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November 23, 2011

Received
NOV 28 2011
Deputy Commissioner

Draft Regulatory Reform Action Plan
c/o Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Reference: Review Comments
Draft Action Plan for Regulatory Reform at MassDEP
October 24, 2011

Dear Commissioner Kimmell:

Mason & Associates, Inc. respectfully submits the enclosed Review Comments in response to the Draft Action Plan for Regulatory Reform at MassDEP dated October 24, 2011.

We thank you for the opportunity to provide input on this Draft Action Plan for the Department's consideration. Should you have any questions concerning this matter, please contact us at (508) 422-9495.

Respectfully submitted,
MASON & ASSOCIATES, INC.

Jeffrey A. Bridge, PWS
Senior Associate

Enclosure: Review Comments, November 23, 2011

REVIEW COMMENTS
Draft Action Plan for Regulatory Reform at MassDEP
Mason & Associates, Inc.
November 23, 2011

A. Wetlands, Waterways and Coastal Resources

1. Coastal/Dredging Programs: Permit Consolidation

The concept of a common permit application will not only reduce the submission of redundant information and increase MassDEP review efficiency but will also reduce the applicant's economic burden of having to file multiple permit applications while significantly expediting the regulatory process. At present, a final Order of Conditions and MEPA compliance (if necessary) serve as pre-requisites to a 401 WQC whereas the 401 WQC is the pre-requisite to Chapter 91 authorization. As a result, the overall timeframe to complete permitting in this domino-like approach can be significant. When adequately regulated by another issuing authority resulting in the issuance of a project-specific permit/approval, permit-by-rule represents an efficient, cost-effective means to address and consolidate all DEP wetlands, waterways and coastal resources-related regulatory programs provided necessary review standards and safeguards are incorporated to protect the environment and to serve the public interest.

2. Chapter 91 Licensing: Revise Restrictions on Timeframes

The proposal to revise the regulations to allow Chapter 91 licensing to run concurrently with the MEPA review process and to allow the issuance of said License prior to a final Order of Conditions appears to be directly related to permit consolidation. In addition, it would further appear that this proposed regulatory change could be expanded to include 401 WQC. Although stated that "No other permitting process contains this time restriction with respect to MEPA," 310 CMR 10.05(7)(f)1 similarly states that DEP shall issue a Superseding Order of Conditions within 40 days of the issuance of a final Certificate by the Secretary of the Executive Office of Environmental Affairs that the applicant has complied with MEPA. In the context of inter-related permit consolidation, it appears that regulatory revisions regarding restrictions on timeframes may be required to extend beyond Chapter 91 licensing.

6. Wetlands: Buffer Zone General Permit

Establishing a Buffer Zone General Permit, depending on its regulatory provisions and having expanded applicability in comparison to the previous concept, will certainly streamline the regulatory process, further prioritize DEP's targeted efforts and provide an overall benefit to the environment.

8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects

In addition to dam removal, inlet widening and stream daylighting, site remediation represents another type of project involving ecological restoration. While serving the health and welfare of the general public and contributing to the protection of the environment, it is in the overall interest of the Commonwealth to effectuate waste site clean-up in a prompt, efficient and cost-effective manner. Given that site remediation is subject to the regulatory-mandated site clean-up process (known as the Massachusetts Contingency Plan [MCP]), it appears in the spirit of regulatory reform to avoid duplication of effort such that these non-development projects involving an element of ecological restoration would directly benefit from expedited permitting. Presently, 310 CMR 10.00 includes a limited project provision for the remediation of a release of hazardous material in accordance with the provisions at 310 CMR 40.0000. It would appear that this type of project serving the public interest and providing ecological restoration is a prime candidate for expedited review and permit consolidation.

Additional Regulatory Reform Idea: Emergencies

A review of the Massachusetts Wetlands Protection Act and 310 CMR 10.06 state that an emergency project is necessary for the protection of the health and safety of the citizens of the Commonwealth. By definition, an emergency project means any project certified in writing as an emergency by the Conservation Commission; notwithstanding Immediate Response Actions receiving oral approval from the Bureau of Waste Site Cleanup (310 CMR 10.06(7)). The Conservation Commission is required to act within 24 hours upon receipt of said request for emergency certification and a site inspection <u>shall</u> be made prior to certification. In addition, the Department may review the action or non-action by the Conservation Commission in response to the request for emergency certification. Said review shall be conducted within seven days.

As stated, 310 CMR 10.06(7) includes expedited review procedures for Immediate Response Actions in connection with emergency waste site cleanup measures. It is suggested that the regulations be further revised in the spirit of regulatory reform to include additional provisions for taking immediate action in response to 1) significant storm events resulting in wide-spread power outages and 2) government state declarations of emergency so as to restore the infrastructure as necessary to serve the public interest. In these instances, the protection of the health and safety of the citizens of the Commonwealth should not be placed at risk in order to comply with the current regulations. For example, restoration of electrical power should not be delayed for having to prepare and submit multiple requests for emergency certification, site inspections by various Conservation Commissions and receipt of written emergency certifications within the established regulatory-mandated 24-hour timeframe.

As evidenced in recent years, immediate restoration of power is paramount to the protection of the health and safety of the Commonwealth such that the regulatory provisions concerning Immediate Response Actions should be expanded to include other types of actions beyond waste site cleanup.

CONSERVATION COMMISSION

City of Leominster, Massachusetts

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Joanne M DiNardo
Conservation Agent
conservation@leominster-ma.gov

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Kelley Freda
Chairperson

Commissioner Kenneth L. Kimmell
Department of Environmental Protection
One Winter Street
Boston, MA 02108

November 23, 2011

Received
DEC 5 2011
Deputy Commissioner

Attention: Jakarta Childers, Commissioner's Office
Subject: DEP's Draft Action Plan for Regulatory Reform

Dear Commissioner Kimmell:

Thank you for the opportunity to comment on DEP's Draft Action Plan for Regulatory Reform. The Leominster Conservation Commission has reviewed DEP's Draft Action Plan for Regulatory Reform and offers the following comments related to wetlands:

5. *Wetlands: Targeted Review by DEP*

In order to most effectively deploy the significant agency resources spent on Wetlands Protection Act (WPA) Permitting, DEP will prioritize a variety of program activities, including immediate issuance of file numbers; increased focus on Superseding Orders of Condition; and increased priority based on significance of wetlands resource impacts. This will reduce agency time spent on lower-value added tasks and will reduce delays for project proponents and Conservation Commissions. MassDEP will prioritize its WPA efforts in the following ways:

- *DEP will assign WPA File Numbers immediately upon submittal of a Notice of Intent (NOI) to a local Conservation Commission. This will allow Conservation Commissions to act without needing to wait for DEP review of the NOI, which is increasingly difficult to do in a timely manner given staffing constraints.*
- *DEP will limit its review of NOIs and its oversight on local actions in order to concentrate resources on cases in which there are appeals to DEP (SOOCs). DEP intervention or participation in the local proceeding will be unusual and reserved for cases where there are particularly sensitive resources at issue. Note that DEP will continue to provide technical and regulatory assistance to the local conservation commissions and others via the Wetlands Circuit Rider program and other activities.*
- *DEP will also strategically deploy its SOOC review efforts to concentrate on projects with significant resource area impacts, and conduct streamlined review of projects that solely impact the buffer zone, or that involve minor residential alterations.*

By concentrating DEP efforts in this manner, DEP will ensure it has adequate resources to give the appropriate level of scrutiny based on potential for environmental harm. These management efforts to more effectively target staff efforts may also allow DEP to redirect Wetlands Program staff to provide increased direct municipal assistance.

The Leominster Conservation Commission agrees with the immediate issuance of WPA File Numbers which will allow for the Commission to act on NOI's in a more timely manner. However; we have concerns with the proposed limiting of reviews of NOI's by DEP staff. The proposed changes do not state whether there will be a threshold for what will be reviewed. The Commission finds comments received by DEP staff to be invaluable and time saving to a volunteer board. With a frequent turnover of Commission members, many questions arise. By not having a circuit rider or NOI review, the Commission would need to contact DEP Wetlands Staff via telephone. We do not see this as cost saving or a staff-time saving proposal. We see this limited review as especially problematic in the Central Region, where there has not been a circuit rider for quite some time. The Leominster Conservation Commission strongly requests that this change be looked into in greater detail.

The Commission also has concerns with wording in the proposed regulations. For example, the phrases "significant resource impacts" and "particularly sensitive resources" are not defined. These changes should be well defined or thresholds should be set.

Although the Commission understands the need for this reform due to limited staffing, we feel that changes to this portion of the Wetlands Regulations will lead to an increased number of appeals to DEP for Superseding Orders of Conditions. This increase will cost the City of Leominster additional money in staff time to prepare background information and gather requested materials, as the Commission is automatically a party to the appeal. The Commission has one full time staff member, who acts as the Conservation Agent, City Environmental Inspector, and is also in charge of the City's Energy Initiatives. No additional burden should be placed on Conservation Agents and Commissions due to regulatory changes on DEP's behalf.

The Commission strongly suggests that the ratio of State to City filing fees for NOI submittals be recalculated if these regulatory reforms are accepted and less work is required of the DEP and more work falls on the Commission.

6. Wetlands: Buffer Zone General Permit

MassDEP will establish a general permit or other similar regulatory provision for certain activities that are proposed for the outer fifty feet (50') of the buffer zone to inland wetlands. This proposal will reduce DEP staff time spent on SOOC review for buffer zone cases, and it has the potential to significantly benefit the environment by providing incentives for applicants to concentrate activity greater than 50' from the resource area. It will also save time for project proponents and for Conservation Commissions. This concept was previously deployed but was ultimately deemed unsuccessful because categorical restrictions limited the universe of eligible projects to a very small category. DEP will revisit that effort with an eye towards expanding the applicability of the general permit from the prior iteration.

The Leominster Conservation Commission disagrees with this proposed change. As a Commission which includes wetlands public outreach and education in our efforts, this change gives the "appearance" that the outer 50 feet of the buffer zone are of no importance to DEP or wetlands protection. Although it would most likely save Commission time, we do not feel that this is in the best interest of wetlands protection.

7. *Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures*

MassDEP will propose regulations to exempt wetlands "resource areas" created by stormwater management structures (e.g. man-made stormwater retention basins) that were constructed prior to 1996, if the stormwater system meets DEP's performance standards. This will reduce agency time spent and streamline processes for external stakeholders by reducing the need to address these man-made stormwater structures under the more time-consuming process for regulated resource areas. This proposed change follows on regulatory changes previously made to exempt stormwater management structures that were constructed after 1996.

The Leominster Conservation Commission strongly agrees with this proposed regulatory change. As proper maintenance is required for stormwater structures to properly function, this change will make it easier for owners of BMPs to perform required maintenance without having to go through the expense and time of the NOI process.

Thank you for the opportunity to comment on the proposed changes.

Kelley M. Freda

Kelley M. Freda

Cc: Dean Mazzarella, Mayor
Leominster City Council
State Senator Jennifer Flanagan
State Representative Dennis Rosa

Received
DEC 1 2011
Deputy Commissioner

137 Farview Way

Amherst, MA 01002

November 29, 2011

Commissioner, Dept. of Environmental Protection

1 Winter St.

Boston, MA 02108

Sir:

I strongly object to two proposals before the DEP: one, the proposal to give a free pass to all proposals for work in the outer 50 feet of the 100-foot wetlands buffer; and two, the proposal to allow "limited projects" for energy facilities within wetlands.

Both of these are completely counter to the state wetlands protection statutes which are so carefully designed to protect the food chain. I strongly urge you to stand firm on the original provisions of the statutes. Once the wetlands are destroyed, they are gone forever, and we cannot afford that. Please stand firm against the pressures of development, stand firm for what you know is the right mode of action.

Sincerely,

Mary E. Hocken

Mary Hocken

137 Farview Way

Amherst, MA 01002

November 26, 2011

Received
DEC 1 2011
Deputy Commissioner

Commissioner, Dept. of Environmental Protection

1 Winter St.

Boston, MA 02108

Sir:

I strongly object to two proposals before the DEP: one, the proposal to give a free pass to all proposals for work in the outer 50 feet of the 100-foot wetlands buffer; and two, the proposal to allow "limited projects" for energy facilities within wetlands.

Both of these are completely counter to the state wetlands protection statutes which are so carefully designed to protect the food chain. I strongly urge you to stand firm on the original provisions of the statutes. Once the wetlands are destroyed, they are gone forever, and we cannot afford that. Please stand firm against the pressures of development, stand firm for what you know is the right mode of action.

Sincerely,

Ann E. Kearns

Joy Friedman Pottery

Henry Lappen
120 Pulpit Hill Rd Unit 31
Amherst MA 01002-4013

Received
DEC 1 2011
Deputy Commissioner

Image: Lace Bowls

Commissioner of DEP
1 Winter St
Boston, MA 02108

Protect our wetlands!
The new Draft Action Plan is terrible. Please do everything you can to stop it. We need the 100' buffer. We should not site "green" energy projects in wetlands. Thanks!

Annual studio sale on 2nd Saturday in Dec.

Mark J. Cool
250 Fire Tower Rd.
Falmouth, MA 02574
December 5, 2011

Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston MA 02108

Re: Comments on Commissioner Kimmell's Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP)

Dear Commissioner Kimmell,

Please find my comments regarding the proposed expansion of the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).

· The construction of a renewable energy project does not fall into the same category as the current five types of projects now covered by the "limited project" exemption of the wetlands regulations. These "limited projects" are 1. closure of solid waste landfills, 2. airport safety, 3. dam safety, 4. development of safe drinking water supplies from groundwater, and 5. cleanup of releases of oil and hazardous materials.

· According to the Massachusetts Wetland Protection Act the common factors in all five "limited projects" are their importance to the protection of public health, safety and/or the environment. The construction of an industrial wind turbine is not important to the protection of public health, safety and/or the environment. In fact an industrial wind turbine project maybe the antithesis of the protection of these factors.

· You've stated that giving renewable energy projects a "limited project" status under the WPA "will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy. I disagree that renewable energy projects will improve air quality, reduce greenhouse gas emissions and boost the green economy.

· Industrial wind turbines do not improve air quality, nor do they reduce greenhouse gas emissions because ----- Any calculation of the CO_2 emissions reduced by wind generation must take into account both the fuel that is replaced and the compensating conventional fuel generation. Such a calculation, involving a randomly intermittent renewable like wind, cannot be done using a single emissions factor. With these ideas informing analysis, performance data from Britain, Denmark, Ireland, and Germany shows that "a substantial part of the theoretical CO_2 saving does not accrue in practice. In some circumstances there may be only minimal benefit."

> [*White, David, Reduction in Carbon Dioxide Emissions: Estimating the Potential Contribution from Wind-Power, commissioned and published by the Renewable Energy Foundation, December 2004. White has earned BSc, C Eng, F I and Chem E.*

degrees. This is perhaps the best comprehensive analysis of the limitations of industrial wind energy to date.]

· Industrial wind turbines do not boost the green economy because ---- In March 2009, researchers Gabriel Calzada Alvarez and colleagues at the Universidad, Rey Juan Carlos released a study examining the economic and employment effects of Spain's aggressive push into renewables. What they found confounds the usual green-job rhetoric:

["Study of the Effects of Employment of Public Aid to Renewable Energy Sources" (draft, Universidad Rey Juan Carlos, March 2009),]

- Since 2000, Spain spent 571,138 euros on each green job, including subsidies of more than 1 million euros per job in the wind industry.
- The programs creating those jobs destroyed nearly 110,500 jobs elsewhere in the economy (2.2 jobs destroyed for every green job created).
- The high cost of electricity mainly affects production costs and levels of employment in metallurgy, nonmetallic mining and food processing, and beverage and tobacco industries.
- Each "green" megawatt installed destroys 5.28 jobs elsewhere in the economy on average.
- These costs do not reflect Spain's particular approach but rather the nature of schemes to promote renewable energy sources.

Spain has found its foray into renewable energy to be unsustainable. No present projection indicates the trend shall be any different in the U.S.

· If the wind turbines don't get a "limited project" status and an industrial wind turbine project cannot be sited because the local conservation commission declines to issue a permit, the Commissioner can always issue a variance. This is a clear "Home-Rule" violation.

· The areas most suitable for wind development in Massachusetts - the Cape, North and South Shores, and the Berkshires - are also the areas where the environment, and specifically wetland resource areas, are very fragile. Therefore greater care must be taken to make sure that the resource areas are protected.

· You've stated that putting renewable energy projects in the "limited project" category will "benefit the environment by creating a more streamlined and predictable permitting pathway."

This is an outrageously misleading statement. Putting renewable energy projects in the "limited project" category will create a more streamlined and predictable permitting pathway, not at all for the benefit, rather, for the decided derogation to the environment.

Respectfully,

Mark J. Cool

Received
DEC 2 2011
Deputy Commissioner

16 Berkshire Terrace

Amherst, MA 01002

November 30, 2011

Commissioner, Dept. of Environmental Protection

1 Winter St.

Boston, MA 02108

Sir:

I strongly object to two proposals before the DEP: one, the proposal to give a free pass to all proposals for work in the outer 50 feet of the 100-foot wetlands buffer; and two, the proposal to allow "limited projects" for energy facilities within wetlands.

Both of these are completely counter to the state wetlands protection statutes which are so carefully designed to protect the food chain. I strongly urge you to stand firm on the original provisions of the statutes. Once the wetlands are destroyed, they are gone forever, and we cannot afford that. Please stand firm against the pressures of development, stand firm for what you know is the right course of action.

Sincerely,

James B. Mead

Town of Middleborough

CONSERVATION COMMISSION

Received
DEC 6 2011
Deputy Commissioner

December 1, 2011

Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: Draft Regulatory Reform Action Plan

Dear Commissioner Kimmell:

After reviewing the Draft Action Plan for Regulatory Reform at MassDEP the Middleborough Conservation Commission and I have a few comments, questions and concerns.

Under Wetlands, Waterways and Coastal Resources, 5: Wetlands: Targeted Review by DEP:

"...reduce agency time spent on lower-value added tasks..." How are these lower-value tasks defined?

"DEP will assign WPA File Numbers immediately..." Although the Middleborough Conservation Commission has staff to review permit applications the Commission still looks forward to the comments DEP may have to offer in their review of a project especially when it is a large or complex project.

"....sensitive resources...." Please define what you mean by sensitive resources.

Under 6: Wetlands: Buffer Zone General Permit:

"MassDEP will establish a general permit or other similar regulatory provision for certain activities that are proposed for the outer fifty feet (50') of the buffer zone to inland wetlands." What certain activities will be allowed under this provision? What will the process be like?

Under D. Waste Site Cleanup, 18: Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)

"DEP will therefore explore whether elements of this process can be stream line or eliminated..." What does this mean for existing Tier 1 sites such as the Rockland Industries site at 255 Plymouth Street here in Middleborough?

I think the biggest concern is that government on the local level would like to still be able to count on the support of the government at the state level.

To contact us regarding these questions, comments and concerns the Middleborough Conservation Commission can be reached at 508-946-2406.

Best regards,

Patricia J. Cassady, Agent
For the Middleborough Conservation Commission

ENVIRONMENTAL STEWARDSHIP DEPARTMENT/

NEW BEDFORD CONSERVATION COMMISSION

CITY OF NEW BEDFORD
SCOTT W. LANG, MAYOR

Received
NOV 21 2011
Deputy Commissioner

November 14, 2011

Commissioner Kenneth Kimmell
MA DEP
Executive Office of Energy & Environmental Affairs
One Winter Street
Boston, MA 02108

Dear Commissioner Kimmell,

The City of New Bedford Conservation Commission has reviewed the proposed DRAFT Action Plan for Regulatory Reform at MASSDEP and offers the following comments:

1. The reforms shall allow local officials more latitude than previously provided by permitting Orders of Conditions under the MA Wetlands Protection Act to be issued without waiting for a DEP File Number. While we see the rationale of this decision (staff shortage at the State level), we would hope some type of red flag" could be set up where if a complicated project comes up a local Commission could somehow notify the DEP Regional Office to be aware that the Order issued may need additional scrutiny.

2. The reduction in overlap of permitting should streamline the process for the applicants. However, will local officials be notified when a permit has been issued that previously would have required an Order of Conditions or other local permits?

It is unfortunate that the State finds these measures necessary to assist in coping with staff cutbacks when local governments such as ours are not in a position to fill in these gaps due to our own staffing shortfalls. Thank you for the opportunity to provide these comments.

Very Truly Yours,

John P. Gurney

John P. Gurney
Chairman, Conservation Commission

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December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Mass DEP
1 Winter Street, 2nd Floor
Boston MA 02108

VIA EMAIL

Dear Commissioner Kenneth L. Kimmel,

The Norton Conservation Commission appreciates the opportunity to present comments and suggestions on the Commissioner's Action Plan for Regulatory Reform at MassDEP dated October 24, 2011. In the present economy it is necessary and prudent to focus limited resources in the most efficient and effective methods of review possible. We offer the following comments:

Item 4. general license small docks and piers

Appropriate conditions for eligible projects and performance standards is a great idea. Can wetlands and waterways departments create performance standards for dock construction, materials, spacing of boards and appropriate location siting? Standards should address maintenance of vegetation around it too, not more than 1 foot of wetland (tree or shrub) vegetation clearing on either side of dock etc with preference for trimming than removing. All docks/piers should have metal plate with owners name/license number on it in event it is dislodged, dock can be found and owner can remove them.

Item 5. wetlands targeted review

- Immediate file number: This is a good idea. The current letter says "issuance of a file number indicates only completeness of submittal, not approval of application" but developers and engineers misread this. They frequently say they don't need to submit information (like alternatives analysis) because DEP gave a file number stating that the application was complete. The wording should be revised. It could say "This application has been issued the number DEP 250-###; a full review of the application will be completed within # days. Any missing or additional information may be requested after review of the application". Then it is clear to everyone that the content of the application has not been reviewed. Are we to assume the letter will not have a person to contact with questions since it will not be reviewed unless a SOOC request?

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- Limited review of NOIs and local actions. DEP will only review superceding order requests. How can DEP make a claim that it will be available to assist conservation commission when the circuit rider program isn't receiving annual funding? Improved direct municipal assistance would be valuable since discussions with DEP lead to varying results and are inconsistent from person to person and region to region. If DEP is to make the claim that they will assist the conservation commission, more effort should be placed on the consistency of the technical and regulatory assistance. DEP could improve advice given to all parties by focusing on the technical aspect of a review.

  The intro says "changes to reduce direct oversight will be coupled with robust oversight and enforcement measures". There are no suggestions by DEP on how they are going to do this. DEP should match the reduced NOI review with easier and more effective methods of getting DEP involved with enforcement when needed. DEP never even makes contact with the conservation commission when an Enforcement Order is issued. Sometimes all DEP would need to do is send a follow up letter to the violator when they receive an Enforcement Order from a conservation commission. It is usually just enough to get someone to start working on their enforcement issue instead of ignoring it or fighting with the conservation commissions. If Conservation Commission has the ability to fine for violation under an enforcement action, these issues may be resolved more quickly and relieve DEP of involvement in small-scale violations at the local level.

- DEP appears to be devaluing the buffer zone yet again when all best scientific evidence available clearly illustrates that the buffer zone is important to the quality of the wetland resource. Aquatic habitat degradation and reduced infiltration of water into the ground have been directly linked to the amount of imperviousness in a watershed[1]. The best scientific evidence available shows that greater than 10% impervious cover in a watershed will begin to degrade water quality, reduce water quantity available for groundwater, reduce stream channel stability, reduce stream biodiversity and increase potential for pollutant impacts[2]. If DEP is going to continue to reduce review of buffer zone unless there is actual resource area alteration, then they need to strengthen the requirements for actual buffer zone protection.

- Explain what a "streamlined review" actually is. It sounds like DEP won't review buffer zone permit applications at all. What is considered a minor residential alteration? Most minor projects already received an exemption at the last regulatory revision. If the commission needs assistance with buffer zone alteration, is DEP staff going to say it isn't a high priority?

---

[1] Impacts of Impervious Cover on Aquatic Systems. Tom Shlueler. Center for Watershed Protection, March 2003.
[2] ibid

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- The Notice of Intent (NOI) application and Order of Conditions (OOC) are several pages long. With each regulatory revision, the application and wetland permit forms continue to get longer. Please condense the information and reduce the number of pages.

Item 6. buffer zone general permit.
The general permit suggestion appears to shift the burden of proof from the applicant to the commission. It also doesn't appear to provide a mechanism for verifying information or oversight of the project as proposed. How will this reduce SOOC review for buffer cases? This sounds like DEP is proposing another exemption when there will not be public review, something DEP stated at the meeting of October 19, 2011 in the Boston Office wouldn't happen. This is likely to lead to more enforcement issues for municipalities. A general permit for wetland review is not a reasonable mechanism for maintaining or preserving the public's interest in our common natural resources. DEP is likely to confirm that each wetland and each project is different, requiring an individual review of a proposal.

This also brings to question the validity of the submitted information. We just heard at the recent AMWS Fall Conference about the ways data is being manipulated to avoid regulatory requirements. There has to be a check and balance. Instead of a general permit, where technical review and public input are likely to be reduced or eliminated, consider an administrative approval process where a full-time conservation agent can approve certain types of projects with a 30 day review timeframe, similar to the way the building inspector evaluates and approves building permits. This option maintains the Conservation Commission's right to a pre-construction review and the integrity of an environmental review as well as resource area protection. It maintains accountability for both the applicant and the reviewer. It further assists conservation commissions in receiving or maintaining funding for full-time employees[3]. Since DEP proposes to conduct less review, conservation commissions have an even greater need for qualified full-time staff.

DEP could consider the following suggested language:
Simplified administrative review of projects within the 100-foot buffer zone and not within any other Resource Area (including Riverfront Area) or Priority Habitat area.

A. Municipalities with full-time conservation director may administratively approve certain minor projects within 30 days of receiving the request if the following performance standards has been met:
    1. wetland resource area boundaries are flagged in the field by a qualified wetland professional and shown on the proposed surveyed plans;
    2. projects proposing 10% or greater impervious cover that provide groundwater recharge, provided that it will not result in degraded water quality; and

[3] I specify full-time staff deliberately. Part-time staff barely have adequate time to administer the regulations currently. This might be an additional burden to them.

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3. the project meets performance standards of the municipality for erosion and sediment control and site stabilization;

B. Conservation Director shall conduct a site inspection to verify wetland boundaries and may require additional erosion and sediment control and/or minor plan revisions including but not limited to, erosion and sediment control or construction methods, if needed.
   1. Minor projects include:
      a. Repairs or replacement of existing septic systems, with no other proposed work, on a plan approved by the Board of Health. A final inspection by the Conservation Director of the stabilized system shall be required prior to seeking final Board of Health approvals;
      b. Construction, repair or replacement of a garage or addition to an existing single family dwelling provided there is a minimum of 50 feet of undisturbed native vegetation between the limit of work and the wetland resource area.

If DEP does select the general permit, a copy of the information should be sent by certified mail to the Conservation Commission, with a provision for verification of data and site inspection within a timely period. It should require additional performance standards including a requirement for greater than 50 feet of undisturbed vegetation between the resource and the limit of work. The key is *undisturbed* vegetation in the 50-foot buffer. There is no reason to give an incentive to an applicant to propose activity more than 50 feet from a wetland if the entire buffer zone is already lawn and the alteration has already been done. The intent of the incentive is to receive a substantive and effective buffer in exchange for easier permitting. Activities more than 50 feet from a wetland without a vegetated buffer should not qualify for an exemption or a general permit.

There has to be oversight where the Conservation Commission can confirm that the application is true and work is being done as proposed not simply a desk review of an application. Also, if the project is in a forested ACEC or Priority Habitat, the performance standard should be increased from a minimum of 50 feet undisturbed vegetated buffer to a minimum 75 feet of undisturbed vegetated buffer. It also depends on the project type; if a residential project is proposed, a cluster or OSRD should be required.

Any project requiring storm water management should not be eligible in a general permit, unless they are using the Cornell data for their region and Conservation Commissions have adequate time to have the calculations reviewed by a consulting engineer. (This option incorporates more accurate data, works toward climate change issues, gives developers an incentive to use the more accurate data in exchange for easier permitting, and municipalities receive better resource area protection.) Projects proposed under Comprehensive Permit applications (40Bs) shouldn't be eligible for a general permit because the public's opportunity to provide comments is already truncated and local review by Conservation Commissions is essential.

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There can also be incentives for projects that meet the recharge requirements for projects with greater than 15% (or 2500sf, whichever is greater) of impervious cover under Mass Wellhead Protection Regulations 310CMR22.21(2)(b)(7).

Item 7. exemptions for storm water management structures before 1996.
If the planning board or conservation commission approved plans for storm water management in an upland area, then the basin should be exempt. It was constructed for that purpose and not really a resource area. If an applicant wants to modify the basin or drainage system or add new storm water, they should be required to submit for conservation commission or planning board approval, whichever is appropriate, an Operation and Maintenance (O & M) Plan and calculations that the basin can hold the new storm water at current standards, and the owners should certify they have the funds to maintain it. There should be a net benefit to the storm water system if there is a request for a modification to it.

If the basin was constructed in a wetland prior to 1996, then the approved plans should show that too. If the basin were constructed in a wetland, then it would be a wetland. A proposal for a modification to the existing system should also require a submittal for conservation commission approval of an O & M plan, and the owners certify they have the funds to maintain it.

Item 8. expedited permits for ecological restoration ie. Dams removal, stream restoration etc.
This could be coordinated under one permit with all the different agencies and the municipality involved. The municipality's general conditions should be incorporated into the overall permit so our local Standard Operating Procedures (SOPs) are upheld and we have means of enforcement. Some portions of riverfront area need to be rewritten to allow restoration projects.

Item 9. limited projects for renewable energy.
DEP has an opportunity to re-emphasize what a limited project really is and when it applies. Once the renewable energy projects are permitted as a public utility providing electric, it will then become eligible for an exemption for maintenance, repair and replacement under MGL 131 Section 40. A set of performance standards or a Memorandum of Understanding regarding the maintenance, repair and replacement of those utilities should be drafted to avoid any problems with determining the appropriate application of the exemption. There should also be performance standards for the eligibility of the limited project status for each type of renewable energy project (solar, wind, hydropower). For example, clear cutting a wetland just to put in a solar farm would not be an appropriate limited project. It should be carefully worded for specific aspects of the project, like access or smaller alterations. Bordering vegetated wetland alteration in an Area of Critical Environmental Concern or Priority Habitat would not be appropriate limited project, unless it is solely for the access.

There is also an opportunity for DEP to embrace the efforts of the Climate Change Adaptation Report and the Massachusetts Clean Energy and Climate Plan for 2020. It is unclear how the limited project would reduce DEP review time but since it is proposed in the Regulatory Reform

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Plan, DEP has an opportunity to incorporate the concepts of the Plan into performance standard incentives for certain actions.

B. item 11, eliminate sewer extension and connection approval
Under the wastewater program only. Eliminating approval by DEP shouldn't eliminate permitting under WPA or MEPA thresholds. Doesn't DEP need this info for interbasin transfer purposes? If not for the interbasin transfer purposes, doesn't DEP in general need to see where the water is going? If DEP isn't reviewing the permits, how will DEP know if the proposed project will be a problem for environment or public health? Just rely on complaints? Then DEP is costing the town more money by stopping a project under an enforcement situation than if DEP just reviewed the application in the first place.

Item 13, eliminate duplicate Title 5 State approvals
It is interesting that the waste water program rarely overturns a local decision but the wetlands program does. Does the waste water program work differently with municipalities than the wetlands program? Eliminating this state permit might remove MEPA filings and public comment, particularly for Comprehensive Permit projects.

Item 14, ground water discharge inspections,
This approach seems similar to the Office of Dam Safety regulations. This is extremely expensive, duplicative, and is difficult for municipalities to comply. DEP should include downstream water quality issues in the list of reasons why a targeted inspection would be initiated. DEP should consider the Section 303(d) list and determine if the ground water discharge is contributing to the pollutants listed. DEP can provide incentives for mitigating impacts to 303(d) waters. Some of this work can be coordinated with the local MS4 coordinator for inclusion in the municipality's storm water permit reporting form to EPA.

B. solid waste, item 15, permits by rule and self-certification
DEP needs to further develop enforcement procedures for non-compliance with the self-certification process. Facilities with ongoing violations or compliance issues should not be eligible for this and should be targeted for review and enforcement by DEP.

Item 16, 3rd party inspectors for active landfills
What about landfills in violation or ones that have leaks now that aren't being fixed, like the Attleboro Landfill Incorporated, Attleboro MA? DEP is aware that ALI is polluting Norton land but still allowing it. Would this proposal allow DEP time to do better enforcement of those facilities in violation?

D. Item 17, Site cleanup
The streamlined public notice procedures should also include notification to Board of Selectmen, Town Clerk, Conservation Commission and Board of Health, at a minimum. The streamlined public notice cannot simply be a legal notice or a notice to just the Town Clerk. Deed restrictions

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should be created in cooperation with the Conservation Commission or local land trust and the Board of Assessor's Office.

E. Other areas: Item 19, self-certification of certain permit renewals
Extensions of ORADS under WPA should not be included in this. How are wetland professionals continuing to say the boundary doesn't look like it has changed in 3 or 5 years when none of the original flags are still in place for them to review, especially if they were not the original resource area delineators? This is obviously a moral question and a question of integrity but there are many consultants who do it and a conservation commission should not have to automatically accept a certification that is so obviously inadequate. The few dishonest companies have ruined this option for the other reputable companies.

Extension for Order of Conditions under WPA should also not be included in self-certification to DEP. The Conservation Commission routinely inspects projects for compliance with OOCs and the Extension request is a time to review the permit conditions with the applicant and ensure that the conditions are being followed. An automatic renewal would allow someone with a violation or someone not in compliance to continue in this manner for possibly another three years. This will lead to a requirement for more enforcement action by the commission and can be avoided. Incidentally, DEP doesn't review these permits now for an extension unless it is a superceding order. In that case, DEP should be working more closely with the conservation commission to ensure the conditions are being followed since DEP very rarely does site inspections during construction for superceding orders.

Item 20, revised fee incentives
If there are fee incentives it should be on the DEP side only, not a reduction in the total fee or the portion to the municipality. Many municipalities rely on the Wetland Protection Fund to fund staff; a reduction in the fees as an incentive would eliminate needed funding to the municipality. A reduced fee could be incorporated to those projects with greater than 50 feet of undisturbed vegetation between the limit of work and a bordering vegetated wetland as described earlier in Item 6.

E-filing may be useful for the DEP but local conservation commission submittals should still be in paper form. Most towns do not have the resources to print submitted electronic copies to make permit applications available for public review or for the commissioners at meetings. Most towns also typically don't have machines big enough to print engineered plans.

There should be a reform to the ANRAD fee. The application has a fee specifically for projects that assume a single family home; however, the ANRAD is solely a resource area delineation and not associated with a project. Most representatives, consultants, engineers etc. do not submit ANRADs for single family home projects and request that type of boundary verification within the NOI application. Many representatives have proposed the ANRAD as a single family project but later submitted NOI applications for entirely different projects. Conservation commissions

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are constantly arguing with consultants who try to circumvent the fee schedule with a false claim of a single family home project (reducing the maximum fee from $2,000.00 to $200.00). The single family home option should be removed from the ANRAD fee schedule so that the fee schedule reflects the intended purpose of verifying resource area boundaries regardless of the future project.

III. Need for additional reform
Emphasize the scientific basis for the regulations rather than the political negotiations.

IV. The Regulatory Reform Action Plan discusses boosting enforcement and ways to assist the municipalities but doesn't have a conceptual plan for that. DEP should propose draft methods of providing this improved assistance to municipalities and better enforcement action procedures. It is mentioned many times with the incentives for applicants but not described in any detail whatsoever. It may be difficult for municipalities and non-government agencies to accept this as an acceptable negotiation when only one side of the equation has been presented.

We hope that these comments and suggestions aid DEP in the difficult decisions ahead and offer any assistance. We look forward to providing additional comments in the future. Thank you.

Sincerely,

Jennifer Carlino

Jennifer Carlino
Conservation Agent

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December 5, 2011

Received
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Deputy Commissioner

Via Hand Delivery

Draft Regulatory Reform Action Plan
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Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

Re: Commissioner's Draft Action Plan for Regulatory Reform ("Draft Action Plan") Comments on Simplification of Activity and Use Limitations

Dear Commissioner Kimmell,

I am writing on behalf of the Industri-Plex Site Remedial Trust ("ISRT") to offer comments on the Commissioner's Draft Action Plan.[1] Our comments focus on Item #17 in the Draft Action Plan – the simplification of Activity and Use Limitations ("AULs"). We believe that some modest changes to the AUL program - and more specifically to Grants of Environmental Restrictions ("GEREs") - will dramatically reduce the time, expense and agency resources that are currently devoted to implementing AULs and GEREs, without in any way reducing the Department's authority to assure regulatory compliance.

A. Introduction – ISRT and Agency Experience with Institutional Controls at the Industri-Plex Superfund Site

The ISRT is responsible for performing remedial activities at the Industri-Plex Superfund Site in Woburn, Massachusetts ("I-Plex" or the "Site") under the direction and oversight of MassDEP and the United States Environmental Protection Agency ("USEPA"), (collectively, the "Agencies"). Over the past two decades, the ISRT has spent well over $100

[1] The ISRT was established in 1989 to manage and implement remedial actions at Operable Unit One of the Industri-plex Superfund Site in Woburn. The ISRT is controlled by Pharmacia Corporation by its attorney-in-fact Monsanto Company and Stauffer Management Company LLC.

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million designing, implementing and maintaining soil and groundwater remedies at two Operable Units, referred to commonly as OU-1 and OU-2, at the Site. The ISRT is now in the process of assisting the Agencies and Site landowners with the final step of the OU-1 remedial process – the inauguration of permanent land use restrictions ("Institutional Controls") on the 45 parcels of land within the OU-1 footprint.[2] The ISRT does not itself own any of this land; it is owned entirely by third parties, many of them small businesses. The current Institutional Control design for the Site calls for the implementation of Grants of Environmental Restriction and Easement ("GEREs") at most of these properties. The use of GEREs rather than Notices of Activity and Use Limitation ("NAULs"), which are in common use at MCP sites, apparently reflects an existing agency preference for using GEREs at federal Superfund sites (i.e., "NPL" sites). To date, only two (2) GEREs have been fully implemented at I-Plex OU-1, even though the physical remedial actions at this portion of the Site were completed nearly two decades ago.

The ISRT's extensive experience with the Site puts it in a unique position to comment on one of the Draft Action Plan's stated goals: simplification of AULs. The ISRT believes that precious MassDEP resources could be conserved, and the overall Institutional Control process both simplified and greatly expedited through the use of NAULs instead of GEREs at federal National Priorities List ("NPL") sites. As explained in more detail below, due to the inherent complexities of GEREs, the ISRT's efforts to inaugurate GEREs for the parcels within the OU-1 footprint has been plagued by delay and exorbitant costs to the Agencies, the ISRT, and landowners who have participated in prior inauguration efforts.[3] The result, as mentioned, is that only two GEREs have been recorded to date. At this pace, we project that it will take decades and over $4 million to complete the GERE process. The dollar estimate addresses only ISRT and landowner costs, and not MassDEP's costs in participating in the GERE process.

B. GERE Pilot Program

In August of 1989, previous operators and then current landowners within I-Plex entered into a consent decree (the "Consent Decree") with MassDEP and USEPA related to I-Plex remediation activities. Pursuant to the Consent Decree, certain activities were established for the

[2] Note that Landowners of parcels comprised solely of "Class A" land are not required to implement GEREs for those parcels.

[3] Like the ISRT, Rackemann, Sawyer & Brewster is also uniquely qualified to comment on the challenges and complexities associated with the GERE process. When AULs were first adopted in 1993, the MCP required an outside legal opinion regarding the validity and enforceability of any GERE. Rackemann was one of very few (our understanding is three) law firms approved by MassDEP to render these outside legal opinions. The author of this letter prepared the response to MassDEP's request for proposals and was one of the three Rackemann lawyers that interviewed with DEP prior to being approved as outside review counsel. In addition, Rackemann has been involved in various ways with title and environmental issues for ISRT Site properties for over 50 years.

first phases of the site-wide cleanup, including remediation within the OU-1 footprint. The Consent Decree also requires that after cleanup completion, the then existing landowners within the OU-1 footprint adopt and then comply with Institutional Controls.

The Institutional Controls are meant to protect the components of the cleanup and human health and the environment, while allowing for ongoing commercial and industrial use, where possible. Commercial and industrial uses have been thriving within the I-Plex footprint and adjoining areas since the mid-1990s.[4] The Consent Decree does not specifically require that GEREs be used to implement Institutional Controls, but many years ago the Agencies determined that GEREs must be the primary Institutional Control mechanism at I-Plex. At the time the ISRT expressed serious reservations about the feasibility of completing GEREs for all of the properties at the Site, due to the need for every holder of a property interest (mortgages, easements, leases, etc.) at the Site to subordinate that property interest to the GERE. Since the drafting of an initial Institutional Control Inauguration Plan in 2007, two GEREs have been implemented as part of a "pilot program" designed to test the feasibility of the GERE process and identify areas of improvement.

The pilot program has revealed that, while the process for inaugurating GEREs can be adjusted in small ways that bring small gains in efficiency, the GERE process is inherently complicated, expensive, and protracted. The purpose of the pilot program was to determine what issues would be encountered when inaugurating GEREs on the all of the OU-1 properties. Since the inception of the pilot program, GEREs have been inaugurated on just two properties, with another close to inauguration.[5] The pilot program has been plagued by the complexity of the OU-1 chain of title, a plethora of easements and encumbrances, undischarged mortgages, and other title problems, as well as the challenges of obtaining subordination agreements from third parties who have no legal obligation, and little if any incentive, to enter into such agreements. Each of the two inaugurated GEREs took approximately one year, at considerable time and expense to everyone involved, including the Department.

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[4] I-Plex is the location of a highly successful substantial mixed-use (retail/office) redevelopment over its 254 acres and home to the Anderson Regional Transportation Center commuter rail station which provides parking for over 1500 vehicles, keeping them out of Boston commuter traffic.

[5] Note that the properties selected for the pilot program were either under the control of the ISRT and a sophisticated landowner. The strategy was to determine whether the GERE process would be difficult for a sophisticated landowner and, if that proved to be the case, try to identify improvements that might benefit the vast majority of Site landowners, who are small entities who presumably lack the experience and resources to participate in a complicated real estate transaction.

The best demonstration of the complexity is to describe the process for the GERE for the property that is close to completion, known as Lot IC-28. The steps were:

1. The Agencies and the ISRT send the Model GERE to the landowner.

2. The landowner examines title to the parcel to identify all property interest holders.

3. The landowner reviews the title examination to determine which property interests must be subordinated. For IC-28 this was a complicated step because there were numerous property interests that were no longer valid. For example, there were mortgages that had never been discharged and easements that had been abandoned. The process required extensive effort to locate the current easement holder and engage that entity in a process for formally terminating the easement.

4. The landowner obtains subordination agreements from all current holders of a property interest. This means that every entity that holds a mortgage, easement, lease of record, right of first refusal, restriction, etc. needed to sign a subordination agreement. For the numerous property interests that, as a practical matter, did not require subordination, the landowner needed to explain to the Department the reasons why subordination was not necessary. This, and the title examination, are far and away the most time consuming and costly parts of the process.

   The Department must understand that there is no obligation for any of the property interest holders to sign a subordination agreement. As mentioned, these third parties have no legal or economic incentive to cooperate in the process. The landowner must plead, cajole, and otherwise do whatever it can to convince what are often institutions such as banks and utility companies to cooperate. This takes a tremendous amount of time and resources.

5. Most of the Site involves registered land. The land registration office of the Land Court will not accept real estate documents for filing without complete evidence that the signatory is duly authorized to execute the document. For example, in the case of a utility signing a subordination agreement, this means that the utility also has to produce a duly certified corporate vote documenting that the signatory is duly authorized.

To further demonstrate the complexity of the GERE inauguration process, attached as Attachment A is the Inauguration Plan for the GERE process, which includes a daunting 32 pages of arcane instructions that only a sophisticated commercial real estate lawyer could fathom. It is imperative to alert the Department to the fact that if this process is not simplified,

the Department will need to expend enormous resources to review and approve over 30 more GERE applications. The review process will take many years if not decades. Below we explain why NAULs are appropriate institutional control mechanisms for NPL sites, saving the Department hundreds, if not thousands of resource hours to accomplish the same goals and allow those resources to be better allocated to other, more deserving under-staffed areas.[6]

C. MassDEP Evaluation of the Use of NAULs at NPL Sites Has Been Favorable

In light of the complexities described above, the Agencies and the ISRT have been evaluating the potential for converting the form of Institutional Controls from GEREs to NAULs at NPL sites, pursuant to M.G.L. Chapter 21E and the Massachusetts Contingency Plan, 310 C.M.R. 40.0000 ("MCP"). As the Department well knows, NAULs are used as the presumptive form of institutional control at all sites undergoing response actions pursuant to the MCP and at which some form of activity and use limitation is needed to achieve a Permanent Solution.

The evaluation process has determined that the conversion to NAULs is feasible in regulatory terms and would in no way detract from the protectiveness of institutional controls implemented at NPL sites. It would, however, greatly streamline and expedite the process for achieving and obtaining the benefit of these protections. The NAUL enforcement mechanisms available to MassDEP are as enforceable as those used for GEREs, and the sanctions available to the Agencies for NAUL and GERE violations are substantially equivalent.[7]

D. Cost and Timing Considerations

As discussed above, the implementation of GEREs is a multi-party, multi-step process that involves significantly more time and cost than the NAUL process. In order for a landowner to effect a GERE, the landowner needs (a) to negotiate and execute the GERE with MassDEP, plus (b) obtain the consent of the holders of all real property interests (easements, mortgages, leases, etc.) in the property to subordinate those interests by means of separate, negotiated subordination agreements.[8] On top of its obligations to participate in the transaction as grantee,

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[6] It should also be pointed out that since the inception of the MCP, less than a handful of GEREs have been inaugurated, compared to approximately 2,000 NAULs, making NAULs more recognizable and comforting to buyers and lenders.

[7] Note that pursuant to the post-inaugural enforcement powers contained in the Consent Decree, the Agencies enjoy a layering of Institutional Control enforcement with broad powers to insure that the integrity of the OU-1 cleanup is not compromised in any way.

[8] *See* 310 C.M.R. 40.1071(4) and 40.1099, Form 1072B. During the pilot program, these subordination agreements have generated substantial transaction costs, both in the subordination identification and execution process and negotiation of what was intended to be a form subordination instrument. The notification of interest holders in an

MassDEP also has a regulatory oversight role. As a result, the process of rolling out GEREs on a property specific basis at all of the parcels requiring institutional controls within the OU-1 footprint will require the direct and significant involvement of all of the landowners, an unknown number of interest holders and MassDEP in both its "proprietary" role as grantee of the GERE, and its regulatory role as overseer of the institutional control component of the overall remedial action.[9]

By contrast, a NAUL is a unilateral document the implementation of which is entirely under the control of the landowner and its LSP. The landowner's LSP determines the appropriate restrictions, consistent with the MCP, and then drafts the NAUL along with a NAUL opinion. A title search is necessary, but the landowner only needs to provide property interest holders with notice of the NAUL. Subordination agreements are not necessary, thereby eliminating what is by far the most burdensome part of the GERE process.

E. Enforcement Mechanisms

MassDEP has broad but somewhat different powers to enforce either a GERE or a NAUL. Where MassDEP is the GERE's grantee, MassDEP will be in direct privity of contract and estate with the grantor landowners. This gives MassDEP the ability to enforce the terms of the GEREs both through breach of contract actions seeking equitable relief and monetary damages, and through its customary statutory and regulatory authorities. Stated differently, MassDEP will be empowered to enforce GEREs both in a "proprietary" capacity (as grantee) and in a "regulatory" capacity (as the agency endowed with the statutory power to enforce M.G.L. c. 21E and the MCP).

MassDEP's ability to enforce a NAUL relies not on any theory of direct privity with the landowner, but rather on MassDEP's omnibus powers to administer and enforce Chapter 21E and the MCP. Thus, MassDEP's ability to enforce NAULs is solely regulatory, and not proprietary. Regulatory enforcement of a NAUL begins with a mandatory MassDEP audit after

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AUL context, by comparison, generates only minimal additional costs and creates virtually no potential for interference with the process. See 310 CMR 40.1074(1)(e) (requiring that notice of a NAUL be provided to holders of interests in the affected property, but not requiring their consent to the NAUL).

[9] By letter dated August 5, 2008, EPA notified MassDEP that EPA does not intend to participate as grantee in the GERE process. See Attachment B. It is not clear from the letter whether or to what extent EPA intends to remain involved in the process of inaugurating GEREs at the remaining OU-1 properties. To the extent it does remain involved, it would be in a regulatory and not proprietary capacity.

the NAUL is filed.[10] Beyond the mandatory audit, any property subject to a NAUL may be audited or inspected again at any time.[11] If it discovers violations of a response action outcome ("RAO") (including violations of a NAUL), then MassDEP can upon proper notice initiate anadministrative enforcement action under M.G.L. Chapter 21E.[12] In cases involving egregious violations or a failure to return to compliance after an administrative enforcement action, MassDEP (through the Attorney General's office) can commence civil or criminal proceedings, in which monetary penalties or injunctions can be sought.[13]

F. The Regulatory Obstacles to NAUL Use at NPL Sites are Easily Surmountable

Two regulatory issues have been identified as possible hindrances to the use of NAULs at NPL sites. First, MassDEP will not be able to enforce the NAULs unless the NAULs are paired with an RAO for the Site.[14] The need for an RAO creates a possible issue at I-Plex and other NPL sites because response actions at such sites typically are conducted pursuant to the National Contingency Plan ("NCP") rather than strictly pursuant to the MCP, and therefore do not involve the filing of RAOs. Second, the I-Plex Model GERE (see Attachment C) contains a restriction on groundwater usage, and the MCP places some limitations on the ability to restrict groundwater usage through a NAUL. Each issue can be resolved, as explained more fully below.

1. Filing an RAO for the Site

In order to properly file one or more NAULs for the Site that will be enforceable under the MCP, NAULs must be accompanied by an RAO - in the case of OU-1, probably a Class A-4 RAO.[15] However, the typical MCP response record does not exist for OU-1 because the

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[10] *See* MassDEP fact sheet "Massachusetts' Approach to Waste Site Cleanup: Chapter 21E and the Massachusetts Contingency Plan," page 5, revised version dated May 2004.

[11] *See* 310 C.M.R. 40.1110(5) ("[T]he Department may initiate, at any time, a Random or Targeted Audit of any site subject to an Activity and Use Limitation").

[12] See 310 C.M.R. 40.1140(2).

[13] *See* M.G.L. c. 21E §§ 5, 11.

[14] Without an RAO, the AUL would simply be a private deed restriction imposed by the landowner, and only the landowner would be able to enforce the use restrictions contained therein. As concluded in III.A below, the ISRT can avail itself of the "adequately regulated" provisions of the MCP to develop and file an RAO for the Site.

[15] A Class A-4 RAO is defined as a disposal site where
"(a) a Permanent Solution has been achieved;
(b) the level of oil and hazardous material in the environment has not been reduced to background;

remediation activities at the Site have all been carried out under the ambit of CERCLA and the NCP.

The absence of an MCP record is no impediment to the filing of an RAO. The MCP deems NPL sites addressed pursuant to the CERCLA and the NCP, under EPA oversight, to be "adequately regulated."[16] This means that response actions at such sites do not need to conform to the procedural and substantive requirements of the MCP. Although RAOs are not required at "adequately regulated" sites, there is nothing in the MCP to prohibit them.[17]

There is no doubt that the Site enjoys "adequately regulated" status under 310 CMR 40.0111. The ISRT's remediation efforts at the Site in accordance with the NCP are well documented, and date back at least as far as 1989 when the Consent Decree became effective. Moreover, even though USEPA has had the primary oversight role at OU-1, MassDEP has played, and continues to play an oversight role, especially as it relates to Institutional Controls, and has assigned a Release Tracking Number to the Site. Significantly, the Consent Decree requires USEPA and MassDEP to jointly oversee the performance of the remediation work at the Site and to design and administer the institutional controls.[18] Given the Site's "adequately regulated" status, and the absence of any restriction in the MCP on the filing of an RAO for an

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(c) one or more Activity and Use Limitations have been implemented...to maintain a level of No Significant Risk;
(d) oil and/or hazardous material in soil located at a depth greater than 15 feet from the ground surface or beneath an engineered barrier exceeded one or more applicable Upper Concentration Limits in Soil...; and
(e) an evaluation ... indicates that it is not feasible to reduce the concentrations of oil and hazardous material in soil located at a depth greater than 15 feet from the ground surface or beneath the engineered barrier to less than or equal to applicable Upper Concentration Limits in Soil..." 310 C.M.R. 40.1036(4).

[16] More specifically, the "adequately regulated" provisions of the MCP state that the applicability of the MCP and M.G.L. Chapter 21E is limited in cases where another government agency—in this case, EPA—is overseeing the response activities. *See* 310 C.M.R. 40.0110-.0111. As long as the remedial action is acceptable to DEP (either as originally drafted, or after incorporating additional revisions suggested by DEP), the MCP states that DEP "shall deem response actions at a disposal site subject to CERCLA adequately regulated for purposes of compliance with 310 C.M.R. 40.0000." 310 C.M.R. 40.0111(1).

[17] *See* 310 CMR 40.1002 (RAOs required at all sites where reportable releases of oil or hazardous material have occurred, except for adequately regulated sites).

[18] *See* Consent Decree, Article VII., Section F. See Attachment D. In addition, Appendix I to the Consent Decree, the "Remedial Design / Action Plan," contains numerous references to joint EPA/DEP control over remediation activities and changes to remediation plans. *See also* Record of Decision, Industri-plex Superfund Site Operable Unit 2, Jan. 31, 2006 ("OU-2 ROD"), at p.196 ("the [Industri-plex] site is 'adequately regulated' for purposes of state law.'"). See Attachment E.

adequately regulated site, an RAO can be filed for OU-1 without need to develop an MCP record independent of the voluminous CERCLA record.[19]

2. Groundwater Restrictions

The Model GERE provides that "extracting, pumping, consuming, exposing, or otherwise using groundwater" are prohibited activities and uses on the properties to be restricted, unless those activities are conducted "in strict compliance with the Work Protocols." This language is designed to manage any risks associated with exposure to groundwater drawn from the Site for irrigation or process purposes. It may also be designed to prevent human consumption of the groundwater, although consumption is highly unlikely to occur, and perhaps would be unlawful, even in the absence of the GERE.

Section 1074(1)(d) of the MCP prohibits using NAULs to regulate the use of groundwater in connection with a Class-A or Class-B RAO.[20] With one, inapplicable exception, the MCP envisions that GEREs – and not NAULs – will be used to effect institutional controls regarding groundwater usage.[21] The presence of groundwater restrictions in institutional controls at NPL sites should not categorically be an impediment to NAUL Conversion.

MassDEP guidance indicates that the purpose behind the prohibition on restricting groundwater use through a NAUL is to prevent landowners from changing the groundwater category at their property in order to achieve a higher class of RAO than would otherwise be achievable.[22] The groundwater at the Site is classified as GW-3, the lowest, non-potable category of water identified under the MCP.[23] With a GW-3 classification, there is no

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[19] If for some reason it were concluded that an RAO cannot be filed for the Site, then another solution to the RAO issue would be to amend the MCP to provide expressly that an RAO is not needed to perfect a NAUL recorded at any NPL site were response actions have been deemed to be adequately regulated.

[20] *See* 310 C.M.R. 40.1074(1)(d).

[21] The lone exception to this rule is that AULs may be employed to restrict the future use of the groundwater as a private drinking water supply when a well is decommissioned. *See* 310 C.M.R. 40.0932(5)(d)1.c.

[22] *See* Massachusetts Department of Environmental Protection "Master MCP Q&A: 1993-2007, Frequently Asked Questions about the Massachusetts Contingency Plan." The rule prevents any attempt to use an AUL to prohibit the withdrawal and consumption of groundwater at a site where the groundwater classification is GW-1 and where contaminant levels in groundwater exceed GW-1 standards established in the MCP. The GW-1 exceedances prevent the achievement of a Class A or Class B RAO; the problem cannot be circumvented with an AUL that purports to reclassify the groundwater from GW-1 to GW-3.

[23] *See* 310 C.M.R. 40.0932.

opportunity or incentive to use groundwater-related institutional controls in order to achieve a better class of RAO. Although the Model GERE purports to restrict groundwater use, it does not do so in a way that, if transcribed to a NAUL, would violate the purpose behind MCP Section 1074(d)(1). We expect that at many NPL sites, the institutional controls include groundwater restrictions that are not intended to be used in the "bootstrapping" fashion that the MCP prohibits.[24]

It should be possible to articulate these restrictions in a NAUL in a way that is consistent with MCP Section 1074(d)(1). Rather than prohibiting the "extracting, pumping, consuming, exposing, or other [use of] groundwater," the NAULs could provide that all activities and uses on the encumbered properties must be served exclusively by a public water supply. This achieves the same end using language that does not directly limit access to or use of the groundwater.[25]

Conclusion

MassDEP's ability to enforce a NAUL is not materially different from its ability to enforce a GERE. All of the substantive provisions in the Model GERE can either be replicated in a NAUL or written off as unnecessary in light of the powers that MassDEP enjoys under Chapter 21E and the MCP. In addition, a simple change to the adequately regulated provisions of the MCP specifically allowing the use of NAULs at NPL sites may be the only regulatory change necessary to effect the conversion process advocated in this letter.

Use of NAULs at NPL sites conforms ideally to the guiding principles of the Draft Action Plan. Their use: a) will not weaken or undermine the MassDEP's environmental protection standards; b) will reduce direct MassDEP oversight and be coupled with robust compliance and enforcement mechanisms; c) is aimed at helping MassDEP manage its responsibilities within current staffing levels and will result in significant time and resource savings; d) can be implemented by MassDEP without the need for legislative change; e) will not result in the transfer of new responsibilities to municipalities; and e) given USEPA's stated desire to not be involved in local land use regulation, will not alter MassDEP's obligations under federal funding agreements with USEPA.

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[24] This may be a function of the different groundwater exposure pathways considered in NCP risk characterizations. While under the MCP groundwater-related risks are viewed through the prism of human consumption (GW-1), vapor intrusion (GW-2), or ecological effects resulting from discharge to surface water (GW-3), an NCP risk assessment may include other, more obscure pathways such as withdrawals for use in an industrial process.

[25] Alternatively or in addition to this approach, a minor revision could be made to the MCP expressly clarifying that groundwater restrictions are prohibited in NAULs if and to the extent the purpose of the restriction is to relax the groundwater classification(s) applicable to the site in question.

In conclusion, the use of NAULs at NPL sites is feasible, is as enforceable as GEREs, conforms with the Draft Action Plan's guiding principles and offers potentially enormous timing and cost advantages to MassDEP over the current federal GERE-based approach to inaugurating Institutional Controls at NPL sites. Better yet, if NAULs are used in lieu of GEREs, institutional controls will be implemented on a much faster timetable at I-Plex and all similarly situated NPL sites in the Commonwealth. NAULs truly are better and faster than GEREs in every conceivable respect.

On behalf of the ISRT, I appreciate the opportunity to comment and would be happy to assist in any way with this initiative so that the Department can allocate its valuable resources to other, more necessary, areas.

Sincerely,

Daniel J. Bailey, III

DJB/smg

cc: Nancy Kaplan
Benjamin Ericson

10571-1

A0914547.DOCX;2

Town of Shelburne
Conservation Commission
51 Bridge Street
Shelburne, MA 01370

Received
NOV 2 1 2011
Deputy Commissioner

November 15, 2011

Draft Regulatory Action Plan
c/o Kakarta Childers, Commissioner's Office
MA Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Re: Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

The Shelburne Conservation Commission is pleased to present comments on the Draft Regulatory Reform Action Plan. We are concerned by the driving premise of the proposed reforms – inadequate funding for programs and staffing that have been essential to protecting the Commonwealth's natural resources. Rather than focusing almost exclusively on reducing or limiting DEP activities, we believe that a concerted effort by the Department and its community constituents statewide to press the Administration and Legislature for adequate funding to protect the environmental is essential.

The full support and capabilities of DEP is vital to local efforts to protect the environment. Our Commission, like many other rural communities west of I-495, has neither administrative nor technical staff, and depends on in-depth programmatic support by DEP to fulfill our responsibilities under the Wetlands Protection Act. While the proposed reforms may not directly transfer new responsibilities to the town of Shelburne, the actual effect of the proposed reforms would be to decrease the DEP resources and support that are vital to our ability to protect wetlands, waterways, and other natural resources.

We will focus our specific comments on selected elements of the proposed Action Plan under A. Wetlands, Waterways and Coastal Resources:

5. Wetlands: Targeted Review by DEP. We support the immediate issuance of NOI file numbers, but it should be made clear that does not indicate that DEP considers an application to be complete. Further, DEP should not limit its review and oversight to cases in which there are appeals. The suggestion that only cases where there are particularly sensitive resources at issue may not cover locally significant issues. Our Commission needs and relies on DEP review of NOIs prior to issuance of an Order of Conditions as we often lack the technical expertise needed to understand fully the impacts of a project.

Re: Draft Action Plan for Regulatory Reform at MassDEP

6. Wetlands: Buffer Zone General Permit. The Draft Action Plan does not provide sufficient detail of a general permit to allow us to assess the impact on our work. We reserve judgment until more detail is provided.

7. Wetlands: Exemption for Regulated "Resources" Created by Stormwater Management Structure. This is a sensible reform that we endorse.

8. Wetlands: Expedited Permitting for Ecological Restoration Projects. We support the proposal to streamline permitting for ecological restoration projects.

9. Wetlands: Limited Project Status to Renewable Energy Projects. We strongly object to granting Limited Project status to renewable energy projects. The current list of 19 Limited Projects focuses almost exclusively on agricultural and existing infrastructure projects, e.g., animal husbandry, forest management, public roadway maintenance, new water supplies, none of which is usually controversial or lacking in public support. Renewable energy projects, such as windfarms and biomass facilities are HIGHLY controversial and involve potentially major adverse environmental impacts. These projects require the fullest, most comprehensive review possible.

10. Wetlands: Improved Regulator Mechanisms for Approving New Energy Technologies – Other New Technologies. The Draft Action Plan does not provide sufficient detail of a general permit to allow us to assess the impact on our work. We reserve judgment until more detail is provided.

Thank you for the opportunity to comment on the Draft Action Plan for Regulatory Reform at MassDEP. As we stated at the beginning of our comments, we rely on the full support and capabilities of DEP to carry out our local effort to protect the Commonwealth's wetlands, waterways and natural resources. Doing more with less may be the political reality of the day, but we should also be seeking adequate public funding to insure that DEP can provide that support.

Sincerely,

Norman Davenport

Norman Davenport
Chair, Shelburne Conservation Commission

Cc: Robert McCollum, DEP WERO
Representative Paul Mark
State Senator Stan Rosenberg
Linda Orel, MACC

November 20, 2011

Received
NOV 28 2011
Deputy Commissioner

Draft Regulatory Reform Action Plan
c/o Jakarta Childers,Commissioner's Office
Ma.Dept.of Enviornmental Protection
1 Winters Street 2nd Floor
Boston, Ma. 02108

Request for Public Comments

Item number V

Are there regulatory reform ideas that have not been included in this Action plan that should be considered by Mass DEP?

In as much as the Massachusetts State Government is mandated to look at many ways to save taxpayer monies, wouldn't it be more feasible to combine the following agencies.(NOAA, U.S.EPA and MA. DEP.)

Due to the agencies having similar regulations, the cost savings would be a benefit to the taxpayer.

Respectfully,

Edward Ziskowski
34 Northridge Rd.
Westfield, Ma. 01085

Commissioner Kenneth Kimmell
Mass DEP
One Winter Street,
Boston, MA 02108

Received
NOV 2 1 2011
Deputy Commissioner

November 10, 2011

Dear Commissioner Kimmell:

We are writing to you regarding the *Draft Action Plan for Regulatory Reform at MassDep.*

Andover, bordered and divided by two major rivers with extensive floodplains has been developed with mainly the only marginal land with extensive wetlands remaining. Increasingly the town is facing large complex projects on land that the Conservation Commission finds are jurisdictional. In addition, an increasing number of infill projects in the densely built upon parts of town challenge the Wetlands Protection Act and our local Bylaw. The Shawsheen River has caused major and damaging flooding several times in the past decade, with several 100-year storms. We believe we must strengthen protection not dilute it.

The Commission is very concerned that allowing the *Commissioner's Draft Action Plan for Regulatory Reform at Mass Department of Environmental Protection* would make regulation more difficult for Conservation Commissions. It is quite likely that several of the usual Andover developers would seize the opportunity to not follow the WPA as evidenced by contentious hearings to uphold the Act (and our Bylaw) required now by staff and Commissioners on an ongoing basis. To allow self-regulation by General Permit will not give the wetlands the strong protection required under the law. It would not benefit the Town of Andover or the Commonwealth of Massachusetts to take regulatory power and give it to those who develop the land. Staff and the Commission foresee a great deal more enforcement actions with real threats to riverbanks and BVW. Work outside the 50-foot buffer, depending on grades, could actually affect the site within the 50 ft. buffer, especially during a major rain event.

In addition to commenting on the *Draft Action Plan,* we urge you to retain the Circuit Rider Program. Pam Merrill, our circuit rider, has been most valuable to us and to the towns of the Northeast, offering workshops on regional wetland matters and advice on issues particular to our town. As projects become more complex and the remaining land more marginal, we need Pam's wise counsel more than ever and the wetlands require her protection.

Yours truly,

Commissioner Alix Driscoll
For the Andover Conservation Commission

From:	Goodman, Abbie
To:	Commissioner, MassDEP (DEP)
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Monday, December 05, 2011 4:53:27 PM

From the American Council of Engineering Companies of Massachusetts

MEMORANDUM

TO: Commissioner Kenneth L. Kimmell, Department of Environmental Protection

FROM: Abbie Goodman, Executive Director, ACEC/MA (agoodman@engineers.org)
John M. Schmid, PE, LEED AP, Chair, ACEC/MA Private Sector Committee
Francis Yanuskiewicz, Co-Chair, ACEC/MA Environmental Affairs Committee

DATE: December 5, 2011

RE: DEP Regulatory Reform
Draft Action Plan, dated October 24, 2011

ACEC/MA thanks you for the opportunity to review and comment on the October 24, 2011 Draft Action Plan for Regulatory Reform at DEP. We also appreciate your discussion of the pertinent plan issues and some of your goals for DEP going forward at the ACEC/MA Environmental Affairs Committee Meeting on October 26, 2011.

Overall, we concur with the plan as presented, and understand the challenge that you have in meeting environmental protection goals in the face of decreasing budgets and staff. “Doing more with less” is a reality for the engineering community and to our clients.

We offer the following comments to assist you in finalizing this plan.

1. ACEC/MA generally supports the changes proposed for the Waste Site Cleanup program (as related to the MCP program) as they should be a benefit to clients and project progress. (i.e. changes such as Simplifying Activity & Use Limitations (AULs) and Streamlining Tier Classification, and Revising the Numerical Ranking System (NRS)).

   ACEC/MA suggests that Department of Environmental Protection (DEP) continue to take steps to prioritize the most serious Tier I sites, regardless of any such modifications to current processes. There is general agreement that the AUL process and the Tier Classification/NRS need to be simplified. Simplifying the AUL process will benefit consultants as well as clients through reduced consulting fees. There is often significant time spent “chasing” the existing AUL regulations.

2. ACEC/MA generally supports the proposal to privatize the annual compliance inspection of Solid Waste Landfills by creating a list of certified solid waste inspectors, to whom DEP would annually assign a specified number of random inspections of 24 active landfills (at permit holder’s expense).

   ACEC/MA recommends that the list of certified inspectors include MA Professional Engineers (PE) with prerequisite solid waste experience, as a minimum.

4. ACEC/MA supports the proposal for only targeted review of Wetlands permits and for immediate issuance of a Wetland File No. by the DEP. These will help avoid delays/delayed hearings.

5. ACEC/MA supports the proposal to establish a Wetlands General Permit for certain activities.

   ACEC/MA suggests that DEP roll out such a program with an educational outreach to all local Conservation Commissions (and their agents) to encourage them to follow suit as much as possible. Consistency with state-wide standards at the local level, based on clear state guidance, would be a real plus!

6. ACEC/MA supports the proposed exemption for wetlands “resource areas” created by man-made stormwater retention basins built before 1996, if the stormwater system meets the DEP’s performance standards.

   ACEC/MA recommends that the DEP considers allowing pre-existing man-made features that do not meet

current DEP performance standards, be exempt if an owner were to retrofit such features so as to meet the standards. Perhaps such retrofit work could be done under a WPA Determination of Applicability, thereby avoiding full wetlands permit filing?

5. ACEC/MA supports "Elimination of Sewer Extension & Connection Approvals"

   ACEC/MA recommends that the DEP issue a "guidance document" for use by local authorities, and hopefully all local authorities would be required to apply the same standards and implement them using accepted, published guidelines for consistency across all DEP regions.

6. ACEC/ MA supports DEP stepping away from Title 5 septic system variances as this will save time for applicants.

   ACEC/MA recommends that the DEP reconsider delegating "shared system" approvals to municipalities. In ACEC/MA's experience, some local Boards of Health and Health Agents are not well equipped to handle these somewhat more complex projects, and they may impose unreasonable restrictions as a result. However, should the DEP proceed with this reform, we suggest the DEP issue a "guidance document" to local authorities who would then become responsible for shared systems approvals going forward.

7. ACEC/MA supports that the DEP require groundwater dischargers to hire qualified professionals to conduct a periodic compliance/structural assessment of facilities based on design life of the facility and expected need for repair/replacement; and in establishing a workable system for third-party facility assessments by establishment of standardized review and inspection protocols and establishment of minimum qualifications for the certifying professionals.

   ACEC/MA recommends that the qualifications for certifying professionals should include requiring a Massachusetts Professional Engineer (PE), at a minimum. We offer to work with DEP to establish other specific criteria for those certifying professionals with regard to experience with the design, operation and maintenance, monitoring, and long term performance of the treatment and disposal facilities.

   Other suggestions for regulatory reform not in the Commissioner's 10/24/11 document

8 ACEC/MA suggests that DEP look into Wetlands Protection Act (WPA) permit appeals processes, specifically with regard to the time frames for reviews and the adjudicatory hearings, even when such appeals are clearly intended to delay projects and are not based on actual impacts and sound technical issues. Addressing this one issue, and the appeal processes for other DEP-issued permits and superseding orders, could save DEP staff considerable time and effort and, allow DEP staff to focus on those appeals processes associated with projects that potentially may have more significant environmental consequences.

Thank you for this opportunity to comment. We are available to meet or discuss these comments in greater detail, and look forward to assisting you as you move to implement these important initiatives.

The American Council of Engineering Companies of Massachusetts (ACEC/MA) is the business association of the Massachusetts and Rhode Island engineering industry, representing over 110 independent engineering companies engaged in the development of transportation, environmental, industrial, and other infrastructure. Founded in 1960 and headquartered in Boston, MA, ACEC/MA is a member organization of the American Council of Engineering Companies (ACEC) based in Washington, DC. ACEC is a national federation of 51 state and regional organizations. ACEC/MA can be reached at 617/227-5551 or on the web at www.acecma.org

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Abbie R. Goodman, ACEC/MA Executive Director

American Council of Engineering Companies of Massachusetts (ACEC/MA), The Engineering Center, One Walnut Street, Boston, MA 02108-3616 USA

Direct T: 617/305-4112, Main: 617/227-5551 x112, F: 617/227-6783

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and the Massachusetts Association of Land Surveyors and Civil Engineers (MALSCE). TEC's web site: www.engineers.org

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From: Art Allen
To: Commissioner, MassDEP (DEP)
Subject: Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date: Wednesday, November 09, 2011 5:51:20 PM

Hello:

I have particular concerns regarding recommendation A.5. Over my 16 year career in wetland science I have worked extensively with Conservation Commissions as a consultant and as a proponent's representative. In my experience, Commissions (particularly those without staff) rely heavily on the comments and recommendations from DEP regarding basic filing requirements for Notices of Intent. Many filings are deficient or do not provide sufficient information regarding general performance standards for resource area alterations and wildlife habitat impacts. Without DEP feedback I am afraid that under-resourced Commissions will rely more heavily on project representatives and this sets up an inherent conflict of interest. Many Commissions are in the habit of assuming that the filing is complete if the DEP file number has been issued without comment. I hope that there is a way to continue providing timely DEP review and comment on filings. It seems that without this review DEP will lose control of the filing process and many Commissions will issue Orders based on insufficient or inaccurate information.

Thank you,

Arthur Allen, CPSS, CWS, CESSWI
Vice President
EcoTec, Inc.
102 Grove Street
Worcester, MA 01605
508-752-9666, ext. 24
Fax: 508-752-9494
Email: aallen@ecotecinc.com
Website: www.ecotecinc.com

To: Commissioner, MassDEP (DEP)
Subject: Draft Action Plan for Regulatory Reform at MassDEP
Date: Tuesday, October 25, 2011 1:31:41 PM

Dear Commissioner,

I have read and understand the draft plan for reform. I have to say it is perfect. As a primary stake holder in this area I definitely think that all of these actions not only streamline the system but will make it easier for those seeking permits to have the right ones the first time. Along with the other items in the draft this is one really great idea. The people of Massachusetts do suffer some really bad air quality for example, and I was wondering if there would be a way to perhaps gather funding by having more enforcement of environmental laws.

Enforcement ends up being a tough thing to do but I believe that EPA uses the federal court systems to differ the cost of most enforcement. Another issue is that with stricter enforcement we have more companies moving out of the area and into places that do not have enforcement. Enforcement, or more of it, may pay for itself in the long term. What are your thoughts on this?

Thanks For Your Time,

From: Diane at Banner
To: Commissioner, MassDEP (DEP)
Subject: Proposed DEP Regulatory Reform
Date: Wednesday, October 26, 2011 1:44:39 PM

Dear Mr. Kimmell,

I am an asbestos abatement contractor.

I have read the proposed regulatory reforms and offer the following suggestions pertinent to the asbestos industry:

1. Develop clear, written guidelines to municipalities re: regulations for asbestos removal involving demolition projects that can be posted in the local BOH or Inspectional Services Dept. for the benefit of homeowners, builders & municipal office staff. Currently there is a great deal of confusion re: the treatment of asbestos in demolition projects. Some towns have no policy and do not address this issue at all. Conversely other towns have regulations that conflict with State/Federal guidelines and in some cases make no sense. This pro-active approach would save the DEP time, energy and resources trying to "close the barn door after the horse has bolted".
2. Reconsider the mandatory waiting period required before an asbestos contractor can remove asbestos. Current regulations require a ten business day waiting period from the time the asbestos contractor notifies the DEP/DOS of the abatement until the job can start. In order to start sooner than the two week waiting period, the owner must call the DEP for an emergency waiver. Often the need to begin abatement is less of an emergency ("I have no heat and the plumber can't do anything because of the asbestos on the boiler") and more of a scheduling issue ("We are closing on the house next week and the buyer wants this asbestos floor tile removed. It can't wait 2 weeks"). For some regulators, the definition of an emergency does not include staying on schedule for a real estate transaction. Shortening the waiting period would likely reduce the number of requests for a waiver and free up the regulator's time for more important matters.

3. Review the DEP/DOS permits to make sure the asbestos contractor is checking off the correct box when he responds to “Is this facility fee exempt” . Each incorrect checkmark costs the state $85.00 in revenue. So far this year Banner Environmental Services Inc. has paid over $9000.00 in DEP fees and I own a very small company (5-6 men in the field). A very quick review of that one item could bring in significant revenue. An incentive for paying outstanding fees might be to link the renewal of the Asbestos Contractor license to paying outstanding debts. The City of Boston does a review annually with success.

These are ideas that immediately come to mind. I hope they are worth your consideration and I would be happy to elaborate if you need more information.

Diane Nelson
Banner Environmental Services Inc.
781-934-6873

From:	Barbara Winters
To:	Commissioner, MassDEP (DEP)
Subject:	Wetlands: Targeted Review by DEP
Date:	Tuesday, November 22, 2011 1:39:42 PM

To: The Massachusetts Commissioner, DEP

From: Concerned citizen/ member of the Becket Commission.

Re: Public Review Draft - 10/24/2011, section #5 in particular.

The proposed changes present a risk that goes well beyond the price of a modest number salaries currently paid to professional personnel on the staff of DEP. The individuals, whose role would be eliminated, are the very people who provide guidance and authority to the local Conservation Commissions, and absent the necessary authority the Commissions' work cannot be implemented.

The proposed change would , in time, erode the value of the area as an internationally recognized center of tourism, and negatively affect it as a very valuable source of income for the Commonwealth.

Over more than a century the area developed as one of the most desirable vacation and second home location for the people of means, who brought with them a rich source of revenue in the form of taxation. They were first drawn to the Berkshires primarily by the beauty of the land, well watered by the numerous lakes, rivers and wetlands. It is much to the credit of all the small towns and caring local communities as well as the vigilance of countless volunteers that the area retains its' rural character. In order to prevent the wreckage of our priceless resources and prevent this area from becoming another urban sprawl we need the essential help of but a few professionals who have the knowledge and the authority to implement the work of the volunteers. It takes only a very few powerful developers and super wealthy individuals to despoil vast tracks of sensitive wetland and rivers. The local commissions do not have the resources to fight corporations and individuals who consider that wealth gives them a license to do as they please. We are unanimous in petitioning you to support our work of preservation of the resources we have, and in ensuring that whatever growth occurs, as it must, is done wisely and with consideration for the environment.

Before we close, a mention must be made of the issue that should add weight to the importance of preserving this area from losing its'character. It took many decades to establish the Berkshires as an international cultural center, which brings people from all over the world every year to enjoy the scenery as well as the opportunity to attend cultural affairs and visit our famous museums. Locally, it also translates into taxable revenues.

Surely, weighing all benefits of preserving our advantages is worth the price of retaining the good and dedicated people whose task it is to guard the precious character of our "neighborhood".

Martin D Winters
Member of the Becket Conservation Commission
P. O. Box 751
Becket, Ma 01223
413 623-8829

From:	Marcia Berger, PE, LSP
To:	Commissioner, MassDEP (DEP)
Subject:	Action Plan for Regulatory Reform comments #14 #16 and #18
Date:	Monday, December 05, 2011 2:05:59 PM

Following are my comments on the action plan for regulatory reform which I may have previously submitted. I changed my comment on #18 somewhat.

#14 Wastewater Targeted Groundwater Discharger Inspections

Consider the minimal qualifications for certifying professionals to include Registered Professional Sanitary Engineers, Registered Professional Civil Engineers, Registered Professional Environmental Engineers and Licensed Wastewater Treatment Operator with grade appropriate to the subject facility.

#16 Solid Waste: Certified 3rd Party Inspectors

If there are 24 landfills requiring annual inspection, then it seems onerous to require a separate certification process for just 24 projects per year-maybe not worth it to already busy professionals and an expense to administer. It is suggested that the certifiers definitely include Registered Sanitary, Civil, and Environmental Engineers, and depending on what they are inspecting, maybe also include Registered Sanitarians and Licensed Site Professionals. Limiting which professions can do the inspections would allow Mass DEP more control for making sure to include needed information in professional training seminars for that population of professionals. Allow other individuals to do some of the field work under the oversight of the designated professional who is the project manager and must sign off on the inspections.

To ensure that the inspectors are up to speed on what Mass DEP wants them to inspect, provide a document with detailed instruction on how the inspections should be conducted. Include a checklist or form to fill out.

Send out a notice to the group of professionals among whom will be the inspectors, e.g. the engineers, letting them know about the program and have them read the documents. If they think they can do the inspection work and are interested, they request to be on the list of qualified individuals that are randomly assigned inspections.

Then there is the question of how thinly to assign the inspections. If each professional were to perform just one inspection per year, or worse, just do one inspection every three years for example, then this would lower the quality of the inspections. Perhaps make it a requirement that they must do perhaps a minimum of three inspections annually. The only way to accomplish this is to limit the number of qualified professionals on the list to just 8 people. Or maybe have them each doing more; require professionals to compete every three years for five inspector slots via competitive pricing.

#18 to eliminate or streamline the Tier I permit process

I support this proposal. The tier classification process is time consuming and should be streamlined. It is especially counterproductive when there are sites with IRA activities so there are two RTNs each requiring a separate full Phase I report.

Property transfers where the seller transfers the liability but not the permit may be problematic. Consider not requiring the new owner to start over at Phase I when this happens; issue a new permit in the same phase as where the project left off.

Sincerely,

Marcia

Marcia J. Berger, P.E., L.S.P.
CLEAN PROPERTIES, INC.
111 Boston Post Road, Suite 211
Sudbury, MA 01776
Tel: (781)547-5656 // (800)977-1982
Fax: (781)577-1510

From:	Alan & Cheryl Binder
To:	Commissioner, MassDEP (DEP)
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Wednesday, November 30, 2011 12:10:20 PM

My name is Alan Binder and I chair the Conservation Commission in Tolland, MA. In this time of economic restraints, I am well aware of the need to cut costs. I am concerned about some things in the upcoming proposals.

Our main link and support comes from the Circuit Riders. Their feedback on NOI's is invaluable. We are amateurs trying to follow the state guidelines and without their support we might as well let anyone do whatever they want. The support of the Circuit Riders is invaluable. We are out in Western MA and most of the Conservation workshops are not near us. We involve the Circuit Riders at our monthly meetings and have asked for presentations that show better practices for our local contractors. I fear that the hours of these MOST HELPFUL employees might be cut back even more.

PLEASE, do not curtail the little help we already have. Not to be repetitive but, without their help, we might as well be in a boat without paddles. Thank you. Alan Binder Chair - Tolland Conservation Commission

From: Robert W Burkhardt
To: Commissioner, MassDEP (DEP)

Subject: Comments on Commissioner"s Draft Action Plan for Regulatory Reform at MassDEP
Date: Monday, December 05, 2011 3:06:19 PM

RE: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Thank you for the opportunity to comment on this action plan. My understanding is the deadline for comments has been extended to December 5, 2011, and I hope my comments are timely. I am a member of the Shirley Conservation Commission, and most of our work pertains to the Wetlands Protection Act, so that is where my comments will focus.

Premises:

You are correct that we are under much increased budgetary pressure. Some of this has helped our process. With less administrative help, we are more involved in the lower levels of WPA administration, for example examining the details of application forms and drafting orders of conditions. I think we were too insulated before. However, a well-informed administrator is very helpful for keeping us abreast of wetlands regulations and their application, and this service has been less easy to dispense with. The circuit rider program can compensate somewhat, but individual expert review of applications is something I hope we can continue at our level; circuit rider comments on individual applications could help here.

General comment:

My general comment is that I found several areas in the proposal where DEP seems to be going beyond implementing legisltation and going into areas which are not part of the original legislation. While indeed these steps may be desirable, I think they are more appropriately taken by the legislature.

Items:

5. Wetlands: Targeted Review by DEP

I think immediate issuance of a file number for a project is very much warranted. This will facilitate communication among all parties about an application. It should no longer signify completeness of an application, and there should be a separate check off and date for this certification. If there are deadlines that were formerly attached to the issuance of a file number, I think they should now be attached to the date completeness was certified. Completeness seems important, and a volunteer Commission and the public should not be put to the trouble of discussing incomplete applications. Prioritized review seems warranted.

6. Wetlands: Buffer Zone General Permit

I don't think dividing the buffer zone into subzones is warranted in the absence of legislation. Locally we do subdivide it, but that is because we have a bylaw.

7. Wetlands: Exemptions for Regulated “Resources” Created by Stormwater

Management Structures

This sounds like a good idea.

8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening; Stream Daylighting, etc.

My main concern here is misapplication. We had a vegetation management program at a local lake which was proposed as "restoration," when my position was the project was actually for improving recreational use.

9. Wetlands: Limited Project Status for Renewable Energy Projects

I find this tradeoff hard to assess: wetland protection vs renewable energy. Both are desirable, but then any applicant is attempting to do something beneficial for someone. I don't think a special limited project is warranted here in the absence of legislation.

10. Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies -- Other New Technologies

Legislation needed I believe.

20. Many Programs: Revise Fees to Incentivize Better Results.

My understanding was that fees were basically to recover administrative costs. Certainly administrative costs can be greater when projects in more sensitive areas are proposed due to the need for more detailed review, but I think the emphasis should be on the administrative costs with no attempt at incentive, unless legislation so directs such an attempt.

Thank you again for the opportunity to comment.

Bob Burkhardt
Member, Shirley Conservation Commission

From: Cahill, Heather
To: Commissioner, MassDEP (DEP); McDevitt, Alicia (DEP)
Subject: Draft Regulatory Plan
Date: Monday, November 21, 2011 2:29:19 PM

Dear Commissioner Kimmell,
In response to the Draft action Plan for Regulatory Reform at MassDEP, my comments are from an Administrator/Secretary point of view with the hope that these comments/recommendations will be taken under advisement.
Recommendations are minor but will be help with streamlining, efficiency, enforcement and staying in communication with state agencies. Following recommendations are:

Reinstate notarizing all permits, certificates, and enforcement. Notarization will confirm that Conservation Commissions and Conservation agents have reviewed and approved proposed work. Documentation can be e-filed with DEP, Registry of Deeds and other state agencies. Notarization of documents is a positive safeguard for automation, efficiency, and streamlining without causing a negative impact on current constraints at the federal, state and local levels.

Provide documentation for administrators, secretaries, commissions, and agents of upcoming changes including webinars, links or training sessions for strong communication of enforcement without affecting or weakening the current Rules & Regulations. As time goes on the fees can be re-structured which will help both the state and local conservation departments.

I realize I'm not a certified Conservation Agent, Engineer or Wetland Scientist, my comments are minor but are vital to MassDEP and municipalities to restore alignment between resources and work.

Thank you for your time and patience, please feel free to contact the office if you have any questions or concerns regarding my recommendations.

Regards,
Heather Cahill

Heather Cahill
Canton Conservation
Pequitside Farm
79 Pleasant Street
Canton, Ma. 02021
(781) 821-5035
hcahill@town.canton.ma.us
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From: John Follet
To: Commissioner, MassDEP (DEP)

Subject: Draft Action Plan for Regulatory Reform at DEP
Date: Tuesday, November 22, 2011 9:14:03 AM

Sir:
we are responding to your request for comments on the Draft Action Plan for Regulatory Reform at MassDEP. We apologize for the lateness of the comments as last evening was our first opportunity to review the Plan. In general we support the reforms in the document and have no particular need to make additions or deletions. We welcome many of the reforms as a way to streamline the work that we do as we on the Commission work without the services of an agent. In a small town such as Chesterfield there are very few large projects and as such many applicants feel strapped by layers of bureaucracy.
On the other hand reform at higher levels of government we believe mandates those of us on the front lines to be more vigilant with regards to our work. An example of such vigilance occurred recently with us. The town recently adapted a zoning bylaw to streamline the permitting process for solar installations in the future. This was part of our effort to become designated as a Green Community. In reviewing the proposed bylaw we noted that protecting wetlands had been overlooked. We proposed an amendment that would require that any solar site would not include wetlands. The amendment was unanimously approved and was adapted at town meeting. We believe that this has more clout than having renewable energy projects be given limited status.
Thank you for keeping us informed and requesting comments.

John Follet, Chair
Chesterfield Conservation Commission

From: Kimmell, Ken (DEP)
To: Childers, Jakarta (DEP)
Subject: FW: PLEASE DELIVER TO MR KIMMELL
Date: Tuesday, December 06, 2011 11:03:08 AM

Kenneth L. Kimmell
Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
617 292-5856

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Sent: Monday, December 05, 2011 10:00 PM
To: Kimmell, Ken (DEP)
Subject: PLEASE DELIVER TO MR KIMMELL

December 5, 2011

Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston MA 02108

Re: Comments on Commissioner Kimmell's Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP)

Please find below my comments regarding the proposed expansion of the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).

The construction of a renewable energy project does not fall into the same category as the current five types of projects now covered by the "limited project" exemption of the wetlands regulations. These "limited projects" are 1. closure of solid waste landfills, 2. airport safety, 3. dam safety, 4. development of safe drinking water supplies from groundwater, and 5. cleanup of releases of oil and hazardous materials.

According to the Massachusetts Wetland Protection Act the common factors in all five "limited projects" are their importance to the protection of public health, safety and/or the environment. The construction of an industrial wind turbine is not important to the protection of public health, safety and/or the environment. In fact, industrial wind turbine projects are the antithesis of the protection of these factors.

While you declare that giving renewable energy projects a "limited project" status under the WPA "will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy, I disagree that renewable energy projects will improve air quality, reduce greenhouse gas emissions or boost the green economy.

Industrial wind turbines do not reduce greenhouse gas emissions because the paltry and unpredictable and inefficient energy produced by wind turbines compel back up generation sources to titrate their production resulting in more, not less, greenhouse emissions.

Industrial wind turbines also do no boost the green economy, and this has been demonstrated by repeated domestic and international data. The green economy to which you refer is little more than a subsidy haven for profiteers.

If the wind turbines do not receive a "limited project" status or an industrial wind turbine project cannot be sited because the local conservation commission declines to issue a permit, the Commissioner can always issue a variance.

The areas most suitable for wind development in Massachusetts - the Cape, North and South Shores, and the Berkshires - are also the areas where the environment, and specifically wetland resource areas, are very fragile. Therefore greater care must be taken to make sure that the resource areas are protected.

Your prediction that putting renewable energy projects in the "limited project" category will "benefit the environment by creating a more streamlined and predictable permitting pathway." is little different than your claims associated with WESRA, the now dead on arrival bill to strip local communities of control over the siting of these subsidy thirsty monstrosities. This effort, instead, is a conspicuous gimmick to help the already over subsidized agricultural industry to have its hand on yet another tax payer give away.

All this, combined with your equally obvious efforts to support the make believe wind turbine health study underway at MPH and the laughable efforts under way at DEP and CEC to change the noise standard measurements criteria related to wind turbines all add up to one thing. Your boss, (our Governor) has made it clear that you are to do everything imaginable to shoe horn industrial sized wind turbines into Massachusetts communities, in reckless disregard of the environment.

To: Commissioner, MassDEP (DEP)
Subject: Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date: Monday, December 05, 2011 12:50:21 PM

Kenneth Kimmell, Commissioner

Massachusetts Department of Environmental Protection

One Winter Street

Boston MA 02108

Dear Commissioner Kimmell,

I am writing regarding the proposed alterations of the wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).
I understand that Mass DEP has lost considerable funding and has experienced a sizable reduction in staff while its mandate has, if anything, increased. I agree that we should try to streamline procedures so that more can be accomplished with the limited available resources. In particular, I support the idea of addressing issues for which the Wetlands Protection Act was originally written, regarding
"LANDFILL CLOSURES, AIRPORT SAFETY, DAM SAFETY, WATER SUPPLY DEVELOPMENT,
CLEANUP OF OIL & HAZARDOUS MATERIALS,AND EMERGENCY CERTIFICATION PROCEDURES."

However, I do not support the addition of renewable energy resources, especially Industrial Wind Turbines, among the "limited projects" designation . Contrary to the preamble to your proposal, there is little evidence that wind turbines will affect the environment favorably at all. If we look at the degradation of the environment entailed in the mere installation of wind turbines in sensitive ecologic systems, they are not justified. Massachusetts is rated at the lowest level of wind acceptable in the United States. Since wind resources are so inconsistent and variable, none of the means of base production of electricity will be eliminated or reduced. Coal, nuclear and hydroelectric power need to be geared up and reduced depending upon the varying availability of electricity generated by wind. As such, it is a very inefficient and expensive process. Since less than 1% of electricity in the Northeast is produced from oil, there will be no reduction of oil importation. The few areas where wind is marginally useable in the Commonwealth coincide with wetlands that are the most vulnerable and sensitive in the Commonwealth. The jobs created by the installation of Industrial Wind Turbines are temporary and frequently go to out of state consultants and employees. In fact, the major part of the subsidies and tax breaks go to corporations outside of the Commonwealth. Hence, I don't think there is any evidence that wind power will help clean our air, reduce oil importation, or create green jobs in the Massachusetts economy.

If we look beyond our own immediate horizons towards the devastation and toxic waste in China created in the mining of rare earths required for the construction of the one ton magnets incorporated in each wind turbine, the earth is substantially

worse off than it was before. While you might take solace knowing that a toxic sludge lake that is six miles across in China is not in our backyard, I would dispute that stance. The whole green movement is predicated on saving the whole planet; not just the Commonwealth of Massachusetts. As such, I consider the whole earth as my backyard. As the Commissioner of the Department of Environmental Protection, so should you.

Please retract your proposal, and allow for local communities and Boards of Selectmen to make decisions regarding zoning issues in their own communities.

Respectfully,

_____

To: Commissioner, MassDEP (DEP)
Subject: MassDEP Regulatory Reform Initiative
Date: Wednesday, November 09, 2011 8:30:21 AM

To:
Kenneth L. Kimmell,
Commissioner
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

I have given some thought to your "Reform Initiative," and I think I can provide an idea for reducing both time and money spent on regulation requirements.

All waste generators within the state are required to mail a copy of the signed retuned manifest (Designated Facility to Generator) to the state to verify the manifested wasted has reached it destination.

A member of DEP must file this paperwork on receipt. I'm only guessing but I would expect this filing is electronic in some nature.

Why not set up an email address where a scanned copy of the signed return manifest can be sent, an automated receipt from the state can also be sent back as with for example: TIER II reports submitted.

You receive an electronic copy in a timelier manner, the cost in time of converting to an electronic version is less, and you free up a member of DEP to work on more important regulatory issues.

I will admit not all generators will have the ability to scan and email a copy, but they may still mail the copy to the state. The same method now employed by DEP can be used to file those copies. But I will suggest the few generators not willing to obtain a scanner will be few, and DEP will overall reduce man power on this task.

My best regards,

From: paul bitters
To: Commissioner, MassDEP (DEP)

Subject: Draft Regulatory Reform Action Plan - Response from TAGS-BAGS-CONTAINERS, Greenfield, MA
Date: Thursday, November 10, 2011 9:02:44 AM

TAGS-BAGS-CONTAINERS

P. O. Box 565, Greenfield, MA 01302-0565 PH: 413-522-7016
P. O. Box 1899, Wells, ME 04090-1899 PH: 207-641-5024
FX: 413-475-3843 EMAIL: paul@tagsbagscontainers.com
Visit our Web Page: www.tagsbagscontainers.com

Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
PH: 617-292-5632
Boston, MA 02108 FX: 617-292-5858
Attn: Jakarta Childers, Commissioner's Office Email: MassDEP.Commissioner@state.ma.us
Attn: John Fischer, Branch Chief, Waste Planning and Commercial Waste Reduction

Draft Regulatory Reform Action Plan

In reply to a letter/email forwarded by Arlene Miller (Longmeadow) from Alicia Barton McDevitt regarding recommended changes and amendments to MA DEP's Regulations & Requirements, I would offer input on the following:

As a company who deems itself a "stakeholder" in the solicitation of contracts, orders and related business with municipalities and agencies within the Commonwealth, our company as well as other qualified vendors, are routinely bypassed and ignored. As communities seek pricing, quality-of-product, and extent of service, these communities are lead to a State Bid Contract, and promoted most times as the "only options" to attain product and price information.

For ourselves, this issue relates specifically to MA State Contracts FAC55 (Printed Trash Bags-PAYT) and FAC61 (Waste Carts, Containers, Bins). Each contract was to expire in 2011, yet due to staff and budget short-falls, both have been "extended" until 2014, thereby 1) denying our company any chance to compete on a fair playing field, 2) mandating the current-contracted companies maintain their price/product/service and 3) continuing to promote a minority of private businesses, while excluding, overlooking and in-a-sense rejecting other vendors.

In states such as Maine, vendors are noted (yet not specifically promoted) on a list of services they supply. The municipality/agency solicits quotes/samples from one-or-all of the listed companies. Certainly, companies which 1) perform poorly, 2) have higher-than-normal pricing, and 3) provide inferior product/service, are reported with potential consequences for future business in the State.

I understand the use of "Contracts" when they are job-specific, as when a community

is contracting with a vendor to supply bags, fix a school roof, etc. Yet locking out other suppliers state-wide with a 3 year contract, and then arbitrarily extending it for another 3-years, limits the opportunity of competitive pricing, new more environmentally-sound products, that will not be offered to a community.

As a MA resident and regional vendor, providing “New England-made” quality trash liners, I ask only for a “level playing field”. With the demise of this Contract-format, DEP staff would become more available to serve communities, and need only maintain “The List” of vendors when 1) new, valid suppliers request to be on the list, and 2) when vendors abuse/misrepresent their product/service and have been reported by communities. I look to the MA DEP to dismiss the contract-approach and simply offer a list of businesses that provide the service/product a municipality would be looking for.

Thank you,
Paul R. Bitters, President cc:
Arlene Miller

Paul R. Bitters

TAGS-BAGS-CONTAINERS

Greenfield, MA 01302-0565 - PH: 413-522-7016
Wells, ME 04090-1899 - PH 207-641-5024
Please visit us at: www.tagsbagscontainers.com
See us on **FACEBOOK** and **LinkedIn**

From: Josh Fawson
To: Commissioner, MassDEP (DEP)

Subject: Draft Action Plan Comments
Date: Monday, November 21, 2011 4:18:34 PM
Attachments: image007.jpg
image008.jpg
image009.jpg

Dear Sir/Madam,

Capaccio Environmental Engineering has the following questions to the proposed changes to the Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval item number 11 in the Commissioners Draft Action Plan for Regulatory Reform at MassDEP.

-

- What does MassDEP intend to do with existing permits and certifications? – will the permits be terminated immediately or will they just expire at the end of the permit life?
- Is MassDEP considering keeping the regs in place but just having people self-certify?
- Does MassDEP have a timeline for the review of this program and the eventual termination
- What should new clients/permittees be doing in the meantime? Can they request a variance from applying? Will the MassDEP be issuing a moratorium on new permits?

Who at DEP is heading this effort up?

Thank you,

Josh Fawson

Josh Fawson, EIT
Environmental Engineer
Capaccio Environmental Engineering, Inc.
Voice: (508) 970-0033 ext. 120
Cell: (774) 249-3216
Fax: (508) 970-0028
www.capaccio.com * www.ems-hsms.com

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by CAPACCIO which bear a registered professional engineer's signature and stamp.

From: Patrick Gallivan
To: Commissioner, MassDEP (DEP)

Subject: DEP Commissioner"s Draft Action Plan for Regulatory Reform at MassDEP
Date: Friday, November 18, 2011 5:41:28 PM

Following a review of this Draft Plan, I have the following comments for your consideration:

It appears that the proposed reforms are an attempt to refocus the resources of the Department to address the more critical environmental issues and also to reduce the duplication of efforts by state and local staff.

As a Conservation Commission, most of what we do pertains to wetland protection and I strongly agree with the reforms proposed in this area. I especially find the changes proposed in Reform #20 to be a very good idea and hope that it will be advanced as one of the priority reform initiatives. Using incentives to steer developers and homeowners away from working close to wetland resource areas will help protect the wetlands and will save DEP and the towns time and money. Currently, a considerable amount of time is spent on NOIs where work is being proposed as close to the resource areas as possible under state law or local bylaw because there is no incentive to move things further away. A developer could also be offered reduced fees if he/she was proposing a redevelopment project on a previously disturbed site or degraded site. This would be preferable to clearing a wooded area, farmland or some other undisturbed environment for their development project. DEP could offer an incentive of reduced fees for reducing the amount of impervious area as a percent of total area on a parcel or for leaving much of a site treed. Along with this, developers could be incentivized to leave more of a parcel's upland area as open space rather than squeezing in an extra lot. This may help towns that are unable to offer incentives under Open Space Residential Design or Cluster Zoning because there is no such bylaw in existence.

I agree that there may be a way for DEP to greatly reduce staff review time of NOIs, ORADs, and DOA's for smaller projects or where there is not a significant amount of resource area on a proposed project site. However, I think that there should be a way for a local ConCom to flag certain projects that they would like to have DEP also review. The same is

true for Enforcement Orders; DEP staff can be a big help in reviewing EO's and providing advice. There is also a need for DEP backup in enforcing some of the Wetland Replication Conditions of OOCs when problems develop. I hope that these options will not be lost during the reform process.

Thank you for the opportunity to comment on these reform ideas.

Sincerely,

Patrick Gallivan

Conservation Agent

Hanover Conservation Commission

To: Commissioner, MassDEP (DEP)
Subject: Draft Regulatory Reform Action Plan
Date: Monday, December 05, 2011 4:22:52 PM

The reforms should be eliminnated.

The best safeguard would be a VERY THOROUGH review of ALL applications.

The impact to environmental justice will be that new applications not thoroughly reviewed will create more appeals.

Municipalities cannot provide an efficient review.

It appears that the reforms will create a significant amount of litigation which will cost the public more money.

From: Kimmell, Ken (DEP)
To: Childers, Jakarta (DEP)
Subject: FW: Regulatory Reform at the Massachusetts Department of Environmental Protection
Date: Tuesday, December 06, 2011 11:04:06 AM

Kenneth L. Kimmell
Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
617 292-5856

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-----Original Message-----
Sent: Sunday, December 04, 2011 10:20 PM
To: Kimmell, Ken (DEP)
Subject: Regulatory Reform at the Massachusetts Department of Environmental Protection

December 4, 2011

Kenneth Kimmell, Commissioner

Massachusetts Department of Environmental Protection

One Winter Street

Boston MA 02108

Re: Comments on Commissioner Kimmell's Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP)

According to the Massachusetts Wetland Protection Act the common factors in all five "limited projects" are their importance to the protection of public health, safety and/or the environment. The construction of an industrial wind turbine is not important to the protection of public health, safety and/or the environment. In fact an industrial wind turbine project maybe the antithesis of the protection of these factors.

There are many examples of turbines falling, catching fire, leaking up to fifty gallons of oil each one contains. Though I am generally a supporter of wind energy, this state is improperly locating them by cutting down thousands of trees in an effort to be green. Trees promote a clean environment more than any amount of turbines could. Turbines need to be placed in already developed and open areas. In addition, turbines are being located to close to residents destroying property values and endangering

the health and safety of those living there. Thirdly, the State is allowing turbines to be installed where the wind is not optimal but convenient for towns and developers. It is all about those front loaded energy tax credits that are tax payer supported. As for the wetlands, if I prune a cedar tree located in a wetlands area I can be fined thousands of dollars but the State just creates loophole after loophole for business interest. Citizens are
sick and tired of the double standard. Please reconsider.

What we need in this State is for our elected officials to look out for every citizens interest. It seems your just working for developers who are looking to soak the State and its taxpayers for their own benefit.

To: Commissioner, MassDEP (DEP)
Subject: Draft Action Plan for Regulatory Reform at MassDEP
Date: Tuesday, November 29, 2011 10:35:19 PM

Dear Commissioner,

I am outraged at the proposed changes outlined in the Commissioner's Draft Action Plan for Regulatory Reform at MassDEP.

I am more than outraged at the weakening of the 100' wetlands boundary, and completely speechless regarding the apparent exemption for "renewable energy projects".

I would love to know where this insane idea came from.

I live in Amherst MA, in a neighborhood of modest and close-packed homes that abut a well-established and well-loved wetland. We just spent a good part of the summer fighting to save this wetland from a "renewable" energy project that would have destroyed both the wetland and the neighborhood. Without the current regulations and enforcements in place, we would have lost this battle. The project was relocated to another perfectly reasonable site less than 0.5 miles away, to everyone's benefit, but construction has not yet begun.

With the proposed changes, I fear the proposal to destroy our wetland and our neighborhood will reappear.

Even if you believe that destroying a wetland in exchange for renewable energy is a good thing (which personally I cannot fathom!), who will pay for the lost value in our homes when the last open space in our neighborhood is covered with 8000 solar panels, weighing well over a ton each, on 12' posts? How is destroying a wetland "renewable"?

I object to the proposed changes in principle, I object to them in practice, and I object to them personally!

I have lived in 5 different states and have never paid taxes as high as I do in MA. I am outraged that the DEP would propose to weaken the wetlands laws, so hard and long fought for, in this way!

Stop this insanity. Enforce the 100' boundary and omit the outrageous exemption for renewable energy projects. I am a strong believer in renewable energy, but there is nothing renewable about destroying wetlands.

From:	Kimmell, Ken (DEP)
To:	Childers, Jakarta (DEP)
Subject:	FW: Comments on Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP)
Date:	Tuesday, December 06, 2011 11:04:22 AM

Kenneth L. Kimmell
Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
617 292-5856

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Sent: Sunday, December 04, 2011 9:28 PM
To: Kimmell, Ken (DEP)
Subject: Comments on Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP)

12/4/11

Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston MA 02108

Dear Commissioner Kimmell,

I want to let you know that I do not approve of your move to try to expand the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10). To do so in my opinion is an egregious act that shows little concern for the environment of MA that so many have worked so hard to protect. Wind turbine development does not trump protecting the environment which is the charge of your agency. To quote someone in my town when she learned about how destructive wind turbines are, she said, "how does destroying the environment in order to save it make any sense?"

· The construction of a renewable energy project does not fall into the same category as the current five types of projects now covered by the "limited project" exemption of the wetlands regulations. These "limited projects" are 1. closure of solid waste landfills, 2. airport safety, 3. dam safety, 4. development of safe drinking water supplies from groundwater, and 5. cleanup of releases of oil and hazardous materials.

· According to the Massachusetts Wetland Protection Act the common factors in all five "limited projects" are their importance to the protection of public health, safety and/or the

environment. The construction of an industrial wind turbine is not important to the protection of public health, safety and/or the environment. In fact an industrial wind turbine project maybe the antithesis of the protection of these factors. Anyone who spends five hours researching adverse health impacts to people from wind turbines will find enough evidence to know that there is something wrong. The evidence submitted to your agency by Wind Wise - Massachusetts proves that there are adverse health impacts to humans from wind turbines. Wind turbines are actually a public health hazard.

· I sincerely would like to see the proof for you to declare that giving renewable energy projects a “limited project” status under the WPA “will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy." The credible scientific evidence I have seen says that renewable energy projects will indeed NOT improve air quality, reduce greenhouse gas emissions and boost the green economy. The vast number of 'green jobs' from wind turbines are largely fiction. Let's work together to actually improve air quality and reduce greenhouse gas emissions. Wind turbines do neither. There are paths that actually will.

· The areas most suitable for wind development in Massachusetts - the Cape, North and South Shores, and the Berkshires - are also the areas where the environment, and specifically wetland resource areas, are very fragile. Therefore greater care must be taken to make sure that the resource areas are protected. I live in an area with a sole source aquifer. Wind turbines can cause great damage to our ground water supply. The risks are just not worth it. There are other responsible solutions.

· "Creating a more streamlined and predictable permitting pathway.” does indeed not benefit the environment. It benefits a few, very selected people...wind developers and the wind energy industry. The environment is the casualty. The citizens of MA are the casualty.

Making it easy to destroy our magnificent Commonwealth through regulations is outrageous in my opinion and I sincerely hope that you will take a long hard look at the charge of your agency and do some hard research and soul searching. There is nothing that has offended my intelligence and commitment to the environment more than the political will to site wind turbines in MA.

I respectfully urge you to go in a different direction, a direction that focuses on responsible solutions that do not adversely impact the citizens or the environment of MA.

Sincerely,

From:	Alexander J Haro
To:	Commissioner, MassDEP (DEP)
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Friday, December 02, 2011 8:57:40 AM

Dear MassDEP:

As a member of the Town of Greenfield Conservation Commission, I have recently reviewed Commissioner Kimmell's Draft Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP), and have several comments.

I am deeply concerned that the measures proposed to reduce MassDEP services (Section A.5) for Wetlands Protection Act (WPA) technical support to Commissions to: "*limit… review of NOIs and [DEPs] oversight on local actions in order to concentrate resources on cases in which there are appeals to DEP (SOOCs). DEP intervention or participation in the local proceeding will be unusual and reserved for cases where there are particularly sensitive resources at issue*."

This action will leave our Commission without MassDEP input on a variety of projects. The Greenfield Commission values MassDEP support in the form of written comments on NOIs and in some cases RDAs, which has been instrumental in resolving decisions where information is unclear or WPA regulations are difficult to interpret (even for small projects, or projects with minimal impact). DEP comments also serve as a written record for reference to regulations and DEP position on a particular application. Without specific and formal DEP commentary on NOIs and RDAs, the Commission is left to interpret WPA regulations and protocol on its own, occasionally with erroneous decisions that later require DEP intervention regardless.

We note that the Action Plan offers to "*continue to provide technical and regulatory assistance to the local conservation commissions and others via the Wetlands Circuit Rider program and other activities*". However, it is unclear to what extent this service will be offered in the future (e.g., continued application-specific written comments, verbal/email comments, or only "phone support" for specific questions). The Commission greatly values the services currently offered by the Circuit Rider, but often these services are not enough to resolve specific issues, clarification of MassDEP policy, or interpretation of the WPA. We therefore strongly recommend that the Action Plan specifically state that written MassDEP commentary and support to Commissions for specific NOIs and RDAs will be retained in the future.

Sincerely,

Alex Haro, Ph.D.
Chair, Greenfield Conservation Commission

Research Ecologist
S. O. Conte Anadromous Fish Research Laboratory
U. S. Geological Survey, Biological Resources Discipline
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To: Commissioner, MassDEP (DEP)
Subject: Comments on Commissioner's Draft Action Plan for Regulatory Reform at MassDEP
Date: Thursday, November 17, 2011 2:35:52 PM

I am writing to comment on the Commissioner's Draft Action Plan for Regulatory Reform as MassDEP.

For Section A.9 relating to Renewable Energy Projects, I am concerned about defining qualifying projects exclusively and simply based on whether or not the projects are eligible for RECs. I am currently working on utility-scale energy storage which does not qualify for RECs, but is an enabling technology for renewable energy sources. I would be very happy to provide additional details about the work we are doing to help refine the definition.

Regards,

To: Commissioner, MassDEP (DEP)
Subject: Question on Draft Action Plan for Regulatory Reform
Date: Monday, November 07, 2011 11:36:19 AM

Dear Commissioner Kimmell:

My question is in regards to point 20 on page 10 of your draft plan. This is the section "Many Programs: Revise Fees to Incentivize Better Results". Can you please give an example of the "categories or permits or activities" you are referring to in the sentence: "For example, increasing fees on the catagories or permits or activities with the highest potential for environmental impact could reduce the number of projects that fall into those categories."

This sentence immediately gave me the impression that new **industry**, which normally carries a number of permits or activites regulated by the state, might be incentivized to locate somewhere other than Massachusetts. In this current economic environment, is that necessarily wise? I am very curious as to what types of activites the increased fees are expecting to reduce.

Sincerely,

From: McDevitt, Alicia (DEP)
To: Childers, Jakarta (DEP)
Subject: FW: Regulatory Reform Draft Action Plan
Date: Friday, November 11, 2011 1:03:48 PM

Comments on reg reform

_____

From: Jaffe, Seth [SDJ@foleyhoag.com]
Sent: Friday, November 11, 2011 12:34 PM
To: McDevitt, Alicia (DEP)
Cc: Ron Ruth (rwruth@sherin.com); Stephen M. Leonard Esq. (sleonard@stephenleonardlaw.com); Richard A. Nylen Jr. (rnylen@ldnllp.com); Jamie Fay (jfay@fpa-inc.com); Deborah H. Gevalt , P.G., LSP (DHG@HaleyAldrich.com); Steven C. Davis (scd@rackemann.com)
Subject: Regulatory Reform Draft Action Plan

Alicia:

I write to comment on DEP's draft regulatory reform action plan. First, let me again thank you for all of your hard work, and you, Ken, and everyone at DEP who took this process so seriously. At a certain level, my comments are simple -- I support the entire package, with the exception of item 21. I do have a few concrete thoughts, nonetheless.

1. Item 6, Buffer Zone General Permit. MassDEP has already been down this road once, so I certainly hope it doesn't make the same mistake twice. Make it simple and make it useable or don't bother even trying.

2. Item 10, New Technologies. Explaining the difficulty in review these projects as being caused by the potentially new and different impacts doesn't capture the entire issue. The bigger problem is that DEP is risk averse and too worried about a new technology failing. It thus makes adaption of new technologies too difficult, which increases transaction costs for both the user and the department and results in a net decrease in environmental benefit from new technologies, because DEP puts too high a value on the cost associated with a failure of the new technology.

3. Item 12, Title 5. The same issue arises here. Third-party review may well be a useful approach, though it will be important to avoid exporting DEP's risk aversion to the third-party reviewers.

4. Item 18, NRS. As you know, I have become completely convinced that there is no need for the NRS at all at this point. DEP should not be timid here. Not only does the NRS have no purpose, it is affirmatively misleading, because there is such a weak correlation between an NRS score and more meaningful criteria, such as whether there is an imminent hazard. In other words, it is at best irrelevant.

5. Item 19, Self-certification for permit renewals. I think that this is very fertile ground and DEP should be bold in thinking about this. Subject to a certification that there are no changes that have increased emissions (or whatever the relevant restrictions/limitations are), all permit renewals should be subject to self-certification. Although not mentioned here, the same should be true for permit modifications. Many changes, which currently require DEP review, do not affect facility outputs. There is no need for DEP to review such modifications.

6. Item 20, Fees. I am concerned about the use of fees to drive environmental results. At a certain-level, this is a form of market-based regulation. Who could be against it? On the other hand, absent statutory authority to impose a carbon tax or a tax on other emissions or releases, use of fees is the tail wagging the dog. Such fees have never been intended as ways to require developers or facility operators to internalize the negative externalities resulting from their operations. Doing so is an important policy choice that should not be implemented in such a back-door fashion. Fees have instead been used to defray the department's cost of reviewing the relevant application and that should remain their purpose absent a broader public debate.

7. Section III, Additional reforms. I fully understand why DEP has deferred these longer-term ideas. I do think that the greatest bang for the buck probably is contained in this one paragraph and I just want to emphasize that DEP must work hard not to lose the momentum behind this effort with the release of the initial package.

Regards,

Seth

FOLEY
HOAG LLP

Seth D. Jaffe | Partner

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From:	Dee Letourneau
To:	Commissioner, MassDEP (DEP)
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Monday, December 05, 2011 1:28:13 PM
Attachments:	image001.jpg

To whom it may concern

I have been on a commission for several years now, and although my colleagues and I have personally grown in our knowledge and understanding of the Wetlands Protection Act and our monitoring and assessment responsibilities, we respect and rely greatly on the recommendations of the DEP comments, and feel that eliminating those would do a great disservice to the public.

Respectfully, Dee Letourneau

Dee Letourneau
33 Riddell Street
Greenfield, MA 01301

413-774-7016

From: Kimmell, Ken (DEP)
To: Childers, Jakarta (DEP)
Subject: FW: wetlands
Date: Tuesday, December 06, 2011 11:04:31 AM

Kenneth L. Kimmell
Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
617 292-5856

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Sent: Sunday, December 04, 2011 2:02 PM
To: Kimmell, Ken (DEP)
Subject: wetlands

December 4, 2011

Commissioner Kenneth Kimmell
Massachusetts Dept of Environmental Protection
One Winter Street
Boston, MA 02108

Dear Commissioner Kimmell:

Re: Your Comments on the Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP).

Please find my review regarding the proposed expansion of the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).

The revisions of wetland regulations you propose will make the occurrence of toxic water pollution much easier anywhere a wind turbine is located in Massachusetts. These risks are preventable. No turbine should be within one and a quarter mile of a residence. To protect the public is the mandate of your office rather than to facilitate profits. Citizen backlash comes with the injury to public health, which is certainly not worth any advantage gained from wind that you or the wind industry can prove.

Energy conservation is far more productive than wind plants.

My town of Savoy is a case in point where a five 2.5 MG turbine wind plant is proposed by Minuteman Wind. This developer has a record of unprepared requests for permitting, which bodes ill for any of their proposals. This water pollution problem is of long-standing concern and is described herein:

Enclosed for your review is a brief description of a wetland area in Savoy MA that is endangered by supply and component delivery, construction and operation of the Minuteman Wind project. Specifically, this wetland system consists of a sizeable brook, ponds, vernal pools, and a water table that is located along Brier Road in Savoy. This area is mapped on the USGS Ashland, MA map. The whole system provides water to all residents on Brier Road and several more nearby.

Will drinking water remain potable or become permanently polluted, destroying private water supplies? Much depends on the right decisions on truly-protective regulations for our wetlands as it affects the public, not only in Savoy but across the State.

Sincerely,

From: McQueeney, Kelly J.
To: Commissioner, MassDEP (DEP)
Subject: Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date: Monday, December 05, 2011 12:38:02 PM

Dear MADEP Commissioner,

We offer the following comments on your Draft Action Plan for Regulatory Reform:

Wastewater treatment systems:
Several years ago MA DEP tried to streamline the staffing plan requirements for waste water treatment systems. They defined a Fully Automated Industrial Pretreatment System (FAIWPS) but made the definition so obscure it is not clear who qualifies and if so how to get approval. We have several of these new "green" technology pH treatment systems and if we qualify, this means we can reduce daily inspections form 5 to 7 days per week down to 2 days per week. **The MADEP could save time and money by allowing organizations to submit data on their automated treatment systems and staffing plans for the record without needing special approval.**

Asbestos Abatement:
For low risk projects, eliminate the need for the 10 day Asbestos Removal permit waiting period.

We greatly appreciate this opportunity to offer comments and would be happy to speak with you if you have any questions.

Thank you
Kelly

Kelly McQueeney, P.E., LEED, Manager - Remediation and Environmental Project Support Services, Harvard University Environmental Health Safety and Emergency Management, 46 Blackstone Street, Cambridge, MA 02139, t: 617-495-9391
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From:	Pike Messenger
To:	Commissioner, MassDEP (DEP)
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Monday, December 05, 2011 10:03:15 AM

Pike Messenger, Interim Conservation Agent
Town of Middleton
Conservation Department
195 North Main Street, 01949

ph: 978-777-1869
fax 978-774-0718
email: concomagent@townofmiddleton.org

Dear DEP:

I would like to see the process made much simpler for folks with backyard projects. When I started in 1995 as agent NOIs were short and to the point. Now they are booklets even for small projects. OCs run to 17 pages and more, again even for small projects. Applicants without lawyers and engineers are intimated by the instructions and forms. I recently helped a fellow fill one out for grading in a yard near BVW. I eventually did it for him and then told him about notification of abutters, money to lock box, and 2 copies to regional DEP. After his hearing it will cost him even more time and money. So roughly: several hours of mine and his time, $40 for a legal ad, $10 for copies, and $100 for fee. After the hearing he must record OC at registry for $85 or so. I believe his is family with little money.

The whole system seems to be rigged for consultants (lawyers, engineers, wetland specialists). I can see the need for detailed NOIs and OCs for sub-divisions, industries, shopping malls and for work in sensitive places.

Also the WPA regulations should be made user friendly. Years ago I asked DEP for an index to the regs. None was forthcoming. I've noticed even the DEP officials have regs' books with dozens of tabs. The regs, at least a version, should also be written by non-lawyers. We have an excellent example in Elizabeth Colburn's fine "A Guide to Understanding and Administering the Massachusetts Wetland Protection Act" 1995. I obtained one for each commissioner and found they often read parts they needed to. It has a good index. Let us ask Elizabeth, or someone like her, to do another. We hear over and over about transparency in government and yet we with our rules become more and more opaque.

I think we could greatly streamline processes and as a result get more folks on our side. Streamlining as you know would save both commissions and applicants time and money. Our purpose is to protect wetlands and wildlife; we must keep that utmost in our minds. I'd like to see our agents in the field more helping folks, even doing delineation for small jobs. They could also spend more time on follow-up and checking if away from phone, paper and computer. That

reminds me I must check a riverfront delineation. Good bye, good luck in your quest to trim.

Respectfully,

Pike Messenger

CC agent 1995 to 2009 and for the last 3 months

To: Commissioner, MassDEP (DEP)
Subject: Comments on Commissioners Draft Action Plan for Regulatory Reform at MassDEP
Date: Monday, December 05, 2011 6:53:05 PM

Thank you for the opportunity to comment on the *Commissioner' Draft Action Plan for Regulatory Reform at MassDEP*

3 Comments

1. Consider streamlining the process for permitting new sidewalks adjacent to existing roadways, particularly those that connect to or join existing sidewalk networks. This could be done under a new limited project provision to encourage development of pedestrian activity that could be expanded to include encouragement of pedestrian access to public natural resources. Permitting of new sidewalks for existing roadways could also be streamlined by modifying Item 6 to allow for this type of project work within the inner 50 feet under the draft Buffer Zone general permit provision. The proposed change to allow for outer buffer zone general permits as written will generally not apply to many new sidewalk projects since they are very often located adjacent to culvert crossings that are closer than 50' to the edge or roadway.

2. Consider reducing permitting requirements for projects that correct historical environmental degradation, for example where major erosion has occurred within resource areas, to encourage the needed remedial work to take place. I have come across 2 relatively recent projects that were constructed in accordance with regulations in place at the time of construction that caused serious erosion problems within resource areas. The anticipated long and potentially costly permitting process to rectify the damaged resources can in effect prevent needed remedial corrective work from occurring. Short term impacts for these types of projects should be balanced against the longer term improvements and corrective nature of the work. Less costly construction methods that may create more short term impacts should be given greater consideration.

3. Consider revising regulations to relax permitting requirements for removal of accumulated sediments from historical drainage ditches through non agricultural areas especially in cases where the work will alleviate basement flooding and protect public health.

Respectfully

From: Alan Douglass
To: Commissioner, MassDEP (DEP)
Subject: Proposed regulatory reform ideas
Date: Tuesday, October 25, 2011 9:16:08 AM

I propose eliminating the applicability of the TURA program for facilities who only qualify based on the fuel they use. For example, if a facility burns only 6,000 gallons of No. 6 oil, it will trigger the "otherwise used" category of TURA for certain chemicals. Since many facilities have no economic way of switching fuels, they continually file their TURA forms and Plans but see no reduction of pollutants because there is no way to do it without shutting down. Additionally, if a facility uses a chemical for pollution control, does it really need to be targeted by TURA for a reduction plan? This seems counter to the goal of TURA.

Alan J. Douglass
EHS Manager
NAEA Energy Massachusetts, LLC
O: 413.730.4701
M: 914.319.9604

From:	Norse Environmental
To:	Commissioner, MassDEP (DEP)
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Tuesday, October 25, 2011 2:25:33 PM
Attachments:	norseenvironmental.vcf

In general, we find the proposed regulatory plan to be a significant benefit.

A couple of comments though, the idea of required e-filing would not work. Though our office has all of the necessary equipment for scanning, printing, etc., the average homeowner does not. I still know people who won't use a computer. We think a lot of people would be potentially disenfranchised by this requirement.

Furthermore, most towns require hard copies, sometimes as many as ten or eleven copies of every Notice of Intent. They will not take electronic filings. In some ways, this is a benefit as everything is mailed with return reciepts or signed transmittals. In a similar way, we get return reciepts from DEP, and this can be valuable to prove dates of delivery. Email does not always provide a return reciept.

Finally, if you talk to most DEP employees in the wetland division, they will tell you that most appeals are superfluous, the result of neighbor arguements. The cost of an appeal is only $100, but yet the applicant can be held up for months and spend thousands of dollars in consultant fees. (In one recent appeal of my projects, the appelant did not even go to the site visit.) Controlling useless appeals would save DEP a great deal of time. Increasing the cost, or requiring a valid appeal based on the regulations would accomplish this.

In the event I can think of some other suggestions, I will be sure to forward them.

Thank you for the opportunity to respond.

--
Steven Eriksen

Norse Environmental Services, Inc.
Unit 4
92 Middlesex Road
Tyngsborough, Mass. 01879
Office 978 649-9932
Fax 978 649-7582
Cell 978 618-6783

To: Commissioner, MassDEP (DEP)

Subject: Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date: Saturday, December 03, 2011 5:59:41 PM

Please find my comments regarding the proposed expansion of the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).

December 3, 2011

Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston MA 02108

Re: Comments on Commissioner Kimmell's Action Plan for Regulatory Reform [sic] at the Massachusetts Department of Environmental Protection [sic] (MassDEP)

As a retired Conservation Commissioner from the Town of Chilmark, I understand the purpose of the DEP's having created the "limited project" designations in 1994. In my mind this is parallel to allowing the installation of a new septic system in a less than ideal location because it is the best possible location on the property which is pre-permit using a cesspool dating back decades if not a couple hundred years. We gave exceptions as necessary to better a bad situation, parallel to how a current "limited project" designation for 1. closure of solid waste landfills, 2. airport safety, 3. dam safety, 4. development of safe drinking water supplies from groundwater, and 5. cleanup of releases of oil and hazardous materials - indeed relates to protecting public health, safety and/or the environment.

Commissioner Kimmel: It defies belief that you would have the temerity to propose to add industrial wind turbine installation to this honorable and intelligently crafted list. You offend the intelligence of anyone paying attention to your actions. As DEP Commissioner, surely you are aware of your responsibility to look into the facts of this matter. BigWind is useless, redundant, environmentally destructive. Adding it to the grid does not reduce fossil fuel use nor greenhouse gas emissions to an appreciable degree, IF AT ALL. Look at actual fuel usage and emissions data when BigWind enters the picture rather than industry computer models. The Emperor Has No Clothes.

As to environmental impact, the CO2 emitted and the fuel used in the manufacture, transportation, construction, and maintenance of the turbines and

their infrastructure are often missing altogether on the balance sheet. Yet while WIND HAS NO REAL VALUE ... its Environmental Footprint is Enormous!

Beyond the fact that the turbines rise 50 stories high and can be seen for 30-40 miles, wind energy is so diffuse that any harvesting mechanism must be MASSIVE. In order to produce 500MW of electricity- low quality, sputtering, and unpredictable -but an amount equivalent to the output of a relatively clean natural gas plant spread over a few acres, we would require 1000 2MW turbines, ~500' tall occupying over 300 square miles of land -- before accounting for roads, transmission lines, or additional infrastructure.

Look at the 2-minute trailer for the movie Windfall. Learn a lot by watching the movie itself; it has won numerous awards as a fair and objective documentary. Look into the health impacts of big wind. Pay attention to Falmouth's town officials attempting to extricate themselves from their arrogant $11-million mistake. Do, at least, educate yourself on the history and consequences of your proposal by taking 10 minutes to watch this short video from the Allegheny Highlands Alliance: http://www.youtube.com/watch?v=jSfr3g8k0Vg&feature=player_embedded#!

Your proposal is nothing more than support for what Mr. Paul Niedzwiecki, Executive Director of the Cape Cod Commission, has called "profiteering masquerading as environmentalism," with potentially tragic consequences statewide. You abdicate your responsibility as Commissioner and make a mockery of the very name of your Department: Environmental Protection indeed. Please withdraw your proposal to offer "new limited project status for wind or solar projects and their utility or access requirements" - immediately.

With all due respect,
Sincerely,

From: Andrew DeSantis
To: Commissioner, MassDEP (DEP)
Subject: Commissioner"s Draft Action Plan for Regulatory Reform at Mass DEP
Date: Tuesday, October 25, 2011 5:26:52 PM

Please be informed that I fully support Regulatory Reform at MassDEP.

I am particularly supportive the ability to obtain a Chapter 91 licensing before obtaining an Order of Conditions under Chapter 131 Section 40. Many times in the past, this question has been raised by members of the Conservation Commission for filed tidelands related projects and the proponent response has always been that they needed to obtain the wetlands permit prior to filing for Chapter 91. I always felt this was backwards.

Secondly, many times even with electronic filings the Commission has acted prior to receiving a file number, the issuance of a file number immediately upon filing helps the process tremendously. Many filings in Revere only have one resource impacted, Land Subject to Coastal Storm Flowage for which there are no performance standards contained in the regulations 310CMR10.00.

Lastly (under the hat of my full time employment at Assistant Director of Public Works in the City of Chelsea) the elimination of Sewer Extension & Connections and the shifting of resources to I&I removal and SSO's makes eminent sense to me.

Andrew B. DeSantis
Chairman
Revere Conservation Commission
281 Broadway
Revere, MA 02151

781-286-8185

To: Childers, Jakarta (DEP)
Subject: FW: criticism of draft action plan for regulatory form/wind turbines
Date: Tuesday, December 06, 2011 11:04:14 AM

Kenneth L. Kimmell
Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
617 292-5856

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Sent: Sunday, December 04, 2011 9:38 PM
To: Kimmell, Ken (DEP)
Cc: therese.murray@masenate.gov
Subject: criticism of draft action plan for regulatory form/wind turbines

P.O. Box 2176
Sandwich, MA 02563
December 4, 2011

Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston MA 02108

Re: Comments on Commissioner Kimmell's Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP)

Please find my comments regarding the proposed expansion of the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).

The construction of a renewable energy project does not fall into the same category as the current five types of projects now covered by the "limited project" exemption of the wetlands regulations. These "limited projects" are 1. closure of solid waste landfills, 2. airport safety, 3. dam safety, 4. development of safe drinking water supplies from groundwater, and 5. cleanup of releases of oil and hazardous materials.

According to the Massachusetts Wetland Protection Act the common factors in all five "limited projects" are their importance to the protection of public health, safety and/or the environment. The construction of an industrial wind turbine is not important to the protection

of public health, safety and/or the environment. In fact an industrial wind turbine project may be the antithesis of the protection of these factors.

Giving renewable energy projects a “limited project” status under the WPA “will NOT benefit the environment by creating a more streamlined and predictable permitting pathway for projects. This action will NOT help improve air quality, reduce greenhouse gas emissions or boost the green economy. I disagree that renewable energy projects will improve air quality, reduce greenhouse gas emissions and boost the green economy. Wind turbines will degrade the soundscape and adversely affect the birds, animals and humans living nearby.

Industrial wind turbines do not improve air quality because they do not reduce greenhouse gas emissions.

Industrial wind turbines do not reduce greenhouse gas emissions because wind energy never "replaces" electricity generated by burning fossil fuels. No conventional electricity plant was ever "replaced" by wind energy because wind energy is not dependable (the wind may not blow for days) and wind energy always requires 100% redundancy.

In addition, recent studies have shown that because wind energy is unpredictable much of it is wasted, it also places great strain on the back up facilities. The conventional facilities that are used to complement wind energy -- to back up in order to offset its sudden fluctuations in demand -- are typically less efficient natural gas plants. Because they must operate in a highly inefficient manner, recent studies have shown that the net savings in fossil fuel consumption and green house gas emissions when wind energy is added to the grid is NEGLIGIBLE.

Wind energy is more expensive per KW hour than conventional gas facilities, and it is always a 100% redundant investment.

Industrial wind turbines do not boost the green economy because of the scale of the so-called "benefits" -- which are global -- compared to the scale of the obvious detriments -- which are all local.
Let's say that a medium sized conventional gas power plant produces about 500MW of dependable, "dispatchable" electricity (i.e. it can be called forth, on demand, when you need it). You would need approximately 1,250 wind turbines, each over 400 feet tall, spread over 250 square miles -- along with thousands of miles of roads and transmission lines -- to get 500MW of "energy" from the wind. Please check the facts.

The areas most suitable for wind development in Massachusetts - the Cape, North and South Shores, and the Berkshires - are also the areas where the environment, and specifically wetland resource areas, are very fragile. Therefore greater care must be taken to make sure that the resource areas are protected. Even though not directly concerning wetlands, please be aware of the people suffering from turbines in Falmouth, joining with similar stories from around the world.

Respectfully submitted,

From: sunderwoodmiller@aol.com
To: Commissioner, MassDEP (DEP)
Subject: Streamlined Regulations
Date: Tuesday, November 01, 2011 2:13:43 PM

Dear Ken:

I am very glad to have you at the helm of our state agency. I believe you will do great work.

While I applaud streamlining the regulations and the increased oversight on the part of DEP on the more important resource areas, while focusing less on "the little stuff", I am concerned about streamlining new power sources resulting in bulldozing the oversight and more strategic review of local conservation commissions.

I am very in favor of windmills (which I actually find majestic and awe-inspiring) and solar units as I believe that the alternative is to surely destroy our environment. Nevertheless, windmills will most likely be positioned on or near ridge lines, where access will be fraught with difficulty, including constructing roadways into wilderness and/or scenic areas. This must be weighed very carefully, and we must not forget that bats (already in trouble in the Northeast) and other flying creatures are often the unintended victims of windmills. They must be positioned carefully and studied thoughtfully.

I am appalled by the current utility exemptions that allow toxic substances to be applied along rights of way within 10' of a resource area. I hope that in our haste to wean ourselves away from oil and gas, we do not lose sight of the importance of protecting our environment and scenic beauty in the long run.

Working together with local ConComms will, I believe, produce the desired result for everyone as long as everyone goes into the process understanding that a compromise will result in a better solution.

Sally Underwood-Miller
Stockbridge Conservation Commission

From:	Phil: Templeton BOH
To:	Commissioner, MassDEP (DEP)
Subject:	Draft Regulatory Reform Action Plan: Comments
Date:	Wednesday, November 09, 2011 11:14:54 AM
Attachments:	image001.gif

Date: 11/9/2011
To: Commissioner Kenneth Kimmell
From: Philip Leger, Health Director Town of Templeton
Chair Royalston BOH, Health Agent Phillipston, Petersham, New Salem

I would like to take this opportunity to thank you for allowing the local boards of health (LBOH) to comment on your "Draft Regulatory Reform Action Plan."

I strongly support #13. Wastewater Title V: Eliminate Duplicative State Approvals. I would ask that 310 CMR 15.260 Tight Tanks be included in this section if not already. LBOH already do the necessary approvals for this function. It is redundant for DEP to have the final approval. The elimination of duplicative state approvals can be handled going forward as Local Upgrade Approvals.

I strongly support #15. Solid Waste: Permits-by-Rule and Self-Certification for Certain Landfill & Transfer Station Activities. As an operator of a <50TPD transfer station, the presumptive approval for permit renewals where no modifications were made and a track record of compliance is a positive step.

I also strongly support #21 Asbestos Abatement Requirements reducing the regulatory burden on homeowners by creating more flexible requirements for abatement of non-friable at owner-occupied residences.

With any regulatory reform, once any final decisions are made I would ask that DEP actively conduct a LBOH training education program to make clear the changes and how they affect the LBOH going forward. The annual DEP regional training seminars are a good way to accomplish this.

It was nice meeting you and hearing you speak at the annual MHOA conference in Springfield last month. Continued ongoing dialogue with your local partners is very important going forward in the new changing governmental landscape. I look forward to future conversation.

Philip Leger R.S.
Health Director
Templeton BOH
978-939-2377
health@templeton1.org

From:	David Thompson
To:	Commissioner, MassDEP (DEP)
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Friday, December 02, 2011 4:21:20 PM

Dear DEP Official

I wanted to pass along some comments on the Draft Action Plan, specifically for the portion for which I am familiar - that related to Waste Site Cleanup.

In general, I wholeheartedly agree with the two WSC-related streamlining suggestions (items #17 and #18).
Briefly stated, in regards to item #17, it is my opinion that AUL simplification is drastically necessary and overdue, for the reasons stated.
In regards to #18, I advocate the complete elimination of the NRS/Tier Classification/permitting process, again, for the reasons stated.

Thank you for the opportunity.

David J. Thompson, LSP
Project Manager
Tyree Environmental
Webster, MA

From:	Russell Holden
To:	Commissioner, MassDEP (DEP)
Subject:	Comments on Regulatory Reform at DEP
Date:	Wednesday, November 23, 2011 11:36:19 AM

Commissioner,

I understand that the comment period for your proposed regulatory reform at DEP has been extended into December. With that in mind I would like to make the following comments relative to:

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures
MassDEP will propose regulations to exempt wetlands "resource areas" created by stormwater
management structures (e.g. man-made stormwater retention basins) that were constructed prior
to 1996, if the stormwater system meets DEP's performance standards. This will reduce agency
time spent and streamline processes for external stakeholders by reducing the need to address
these man-made stormwater structures under the more time-consuming process for regulated
resource areas. This proposed change follows on regulatory changes previously made to exempt
stormwater management structures that were constructed after 1996.

Quite simply it seems only obvious that once constructed, stormwater management structures perform the functions of wetlands that are protected under the Wetlands Protection Act. Namely these structures reduce stormwater levels, allow for groundwater recharge, help to prevent flooding, and over time can provide wildlife habitat. It is counterproductive to the interests of the Wetlands Protection Act to consider these structures as nonjurisdictional given their roles. This rationale would apply to structures completed either previously to 1996 or thereafter given that they meet all or a significant proportion of performance standards. That said, the consideration of these structures on a par with isolated land subject to flooding (ILSF) may be appropriate given that such resource areas do not have a buffer zone. In summary, constructed stormwater management structures should be considered as resource areas.

Thank you for your consideration.

-Russ Holden
Chair - Uxbridge Conservation Commission

To: Commissioner, MassDEP (DEP)
Subject: Comment on the draft action plan for the Mass DEP
Date: Monday, October 24, 2011 9:24:31 PM

I have no idea if this idea has been tried but I think it should -

You should have citizen volunteers to fill in some of the holes. They can be trained to spot pollution issues or regulatory issues, etc., in their communities.

1. This would train citizens to be more involved in environmental issues
2. It would ease some small part of your staffing issues.
3. When environmental issues arise, maybe communities will be better represented if they have citizens from their community volunteering and understanding the processes.

Of course, it would be important that citizens not be bought off by corporations or companies who wish to disregard environmental regulations..

Otherwise, regarding the plan - I feel sure that the underfunding WILL result in environmental degrading of our state and will also result in environmental justice issues - we already have those, I know because I have experienced this in my neighborhood.

The DEP should advocate for itself heavily and ask citizens to do so also. What is more important than serving clean air and water to our children?

Thank you

From:	Karen Leigh
To:	Commissioner, MassDEP (DEP)
Subject:	Attn: Jakarta Childers Regarding DEP"s Regulatory Reform Proposal
Date:	Tuesday, October 25, 2011 3:53:06 PM
Attachments:	image001.gif

Greetings,

I would like to submit the following comments and concerns regarding changes to DEP:

I am the coordinator for the Westfield Conservation Commission, a commissioner on the Wilbraham Conservation Commission for over 10 years, and been in government employment for decades. Therefore I understand that decreasing budgets means having to decrease or remove services somewhere, I really do get that. But in doing so we should not allow changes that weaken current and effective regulations. In my opinion some of these proposed changes will have negative impacts on implementation of the Massachusetts Wetlands Protection Act.

1. Wetlands: Targeted Review by DEP

Decreasing DEP reviews of NOI submittals will only increase review pressure on local commissions. Commissions greatly appreciate (especially those commissions with no agent) the extra set of eyes looking at these documents and the guidance they get from DEP staff. Many commissions lack essential knowledge of the regulations to make proper and informed decisions. And unfortunately, there are consultants and applicants who take advantage of that. As such, decision errors will increase, thereby increasing DEP involvement in bad decisions and appeals.

2. Wetlands: Buffer Zone General Permit

Your proposal states it will: "…reduce DEP staff time spent on SOOC review for buffer zone cases, and it has the potential to significantly benefit the environment by providing incentives for applicants to concentrate activity greater than 50' from the resource area."

I believe the opposite will occur. This will not only undermine a commission's right to determine if work in the outer 50' will impact a resource area but it will also give applicants the notion that the outer 50' has less value, or that the outer 50' is now a "given" to develop. Many commissions already maintain at least a 50' buffer (or "no-disturb) zone when reviewing projects. By providing an expedited review on the outer 50' buffer zone you are essentially taking that decision making power away from commissions and giving it the applicants.

3. Wetlands: Expedited Permitting for Ecological Restoration Projects

Where I agree with encouraging restoration projects, they can be the most sensitive and difficult types of projects to do correctly. Special expertise is needed to engineer or design proper wetland characteristics such as riverine hydrology or the habitat needs of a particular species. Commissions need time and access to their own resources and experts to ensure the project has considered all aspects and will have long term success. Expediting such complicated projects will only pressure commissions to allow projects to go forward without proper review.

It is unfortunate but true that when laws are weakened or expedited there are consultants and developers savvy enough to take advantage of these opportunities for their own benefit. These

consultants have been in the business for many years where commissioners typically have little or no regulatory expertise. Many times consultants know the regulations better than commissions and therefore know how to sway decisions in their favor, regardless of compliance with the law. DEP's involvement at the beginning of projects is sometimes crucial to commissions making the right decision. Now will DEP will only get involved after the commission has made a mistake that could have been avoided had DEP weighed in on the project from the beginning?

I feel the proposed changes I have discussed above should therefore not be approved.

I appreciate having the opportunity to express my questions and concerns to you.

Karen Leigh, M.S.
Conservation Coordinator
Westfield Conservation Commission

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Westfield, MA 01085
Tel 413-572-6281
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"The more clearly we can focus our attention
on the wonders and realities of the universe about us,
the less taste we shall have for destruction."
-- Rachel Carson

please consider the environment before printing this e-mail.

To: Commissioner, MassDEP (DEP)
Subject: Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date: Friday, December 02, 2011 7:55:29 PM

I have had conversations with DEP representatives as facilitated by the office of state senator Eldridge.

#1 My comments would be ,the DEP should consider adopting a revised policy concerning the term " bedroom "

Which currently presumes : two person occupancy ** requiring allocation of 110 gallons per day of sewerage output .

should be modified or changed to read *** 65gallons per person of occupancy**** ,based on the reality of current lifestyles .

#2 I would suggest the DEP should provide a specific path for appeals, exclusively for (Towns that do not have facilities for town water and Town Sewer).

I believe citizens of such towns are put at a distinct disadvantage for development opportunities and should be afforded a special permitting process .

That allows ,flexibility to current Title 5 interpretations, and should allow innovative designs that can demonstrate protection of the health and welfare while allowing reasonable growth.
This may be accomplished by simply to allow multiple well sites, by right ,rather than requiring Public Water Supplies .

#3 Lastly if nothing else the state should adopt a specific clause that allows an exemption to title 5 rules to allow a family to care for an elderly family member without incurring extraordinary costs associated with title 5 upgrades to accommodate an additional bedroom to support such a family member.

From:	Steven Zieff
To:	Commissioner, MassDEP (DEP)
Cc:	Bialecki, Gregory (EOHED); Anderson Lamoureux, April (EOHED)
Subject:	Commissioners Draft Action Plan for Regulatory Reform
Date:	Friday, November 18, 2011 10:20:30 AM

Commissioner Kimmell
We have reviewed and endorse the initiatives of the above plan.
Enabling further local control, self certification and targeted reviews help to make for an effective and efficient DEP.

As it relates to further advancements; may we suggest two areas which deserve review:

1) Water Management Act (WMA) Permits, and
2) Use of empirical data for the calculation of Discharge Permits.

Water Management Act
The Commonwealth of Massachusetts is a water resource rich state.
The State's advantages are not available due to ineffective water use regulation.
An examination of the WMA Permits demonstrates an incongruity when compared to population, households or other metrics.
When WMA communities are compared to MWRA communities, especially when gauging the issues of life safety, agriculture, industry and sanitary requirements – a review in the interest of equitable water usage and availability is called for.

Empirical Water Usage
Through the advances of the plumbing code and modern construction practices water usage on a per unit measure is diminishing, clear evidence of this is found in every community's water and sewer records.
Discharge permits for modern private and public wastewater treatment facilities continue to be analyzed and permitted utilizing Title V water usage values.
The conservative Title V values are further compounded by safety / redundancy requirements in the formulation and issuance of Discharge Permits.
Relying upon Title V values results in redundant systems which are wasteful in terms of resource efficiency and plant cost; effectively increasing the cost of living and working in the Commonwealth.
This is a clear case of water treatment technology outpacing the regulations.

Amending these regulations will lead to greater availability and better treatment of effluent and the resulting quality of the Commonwealth's ground water.

We appreciate the efforts you are making.
Please do not hesitate to contact us should you have any questions.

Regards
Steven Zieff

Steven N. Zieff
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Weston, MA 02493
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(781) 894-9999 Fax
szieff@BaystoneDevelopment.com

From:	McDevitt, Alicia (DEP)
To:	Childers, Jakarta (DEP)
Subject:	FW: Opposed: Wetlands Protection Act "limited project" for wind turbines
Date:	Monday, December 05, 2011 2:31:30 PM

Re reform comment

From: Bjdurk@aol.com [mailto:Bjdurk@aol.com]
Sent: Monday, December 05, 2011 2:25 PM
To: Kimmell, Ken (DEP)
Cc: McDevitt, Alicia (DEP); berlincc@townofberlin.com; Tosches, Jamie (AGO); Nosal, Jed (AGO); daniel_diorio@scottbrown.senate.gov; george_vasvatekis@scottbrown.senate.gov; jerry_mcdermott@scottbrown.senate.gov; sam_jonsson@scottbrown.senate.gov
Subject: Opposed: Wetlands Protection Act "limited project" for wind turbines

December 5. 2011

Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

RE: Proposed expansion of the categories of “limited projects” under the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).

Dear Commissioner Kimmell:

I am opposed to the Patrick Administration's continuing assault on public and environmental protections, MGL Chapter 91 Waterways and Public Protection Act, and now, the Wetlands Protection Act. These protections present obstacles to furtherance of this administration's reckless agenda to mandate publicly-funded, high cost, high risk, low value and environmentally damaging wind energy.

Far from an actual "limited project" intended to improve the safety of our drinking water, dams and airports, offering a measure to address oil spills and hazardous waste, wind turbines introduce and leak hazardous oils as they introduce rare earth minerals, copper and transformers that catch fire, and fiberglass wind blades that cannot be recycled.

This is photographic evidence that wind turbines leak oil and cause environmental damage:
http://www.iberica2000.org/Documents/Eolica/Photos/contamination/
Wind turbines require pressure washing with detergents to eliminate plaque:
http://www.usatoday.com/news/science/enviro/2001-07-05-wind-power-bugs.htm

Massive scale industrial wind turbine projects merit full environmental review under the Wetlands Protections Act in the interest of citizens and our environment.

The Patrick Administration wind energy policies threaten to turn Massachusetts into a future wasteland of abandoned wind turbines and trigger an an exodus of businesses and residents.

Daily Mall

November 19, 2011

"Minnesotans for Global Warming report that in the last 30 years, the United States has had 14,000 wind turbines abandoned."

http://blogs.dailymail.com/donsurber/archives/46519

It's clear that the Patrick Administration promotes a green agenda that is in conflict with public and environmental interests as the DEP and this Administration is aligned with and serves the renewables' sector. This Administrations' green laws provide business opportunities for Mass Public Officials who ignore that bright State Ethics line. Harvest Energy, Flo Design, Rhumb Line Energy, Epsilon Associates, DeepWater Wind and First Wind are examples of companies with Patrick Administration Directors, founders, CEO's and Presidents and Advisors. The public economic, environmental interests are compromised.

Boston-based UPC First Wind Paul Gaynor is co-chair of the Mass Department of Environmental Protection Advisory Committee "Low Carbon Energy Supply Subcommittee."

http://www.mass.gov/?pageID=eoeeapressrelease&L=1&L0=Home&sid=Eoeea&b=pressrelease&f=090330_pr_cac&csid=Eoeea
CLIMATE PROTECTION AND GREEN ECONOMY ADVISORY COMMITTEE SUBCOMMITTEES
LOW CARBON ENERGY SUPPLY
CoChairs: Paul Gaynor (First Wind)
http://www.mass.gov/Eoeea/docs/eea/energy/2020-clean-energy-plan.pdf

"The Patrick Administration has made great strides at making Massachusetts an environment for clean energy companies to grow," said **Paul Gaynor, CEO of First Wind**, a Massachusetts-based developer and operator of utility-scale wind projects..."

http://www.masscec.com/index.cfm/page/Report:-Patrick-Murray-Administration-Clean-Energy-Policies-Will-Produce-Dramatic-Reduction-in-Green/cdid/10959/pid/11150

Crony capitalism in Massachusetts and your appointed Advisor First Wind have not escaped the critical attention of the Chairman of the House Budget Committee:

CHAIRMAN PAUL RYAN HOUSE BUDGET COMMITTEE

'THE EMPTY PROMISE OF GREEN JOBS'
"THE COSTLY CONSEQUENCES OF CRONY CAPITALISM"
September 22, 2011
http://budget.house.gov/UploadedFiles/GreenJobs9222011.pdf

excerpt from Chairman Ryan's Report:

> *First Wind Holdings, received a $117 million loan guarantee in March of 2010. First Wind withdrew its initial public offering in October of 2010, due to a lack of investor demand. 11 According to the Boston Globe, investors shied away from the company because "First Wind owes more than $500 million, loses money on a steady basis, and reports a negative cash flow."12 [cut]*

We now know that the Patrick Administration's Green Communities Act signed into law on July 2, 2008 has not done what Governor Deval Patrick represented to Massachusetts' ratepayers it would do:

"Today, Massachusetts has taken a giant step forward toward a clean energy future," said Governor Deval Patrick, who signed the bill at a ceremony at the Museum of Science.

"*This legislation will reduce electric bills, promote the development of renewable energy, and stimulate the clean energy industry that is taking root here in the Commonwealth…"* [cut]

http://www.boston.com/news/local/breaking_news/2008/07/patrick_signs_l.html

(1.) Governor Deval L. Patrick
Energy Bill Signing

http://www.jdsupra.com/post/documentViewer.aspx?fid=881e7bf3-abb5-4b47-b7e5-f6a626144f91
The Patrick Administration has represented that the Green Communities Act will, "*reduce electric bills*" by Governor Patrick on 11/10/11. Yet, a $4 Billion dollar GCA premium cost has been identified by MA Attorney General as an consequence of the Green Communities Act. While it was reasonably foreseeable, unfortunately not avoided, public debt is now enlarged by the Green Communities Act by $4 Billion dollars, (and by Cape Wind with a $4.08 Billion "Green Energy Tax".

Please listen to the MA industry and business community and "Voice and Resource" of more than 6,500 Massachusetts employers in every sector of the economy - manufacturing, retail, health care, finance, service, high tech, biotechnology, and higher education, Associated Industries of Massachusetts. AIM has made appeal to this Administration on the GCA.

Source: Associated Industries of Massachusetts:

Green Communities Act Pushes Up Energy Costs with Few Benefits

Massachusetts employers and residents who already pay some of the highest electricity bills in the nation face additional and potentially catastrophic rate increases to fund a hodgepodge of ill-conceived and conflicting programs created by the 2008 Green Communities Act.

Associated Industries of Massachusetts will today urge a legislative committee to look critically at the Green Communities Act and to modify elements that do not create benefit for ratepayers. [cut continue reading]

http://blog.aimnet.org/AIM-IssueConnect/bid/70496/Green-Communities-Act-Pushes-Up-Energy-Costs-with-Few-Benefits

Falmouth's potential $11 million dollar financial loss due to wind turbine noise

Newsvine http://bjdurk.newsvine.com/_news/2011/11/12/8754974-falmouths-potential-11-million-dollar-financial-loss-due-to-wind-turbine-noise

Cape Cod Times November 9, 2001 quote:

> ***"During Monday night's debate, Amy Lowell, the town's assistant wastewater manager, estimated the town would find itself responsible for paying about $11 million in back grants, renewable energy credits and other costs if they agreed to a long-term shutdown of Wind 1. Harper previously estimated a complete shutdown of Wind 1 would***

cost Falmouth about $970,000 in lost revenue annually."

There are no demonstrable benefits associated with the ongoing erosion of environmental and public protections by the Patrick Administration. Specifically, the "limited project" status proposed for wind turbines increases environmental, public safety and economic risks. This administration attempts to color as beneficial, those benefits exclusively enjoyed by crony capitalists as our wayward Mass Public Officials.

With a vote of "No Confidence", in this Administration's green strategies, (First Wind, Evergreen Solar, Beacon Power, TPI Composites, A123 Sytems, EnerNOC, Wind Pole Ventures, etc.,), I ask that for once the Patrick Administration refrain from attempting to fix what's not broken. If in your view wind energy can stand on environmental merits, there is no need to relax environmental and public protections, repeatedly, as you continue to expose tax and ratepayers as well as the environment to unacceptable risks.

Sincerely,

Barbara Durkin
48 Moore Lane
Northboro, MA 01532
Telephone: (508) 612-4133

From:	Gaileotis@aol.com
To:	jclarke@massaudubon.org
Cc:	Commissioner, MassDEP (DEP); Harrington, Brian (DEP); hricci@massaudubon.org; linda.orel@maccweb.org; jane@thebeatnews.org
Subject:	(no subject)
Date:	Monday, December 12, 2011 10:40:27 AM

Good morning.

Since moving to Massachusetts a decade ago, I've been an admirer and supporter of MassAudubon and its intelligent, informed advocacy for wetlands. So I'm dismayed to be so totally in disagreement with a MassAudubon position on a critical environmental issue:

#5. Wetlands Targeted Review: We support DEP's proposal to immediately issue WPA file numbers and to limit the department's involvement in wetlands applications to those that are prioritized based on impact or resource sensitivity. The specifics of this proposal need to ensure that conservation commissions and DEP retain the right to require additional information or take other actions on inadequate applications, and for DEP to provide advice and support to conservation commissions.

Having worked in wetlands protection exclusively in the Berkshires, it makes me wonder -- as decisions sometimes do -- whether the inevitable Boston-centric approach reflects a world vastly different from ours. I was a member of, and chaired, the Otis commission for several years, served as agent for the Sheffield commission and after three years am in the process of retiring as agent for the Richmond commission. I have met with and consulted with several other commissions and commission chairmen.

The experience has convinced me that very, very few commissions truly know the WPA regs, have a general understanding of the complex web of state and federal regulations that are involved in many wetlands applications, and have members who are capable of conducting site visits and assessing potential resource-area impacts. And many do not have knowledgeable paid staff or consultants.

In short, your comments -- and to a greater degree those submitted by MACC -- are based on an assumption that commissions have the expertise and the resources to perform competent NOI reviews. Most in this region's small towns do not.

For applications of any significance, these volunteer commissioners face consultants whose sole objective is to get a quick approval and make the proposed project as cost-effective for the client as possible. And whose overriding goal, to achieve that objective, is to circumvent as many regulatory requirements as possible.

The most common "mistake" by consultants filing a NOI is to check "buffer zone only," as it is well known that this almost always ensures assignment of a file number without thorough DEP review.

I'll spare you my list of "buffer zone projects" that had significant impact on pristine streams and BVW (including one within an ACEC), that filled BLSF and sacrificed RFA by referring to perennial streams as intermittent.

In addition to circumventing oversight, these "buffer-zone project" NOIs deprive DEP and the commissions with the fee money associated with resource-area impacts. So we not only sacrifice wetlands, we give them away free of charge.

Under the current proposal, we will live in a world of "buffer zone projects" approved by beleaguered volunteer commissions faced with multiple complex applications and minimal or no expert advice. There will be few "red flags" to signal pre-permitting involvement by a sorely understaffed DEP. So DEP will, instead, increasingly be forced to shift roles, from "good cop" to "bad cop," forced to intervene after faulty decisions have been made and shovels have hit the ground. And forced to manage through the inevitable negative publicity, letters to editors and calls to legislators.

In our rural towns -- approximately 150 of them within WERO -- we have enormous amounts of undeveloped land containing wetlands. This proposal, if enacted, will put those areas at great risk.

As you know, the current municipally based wetlands protection process was cobbled together in crazy-quilt fashion, and tossed into the laps of commissions that had been created to hold and conserve public lands. It is an unworkable system, and is becoming more unworkable under a patchwork of changes motivated solely by budgetary considerations.

If we must put budgetary considerations first, let us be brave, dismantle the entire process and begin anew. Consider the T5 model, where boards of health provide oversight for decisions made by health agents who are professionals trained in their field, and who are ***required*** to continuously update their training. Smaller towns share resources effectively, e.g. Tri-town Health in Lee. Using this model, the degree of DEP review could be determined under a system establishing thresholds that related directly to potential wetlands impact.

Thank you for considering another perspective -- and thank you for all that you do to protect our environment. I'm hoping you, and DEP/EOEEA, will take another look at this issue. (I'm also hoping that, despite the fact that I missed the deadline, Commissioner Kimmell will read and consider this input.)

Respectfully yours,

Gail Palmer
Otis
413.386.8574

NEPONSET RIVER WATERSHED ASSOCIATION

2173 Washington Street • Canton, MA 02021
Phone 781-575-0354 • Fax 781-575-9971 • www.neponset.org

December 5, 2011

Commissioner Kenneth Kimmell
MassDEP
One Winter Street
Boston, MA 02108
Via Email: MassDEP.Commissioner@state.ma.us

RE: Comments on Commissioner's Draft Regulatory Reform Plan

Dear Commissioner Kimmell:

The Neponset River Watershed Association (NepRWA) greatly appreciates the Department's solicitation of public comments on its draft Regulatory Reform Plan before it issues its formal regulatory proposals. NepRWA sincerely sympathizes with the predicament the Department is in due to the enormous budget cuts to which it has been subject in the last few years. We understand the need to prioritize and streamline your work and appreciate the efforts you have made in drafting proposals to do so in a manner that, for the most part, avoids reduction of environmental protection standards. In only a few circumstances do we feel that your proposals clearly fail in that effort -- in particular, your proposal to eliminate all sewer connection and extension permits (see comments on Proposal # 11, below) -- and in some other cases we believe that preservation of current standards will require additional safeguards and careful drafting of regulatory revisions.

Please accept the following comments on your draft Regulatory Reform Plan.

Sewer Connections and Extensions.

Proposal # 11, pp. 6-7: The Neponset River Watershed Association, Conservation Law Foundation, and PEER worked very closely with MassDEP in 2006 to carefully craft regulatory changes that eliminated more than half of previously required sewer connection and extension permits. Although there may still be cases where state permitting of sewer extensions and connections is duplicative of permits issued by municipal sewer authorities and publically owned treatment works (POTWs), MassDEP's proposal to eliminate all state sewer connection and extension permitting is extremely ill advised and is based on two false assumptions:

- that municipal agencies with authority to issue local sewer connection and extension permits have adequate incentive to deny permits to large new economic development projects, even when the POTW that will receive the additional wastewater is at or near its capacity to treat existing quantities of sewage; and

- that all, or even most, POTWs are adequately monitoring and treating (or requiring industrial sewer dischargers to pre-treat) chemicals that can "pass through" POTWs and have the potential to enter our surface waters in toxic amounts.

Permitting of sewer discharges that exceed or approach POTWs treatment design capacity. The great majority of local sewer connection and extension permits are issued not by municipal or regional POTWs, but by separate municipal sewer authorities. Although federal and state rules require POTWs to begin reviewing their treatment capabilities as soon as sewer flows reach 80% of a facility's design flow capacity, there is little incentive for municipalities to deny sewer connection or extension permits for desireable economic development projects that may exceed or approach that capacity. State permit review is sometimes the only protection against new sewer discharges that, individually or cumulatively, can overwhelm a POTWs ability to adequately treat sewage in accordance with its NPDES permit.

Permitting of industrial sewer discharges. An even greater threat to water quality in the Commonwealth is the potential of some industrial sewer discharges to contain highly toxic chemicals that are not regulated in POTWs' NPDES permits and thus are neither monitored or treated before being discharged into our surface waters. With the exception of a handful of large POTWs like MWRA with sophisticated Industrial pre-treatment programs (IPPs), nobody has even asked industrial sewer discharges which toxic pollutants, if any, they are putting into the sewers. In fact, POTWs with IPP programs are only required by their NPDES permits to monitor and require pre-treatment of a very limited list of known contaminants, but not to find out if any other dangerous chemicals are being discharged into their sewer systems.

Most POTWs in Massachusetts are non-IPPs with no training or ability to regulate toxic industrial discharges, yet an analysis done in 2006 uncovered numerous new sewer tie-ins to non-IPP POTWs by companies working with dangerous chemicals. Despite this fact, not a single POTW has been certified as an approved IPP in more than a decade.

In late 2006, MassDEP proposed regulations to reduce by about 90% the number of sewer connections and extensions required to obtain state permits. The Neponset River Watershed Association, the Conservation Law Foundation, and PEER (along with a dozen other groups) spoke out in opposition to that proposal, but in the end a compromise was reached which reduced the number of permit exemptions, especially for industries discharging to POTWs without IPPs. The most important part of the compromise was a regulatory provision adopted by DEP that requires specified industries and commercial concerns such as manufacturers, garages, hospitals and laboratories to report toxic discharges to MassDEP so the Department could determine whether additional regulation is needed to protect surface waters. 314 CMR 7.05(2)(g) states: "*The toxic reporting requirement contained in this section shall become effective upon the Department's issuance of written guidance, which shall occur no later than January 12, 2009.*"

In 2008, MassDEP set up an Advisory Committee, which included representatives of affected industries, to help draft that guidance. The Committee unanimously agreed on a strategy devised by DEP staff that would have minimized reporting requirements for industries unless specific problem pollutants were contained in products entering their wastewater stream. A toxics use survey was created by DEP staff, approved by the Advisory Committee, and was ready to be sent out to affected companies when in 2010 DEP decided to ignore its own regulatory mandate and shelve the sewer toxics reporting program indefinitely.

If it is to now further reduce the number of sewer extensions and connections required to obtain state permits, it is essential that DEP first make a binding commitment to fully implement its toxics reporting regulation. Furthermore, state sewer permits should not be eliminated for industrial and commercial dischargers covered by this provision until the results of the toxics survey are in and DEP has taken action, if necessary, to ensure that toxics are not being discharged into our rivers and streams without first being treated by the dischargers and/or the POTWs.

Shifts in DEP staffing resulting from this proposed regulatory revision. The Draft Regulatory Reform Plan states that DEP "will shift resources from duplicating local permitting to instead focus on wastewater treatment and collection system issues such as infiltration/inflow (I/I), capacity issues, sanitary sewer overflows and industrial pretreatment programs." We would like to know what the current staffing levels are for each of these programs and what they would be if this regulatory change were to occur (although the priority for any saved staff time should be to implement the industrial toxics reporting requirement). The fact is that MassDEP over the last few years has shifted its only staff with significant expertise in industrial pretreatment to other programs. Will those staff be shifted back to IPP if this regulatory reform proposal is adopted?

MEPA Filing Required. Finally, a proposal to eliminate sewer connection and extension permits requires a MEPA filing. 301 CMR 11.03(12)(b) requires that an Environmental Notification Form be filed for:

> *Promulgation of New or revised regulations, of which a primary purpose is protecting*
>
> *Against Damage to the Environment, that significantly reduce:*
>
> *1. standards for environmental protection*
>
> *2. opportunities for public participation in permitting or other review processes; or*
>
> *3. public access to information generated or provide in accordance with the regulations.*

DEP's Draft Regulatory Reform Plan states that "MassDEP acknowledges … that the current right to appeal these permits would not exist if the permits are eliminated." DEP's claim that only one permit appeal has occurred in the last three years is almost surely due to the fact that DEP is not enforcing the requirement to apply for these permits in the first place. There

have certainly been dozens if not hundreds of sewer connection and extensions permitted by local authorities that have exceeded state permitting thresholds but that failed to obtain state permits. Parties who have applied at the state level have done so voluntarily, and thus are likely to be the “good guys" whose practices are in compliance with regulatory standards and thus are unlikely to have their permits appealed by third parties.

Water Quality Certifications (WQC). Proposal #1, p. 3: We strongly oppose allowing a 401 WQC permit-by-rule for applicants that secure Wetlands Protection Act and c. 91 approvals. WQCs serve the purpose of ensuring that state water quality standards are met, which entails examination of different issues than OOCs/SOCs and c. 91 licenses. Such permits-by-rule would be contrary to the requirements of the federal Clean Water Act.

Chapter 91

• Proposal #2, p. 4: If DEP changes its regulations to allow Chapter 91 licensing to run concurrently with MEPA review, applicants should be required to disclose in detail in the MEPA filing the public benefits and public detriments of the proposed project.

• Proposals # 3-4, p. 4: DEP should use time saved by issuance of general permits for small docks and piers to much more actively determine compliance with and enforce navigational and shoreline public access rights. DEP should consider raising license fees for these projects, if necessary, to ensure that this happens.

Wetlands

• Proposal # 6, p. 5: The ecological importance of maintaining significant buffer zones is beyond dispute, and buffers should be larger to be truly protective. Unless strong performance standards are established and eligible projects are limited to those that are unlikely to have significant wetland impacts, we cannot support this proposal.

• Proposal #7, p. 5: The proposal to exempt wetland “resources areas” created by stormwater management structures constructed prior to 1996 is reasonable so long as operations and maintenance records can be produced and an inspection report demonstrates that the systems are functioning as designed.

• Proposal #8, p. 6: We fully support the proposal to expedite and streamline permitting for ecological restoration projects, such as dam removals, where environmental benefits are expected to significantly outweigh impacts. However great care must be taken so as not to include projects that provide largely aesthetic value (such as turning other resource areas into ponds) with little or no advantage to wetland functions.

Waste Site Cleanup

• Proposal # 17, p. 9: DEP has a number of requirements for filing Activity and Use Limitations (AULs) with Registries of Deeds, often requiring multiple trips to the relevant Registry. We

support efforts to refine the requirements to reduce complications without sacrificing important information. Increased public accessibility of on-line information regarding AULs would benefit DEP and the public alike.

• Proposal #18, p. 9: DEP's proposal to eliminate Tier I Permits unfortunately would eliminate the option of writing special requirements into the permit. If permits were eliminated, the MCP would need to be amended to provide alternative enforcement mechanisms.

Presumptive Approval of Permit Renewals. Proposal #19, p. 10: We do not feel it is possible for us to comment on this proposal until the Department identifies the individual permits and precise circumstances for which presumptive approvals would be issued.

E-filing. Proposal #20, p. 10: We strongly support efforts to significantly expand or require e-filing of applications, so long as full public access is provided for every filing.

Thank you very much for this early opportunity to comment on your Regulatory Reform Plan.

Sincerely yours,

Steve Pearlman
Advocacy Director

regs, policies, etc/12-5-11 comments on dep reg reform proposals.docx

LSP Association
assess. advise. restore.

401 Edgewater Place, Suite 600
Wakefield, MA 01880
tel: 781-876-8915 • fax: 781-623-6107
email: info@lspa.org • www.lspa.org

December 5, 2011

Commissioner Kenneth Kimmell c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: LSP Association Comments
Commissioner's Draft Action Plan for Regulatory Reform
October 24, 2011 Public Review Draft

Dear Commissioner Kimmell:

The LSP Association (LSPA), a professional non-profit association of over 900 LSPs and other environmental professionals, respectfully submits the following comments and suggestions related to the October 24, 2011 Public Review Draft Action Plan for Regulatory Reform published electronically by the Massachusetts Department of Environmental Protection (MassDEP).

The LSPA recognizes the significant effort that MassDEP has put into developing recommendations for streamlining environmental regulations across the full jurisdiction of MassDEP, not only for the waste site cleanup program.

We support the two proposed revisions to the waste site cleanup regulations:

- Elimination of the tier classification process and numerical ranking system. The process is time consuming, and in our opinion does not result in significant added protection of public health and the environment. A single, simplified permit for sites for which a Response Action Outcome (RAO) has not been filed within one year of notification is all that is needed, except perhaps for that small universe of sites which require direct MassDEP involvement.
- The proposed streamlining of the Activity and Use Limitation (AUL) forms and the filing/public notice process will significantly reduce both the preparation and review resources required for this document. Reforming the AUL process will also assist in clearly communicating the AUL provisions and increasing post-RAO compliance with the AULs. This effort should build on some of the reforms proposed in the draft revised AUL guidance published previously this year.

LSP Association
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In addition, we suggest that the Department also consider the following additional changes, which we feel will further reduce MassDEP's resource commitment without compromising the interests of the MCP.

- Reform the Bill of Lading (BOL) process. As it currently stands, BOLs are more cumbersome than hazardous waste manifests, requiring numerous redundant and voluminous submittals, including the resubmission of analytical data that has already been provided as part of the waste profile process.
- Continue efforts to improve eDEP usefulness and reliability. We understand this is a MassDEP priority, and applaud your efforts in this regard. When the system is working, it reduces the time MassDEP must spend responding to inquiries and managing office file review visits – and not incidentally, it reduces the time spent by the regulated and real estate communities in acquiring this data.
- While revising the AUL provisions, make the various timing requirements for AUL amendments consistent with those applicable to the original AUL. This may only provide a small direct benefit with regard to MassDEP resource allocation, but by reducing the confusion created by inconsistent timeframes these changes will provide an indirect benefit by reducing the amount of time MassDEP staff have to spend on enforcing these confusing requirements.
- Extend the deadline for completion of the Phase II Comprehensive Site Assessment (CSA) following completion of Phase I. Incremental additions (by policy and guidance) to the work required for a CSA, such as multiple quarterly rounds of groundwater sampling, and seasonally- and worst-case conditions-driven indoor air sampling have made it increasingly difficult to complete a CSA in two years, particularly if the requirement for such work is not identified until later in the investigation (sometimes as the result of data generated part-way through the CSA process).
- Revise the definition of LNAPL and UCLs to streamline the MCP closure process.
- Provide for an optional "fee for audit" process where, for a fee, DEP will provide an audit and notice of audit findings when requested by the performing PRP at a particular site.

In addition to the regulatory reform items suggested above, the LSPA also urges the Department to prioritize those workgroup issues that have been discussed and debated for many years. These include LNAPL, Historic Urban Fill (HUF), and Asbestos in Soil. We believe that resolution of the issues raised in these work groups will serve to streamline the MCP process for all stakeholders.

Finally, although the majority of the LSPA comments relate specifically to MCP/21E program reforms, we also offer the following suggestion regarding another program reform in an area which often impacts the LSP profession.

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- The LSPA applauds and encourages streamlining and combining the wetlands/coast permitting processes. A sediment remediation project under the MCP can require multiple permits (Chapter 91, Water Quality, Wetlands, federal Clean Water Act dredge and fill, NPDES, etc.) all of which govern the same resource areas, receive similar reviews and require submittal of similar supporting information. The time it takes to obtain, report on and close out each of these regulatory instruments delays environmental cleanup, expends duplicative resources, and does not result in incrementally greater protection of public health and the environment.

We appreciate the opportunity to comment on the Draft Action Plan for Regulatory Reform, and look forward to the finalization and implementation of the recommended changes. As always, please feel free to contact the LSPA if you have any questions regarding our comments, or if you think we can be of further assistance in this matter.

Sincerely,

LSP Association

Suzanne Courtemanche, LSP, CHMM
President

Wendy L. Rundle
Executive Director

cc: Liz Callahan, Acting Division Director, Policy and Program Planning, BWSC, MassDEP

Stephen H. Kaiser
191 Hamilton St.
Cambridge Mass. 02139

To : Alicia McDevitt, Deputy Commissioner, MassDEP

From : Stephen H. Kaiser, PhD

Comment #1 on Draft Action Plan for Regulatory Reform

This is the first of two comments I plan to submit to DEP in response to the Department's request for public comment.

It is a very valid priority for DEP to speak openly in public about the realities of reduced budgets and staffing in combination with increased responsibilities. Those elevated responsibilities include energy, global warming, and water management.

DEP was originally established in 1973 as DEQE -- the Department of Environmental Quality Engineering. Many of the original employees were hired into engineering positions. Unfortunately, the shift in recent years to a DEP with less emphasis on engineering has left the agency insufficiently prepared to deal with new responsibilities on highly technical issues.

Indeed, the increased oversight of energy issues was imposed on DEP without any increase in staff positions. With declining budgets, the energy burden on DEP is a classic case highlighted in the Commissioner's letter -- there is fewer staff, but more responsibilities.

The only way for DEP to absorb a 25 percent drop in personnel is either to assume there was a 25 staff inefficiency a decade ago that has miraculously been remedied, or assume management can find ways for already efficient employees to work 25% harder to get things done. The undesirable alternative is lesser protection of the environment -- a possible future that DEP openly seeks to avoid.

The challenge for DEP in developing a new focus on regulatory responsibilities is to maintain credibility in what has been called the “regulatory battlefield” -- with developers seeking less, while environmentalists seek more or simple retention of what regulations already exist. DEP will need to preserve the ideal image of neutrality between these opposing forces.

I have been involved in at least a half-dozen legal appeals to DEP actions. I have been impressed by the extent of staff time which must be applied to affidavits, legal briefs, meetings and other activities associated with the defense of the agency's actions. I agree that it would be better if citizens did not feel the need to appeal.

There seem to be two approaches to the burden of appeals. The first is to make appeals more difficult to file or to assure that DEP has greater control over the appeals process. This approach has been a primary DEP priority in the recent past.

The other approach is to ask the question : is there some action DEP could take to reduce the level of public discontent that causes these appeals? Are there unnecessary adversarial relations between the Department and the public, with staff time spent on adversarial matters? Are their possible adjustments to the permitting process so that the credibility of the regulatory process is improved in such a way that the need for appeals is reduced?

Another approach to the issue of staff workloads (including appeals) is to consider a proactive approach to major issues with a strategy of dealing with them in a regulatory capacity to reduce total controversy. Issues which come to mind are water management and biomass power plants.

The DEP advisory process must be strengthened to avoid the controversy of October 2009 which resulted in EEA's creation of the Sustainable Water Management Initiative and the numerous meetings of committees and subcommittees over the past two years. Neither committee has met for four months. There has been little evidence of progress. Such a situation cannot be beneficial to DEP staff morale.

Certainly there should be opportunities in water management leadership to find more efficient ways of problem solving and the use of everyone's time. With good strategic policy leadership, there would have been no need for the formation of the SWMI process, its two large advisory committees, and its recent drift into inactivity.

A proactive role for DEP in biomass would have been to advocate for EIRs for two very controversial plants in Western Mass. In the instances of Springfield and Greenfield, much of the resulting public displeasure over these projects was directed at DEP. Key issues should have been handled in the MEPA process. One of the functions of MEPA is to do just that -- to serve as a forum for concerns and alternatives in an orderly resolution process. The goal is to obtain information, consider alternatives, and resolve disputes through the consultation and EIR process.

It is true that in the case of Russell Biomass, MEPA did require an EIR, while the DEP water withdrawal permit was also appealed by aggrieved citizens. In this instance, the effectiveness of the process was limited by the revolving door problem in state employment : the MEPA staff reviewer who scoped and approved the EIRs left state employment to go to work for the consultant who wrote the EIR.

Staff overload has been produced by top-level decisions in the past three or four years -- especially to assign the burden of energy policy onto existing DEP staff. With declining staff levels, employees were told to take on the complex technical challenges of energy development and conservation. Technically skilled DEP employees were stretched even more, while others had to cut back on non-energy responsibilities previously assigned.

As DEP well knows, I was an expert witness for the appellants in the Russell case. I appreciated the work of the Western Region in preventing damage from withdrawals under drought conditions, and the manner that staff responded to concerns expressed by the state office of Fish and Wildlife. These skills need to be appreciated and defended.

The DEP objective should be to become proactive and efficient in dealing with controversial or complex issues,. At the same time the agency must work to retain high quality personnel so they can continue to serve the public in difficult times.

My immediate solution to the energy issue is to require more help and coordination from the state energy office and from the technical universities such as MIT and Lowell Tech. DEP energy expertise can now become concentrated on permit writing for air, noise and water issues. DEP should seek MEPA help in having as much information and issues placed on the table early in the process -- before the department begins the technical task of permit writing. As I shall explain in my later comment I am opposed to concurrent MEPA review and DEP permit writing.

DEP should be quite candid about the forces that are trying to change the state's legal process by watering down regulations, allowing for perversions of regulation called “self-permitting” and not supporting adequate staffing levels for DEP. Where there is any relaxation in formal permitting by the state, there should be stepped up selective enforcement to encourage self-compliance with the law, even when there are insufficient state employees to assure full compliance with those laws.

Our economic system works very well in many cases, but too often the Invisible Hand points the way to simple anti-social greed. Wetlands and tidelands cannot protect themselves. Only humans can do that, and -- to avoid vigilantism or protests similar to Occupy Wall Street -- the government needs to perform its role with fairness and credibility. It cannot do so if the primary regulatory mandate is to move at the speed of business and to protect interests that are too big to fail.

For DEP's regulatory plans, it will be important to frame its regulatory and enforcement policies around the authorization provided by law. One of the key lessons from the tidelands case of Moot v. DEP is the importance of assuring that state regulatory changes must be duly authorized by the Legislature. If there are any actions in the new DEP plan that may require Legislative action, we should know early in the process.

As a bulwark against the special interests seeking regulatory dismemberment and any loss of focus among DEP staff about the importance of their mission, I would stress to every official in this Administration -- from the Governor down to the Commissioner's staff -- that our Commonwealth is governed not only by its legislative laws, codified as Mass General Laws or MGL, but also by the state Constitution. In the very front of the Constitution is the Declaration of Rights. Thirty fundamental rights are guaranteed therein.

Article 7 begins : " *Government is instituted for the Common good, for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family or Class of men.*"

This stated function of all government is vital guidance for all state employees, and a very useful directive for DEP in all its future actions. I suspect that greater compliance with Article 7 would result in <u>less citizen discontent</u>. There would be fewer appeals and better environmental protection.

Should there by anyone inclined to proclaim our Constitution outdated and irrelevant, I would cite the evidence within the past few days of a call by the Vatican for radical reform of the world's financial systems. In 2009, a Papal encyclical had denounced the profit-at-any-cost attitudes that dominate current thinking and were responsible for the 2008 global financial meltdown. The latest Vatican document criticized "*an economic liberalism that spurns rules and controls*" while instead urging economic systems that are based on ethics and the "*achievement of a universal common good.*"

The Vatican report uses the words "Common good" eighteen times These are exactly the words that are found in Article 7 of our state Constitution.

Sincerely,

Stephen H. Kaiser, PhD

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November 23, 2011

Jakarta Childers, Commissioners Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Dear Sir or Madam:

Re: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

This follows Commissioner Kenneth Kimmell's October 24 request for comments on a draft action plan for regulatory reform.

As a taxpayer, prospective employer and a professional practitioner in the State of Massachusetts, I certainly appreciate the opportunity to provide comments on regulatory reform at the Massachusetts Department of Environmental Protection (MassDEP).

I highlight three over-riding concerns: duplicate regulation, continued administration and enforcement of obsolete regulations and the existence of burdensome regulations that benefit neither the environment nor citizens doing business in this state. It is my belief that regulatory reform must rise to the highest levels of priority at all levels of government. The State of Massachusetts and the Federal Government must both cut expenses and enable a climate conducive to economic growth.

The following paragraphs highlight specific comments to Commissioner Kimmell's proposal. I highlight additional program areas that should also be subjects of regulatory review and reform.

1 Duplicate Regulation

General comment: there is no need for duplicate and overlapping regulations.

Paragraph 11: Sanitary and Industrial Wastewater ...

MassDEP proposes to eliminate its separate certification and approval of sanitary and industrial connections. I laud this measure.

The United States Environmental Protection Agency (EPA) has primacy on administrating and enforcing water pollution control regulations. EPA regulations impose direct requirements on sewage treatment plants under the National Pollutant Discharge Elimination System (NPDES). Local sewage treatment plants in turn enforce wastewater pretreatment requirements. Because wastewater discharges are already regulated by the EPA and local sewer authorities, there is no merit to MassDEP developing and enforcing regulations as well.

Mention is made of focusing efforts on 'industrial pretreatment'. Since industrial pretreatment is already regulated under the EPA pretreatment regulations[1] and local sewer authorities are required to enforce the regulations, this is also an area where MassDEP can release its resources.

Summary: do not regulate wastewater discharges that the EPA and local sewer authority already regulate.

Paragraph 13: Eliminate Duplicate State Approvals

Both MassDEP and local boards of health regulate discharges from underground sewage disposal systems (septic systems) . I agree with MassDEP's proposition that there is no need for the duplicate regulation. MassDEP proposes to shift permitting authority to local boards of health.

I suggest that a slightly different tact be taken for this good idea. I suggest that MassDEP regulate septic system discharges for the following reasons:

- The concerns with water pollution and protection of the public health are uniform across the state.
- Local boards come and go with members having wide ranges of experience with septic systems and the regulatory process in general.
- MassDEP generally has a higher and more consistent level of expertise in this area than disparate boards of health.
- MassDEP's managing this program ensures the uniformity of regulation across the state.

Summary: regulate wastewater discharges under the existing State Sanitary Code to insure uniform regulation and application of the same.

Greenhouse Gas Registration: Duplicate Regulations

MassDEP recently inaugurated a new reporting program, complete with an expensive and burdensome 3rd party certification. It now requires Massachusetts entities to prepare elaborate reports of greenhouse gas emissions for some State of California advocacy group.[2]

This regulation is an information collection effort that completely duplicates information collection efforts already undertaken by others. Aside from placing an unnecessary burden on Massachusetts

[1] 40CFR403 et. seq.
[2] 310 CMR 7.71

businesses, the program benefits no one. The following are excerpts from a letter I prepared in February 2011 for the local representative to the State of Massachusetts General Assembly:

- MassDEP wants to know how much each vehicle used by industrial and commercial facilities is driven. The Department of Transportation (DOT) already collects and has collected this information for many years - through the annual vehicle inspections every vehicle undergoes. Doubtless, MassDEP communicates with DOT.
- MassDEP wants to know the gas consumption of every vehicle. Gas consumption data is already available through the Department of Revenue (DOR) sales tax data and the bureaus of weights and measures that calibrate gasoline and diesel dispensing pumps. Doubtless, DEP communicates with DOR. DEP, after all is a tax collection agency as it levies its multitudes of 'fees' on the state's employers.
- MassDEP is now looking to gather data on water coolers, drinking fountains and air conditioner units. An enquiry through Sears and Roebuck and other vendors of this equipment will give a good idea of how many of these things are sold. The EPA already has emission factors on the quantities of refrigerant leaked to the atmosphere from these things.

Greenhouse gas registration increases administrative requirements on both businesses and MassDEP without reducing the likelihood of 'global warming'.

Summary: Eliminate the Greenhouse Gas Registration Program.

Hazardous Waste Regulation: Duplicate Regulations

The EPA promulgated a complete set of hazardous waste regulations in 1980. MassDEP soon followed with a regulatory program that completely overlaps the EPA program and imposes additional 'more stringent' regulations on Massachusetts businesses. The hazards and need for hazardous waste regulation are the same across the entire country. There is no need for separate state by state regulation, the EPA wishes notwithstanding. For Massachusetts to develop, administer and enforce a unique variant of the federal regulation makes it more difficult for businesses to compete in this state and discourages out-of-state businesses from locating/relocating here.

The need for cost reduction is great. I suggest that MassDEP terminate its hazardous waste program shifting its efforts to enforcing the EPA regulations as developed and promulgated by the EPA.

Summary: Eliminate the state-unique hazardous waste program; enforce the EPA hazardous waste regulations.

2 Obsolete Regulations

General comment: obsolete regulations may once have served a purpose. They no longer have merit.

Toxic Use Reduction Act

The State of Massachusetts adopted the Toxic Use Reduction Act (TURA) in the 1980's that required businesses to 'plan' for toxic chemical use reduction. The program had the positive effect of reducing toxic chemical use in the state. The regulation had an unusual edict effecting businesses and practitioners alike: the need to hire specially MassDEP-certified 'toxic use reduction planners' to certify 'toxic use reduction plans'. While DEP collects fees from the 'toxic use reduction planner' licensing effort, the license serves no purpose at all exept to advance requirements rendered obsolete a generation ago. Alternate-annual (once every other year) TURA planning has now devolved to a rehashing of a 20-year old business plan written to MassDEP specification that may or may not have any relevance to a modern business plan that business develops.

The TURA has met its need; it is now time for the program to expire.

Summary: Eliminate the Toxic Use Reduction Act program.

Paragraph 21: Asbestos

Asbestos regulation grew from concerns with asbestos found in schools some 30 years ago. The EPA through its Asbestos Hazard Emergency Response Act (AHERA), along with the Federal Occupational Safety and Health Administration (OSHA) and others devised numerous programs that encouraged the removal of (especially friable) asbestos. Instead of adopting and enforcing the federal regulations, MassDEP developed, administers and enforces state-unique requirements. There is nothing unique about the asbestos found in Massachusetts contrasted with that found on other states. Further, since the majority of high-risk asbestos has been removed from service. Much, but not all of the MassDEP asbestos program can be eliminated.

Commissioner Kimmell implies that MassDEP has an obligation to 'ensure that homeowners keep themselves safe'. Neither MassDEP nor any other government agency has an obligation to force homeowners to enhance their personal safety. I do suggest however, that MassDEP continue to prepare and distribute fliers highlighting safe ways to remove asbestos: do not sand vinyl asbestos tiles (VAT); use a heat gun to assist their removal &c. Once it is buried in a landfill, asbestos is no longer hazardous waste.

Summary: Reduce the scope of the asbestos control programs.

3 Burdensome and Unnecessary Regulations

General comment: some regulations appear to have no purpose other than to stifle economic growth and competitiveness, Portions of the TURA regulation focused on 'TURA Planners' and portions of the Sanitary and Industrial Wastewater Program pertaining to specially licensed 'wastewater treatment operators' appear to fit within the category of 'Burdensome' as well.

Paragraph 12: Wastewater Title 5: Innovative Program

'MassDEP proposes to streamline the review of 'innovative and alternative' ... [septic systems]. This is a good idea whose time has come.

Historically, private standards-setting organizations such as the National Fire Protection Association, (NFPA) the American Society of Testing and Materials (ASTM) and many others have set industry consensus standards on equipment and practices. I would expect that MassDEP could greatly simplify its Sanitary Code regulations by adopting requirements stating that system installers will use approved equipment to be installed 'in accordance with manufacturers instruction'.

Compliance with the state sanitary code is established from a single parameter: the concentration of pollutants down-gradient from subject underground wastewater disposal systems. If a system treats sewage, it is compliant; if it does not treat sewage; it is not compliant.

Summary: MassDEP proposes to simplify the approval of septic system components. Good idea!

Paragraph 19: Many Programs - Self Certification

MassDEP acknowledges that facilities carry permits that have a specific expiry. These permits are similar to drivers licenses. Once expired a facility should be able to renew its permit through a presumptive approval. This is a good idea whose time has long come. I laud MassDEP in suggesting that presumptive approval permitting both reduces agency staff load and requirements on businesses and others in the state. I caution the DEP that should this idea come to pass that it advise all facilities of pending expiry of their permits. The institutional failure of the State of Massachusetts Department of Transportation (DOT) to notify drivers of the impending expiry of their licenses is at best lax and reflects poorly on the government of Massachusetts as a whole.

MassDEP clearly states that it will not consider reforming the Title V (air operating permits) program, ostensibly due to some federal requirement. I believe that if government in general (both federal and state) is seriously considering cost reduction and opening doors to econonic growth, then the governmental units must cooperate to achieve the most expeditious means of environmental protection. History has shown that it takes many years for MassDEP to issue Title V operating permits notwithstanding any statutory deadlines, even for relatively simple facilities. Presumptive approvals are much more conducive to business planning and jobs creation than the current scheme for air pollution operating permit approvals.

Summary: All operating-type permits are candidates for presumptive approval unless there is a compelling reason otherwise. 'Bureaucratic red tape' is not a compelling reason.

Closure

I appreciate the opportunity to offer comments. If you have any questions or would like to discuss any of items in further detail, please contact the undersigned.

Sincerely yours,

Edward N. Lewis

Berkshire Environmental Action Team

Working with you to protect the environment for wildlife

Draft Regulatory Reform Action Plan
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Via Email: mailto:MassDEP.Commissioner@state.ma.us

Re : Commissioner's Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell,

Thank you for the opportunity for Berkshire Environmental Action Team (BEAT) to provide comment on the Commissioner's Action Plan for Regulatory Reform at MassDEP. BEAT is a 501(c)3 non-profit with a mission to protect the environment for wildlife.

To carry out our mission we try to work closely with the Western Regional Office of the Massachusetts Department of Environmental Protection (WERO). We are very proud of WERO and appreciate their efforts to help us understand the laws and their application, as well as their efforts to help the Conservation Commissions throughout western Massachusetts. In the last several years, however, we have seen WERO's ability to protect the environment erode considerably. They now only help on the most egregious or precedent-setting cases. Smaller infractions, especially in cities or towns having less conscientious Conservation Commissions, are ignored.

BEAT is extremely worried about DEP's proposal to immediately issue WPA file numbers. We are very grateful to WERO for providing timely and often detailed comments when they issue a file number for Notices of Intent. Our Conservation Commissions often rely on this

input to help guide them in their decision making. Please reconsider this part of your Action Plan.

We are also extremely concerned about the lack of careful review of industrial energy projects that the state considers “green”. No industrial energy project should receive expedited review. All industrial energy projects should be held to the same standard that any other industrial project would have to meet.

We need to protect our environment – the support system for our lives and well being. We will continue to advocate for spending at least 2% of our budget on environmental protection. At this time Massachusetts is so far from that goal it is depressing.

Thank you for considering our comments.

Jane Winn
Executive Director

ACE
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Building Power for Environmental Justice

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December 5, 2011

Draft Regulatory Reform Action Plan
c/o Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

Dear Commissioner Kimmell and Ms. Childers:

These comments are submitted on behalf of Alternatives for Community & Environment (ACE). ACE is a non-profit environmental justice organization whose mission is:

> ACE builds the power of communities of color and low income communities in Massachusetts to eradicate environmental racism and classism, create healthy, sustainable communities, and achieve environmental justice.

We appreciate the opportunity to comment on MassDEP's public review draft of the Commissioner's Draft Action Plan for Regulatory Reform. ACE compliments MassDEP for looking for opportunities to increase its efficiencies to devote more resources to environmental protection.

ACE suggests that MassDEP make several revisions to the Action Plan, as discussed below. ACE also agrees with the comments submitted by Don't Waste Massachusetts, an alliance of statewide and local groups that supports increased waste reduction measures rather increased disposal capacity.

As a general matter, we are very concerned that MassDEP did not undertake an environmental justice analysis of each of its proposals for regulatory reform. Proposals that would reduce public notice or participation or MassDEP oversight could have a disparate impact on environmental justice populations. In addition, MassDEP should have indicated the locations of environmental justice neighborhoods in relation to facilities that would be affected by the proposed regulatory changes. For example, if landfills and transfer stations are disproportionately located in or near environmental justice communities, changes that reduce direct oversight or standards would likely have a disparate impact on environmental justice populations.

2. Chapter 91 Licensing: Revise Restrictions to Timelines

Conducting concurrent Chapter 91 licensing processes with MEPA review during a concentrated time frame may have the unnecessary impact of reducing community involvement by shortening the time for community residents to discover that a project is proceeding and to gain sufficient information to comment about such projects. ACE supports MassDEP holding public hearings at times convenient for community residents, particularly those from environmental justice communities as defined by the Massachusetts Environmental Justice Policy, and increasing the public comment period to at least 60 days. Further, it is unclear how this change would decrease MassDEP's workload. Instead, there might be times when MEPA review results in a changed project that would require changes to the chapter 91 license. Implementing the change suggested by MassDEP might, in those circumstances, increase MassDEP's workload.

3. Chapter 91 Licensing: Establish a Policy for License Terms

ACE supports making license terms uniform and known to the public. The policy should be set forth in regulations so that it is enforceable. If the policy will not be enforceable, MassDEP should consider establishing license terms in the regulations.

4. Chapter 91 Licensing: General License for Small Docks & Piers

ACE supports general licensing for non-commercial small-scale docks, piers, and similar structures. However, ACE would like to see MassDEP create a threshold for what is considered to be "small-scale." Non-commercial small scale docks, piers, and similar structures can have detrimental impacts on environmental justice communities. MassDEP should create a process where community residents can submit complaints about such small-scale structures that will result in a MassDEP investigation.

8. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

The Action Plan notes that the aquatic restoration regulatory working group will likely identify changes to the Wetlands Protection Act regulations, and, potentially other regulations. ACE requests an extended public comment period of at least 45 days to review the proposed regulatory changes.

9. Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies – Other New Technologies

ACE asks MassDEP to clearly define innovative projects that would be defined as "clean energy projects." The definition of clean energy projects should not include facilities that require a fossil fuel catalyst to operate. During the pilot of such innovative projects, MassDEP should allow for public comments about the project and to submit comments related to public health and safety and the environment.

10. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

ACE agrees that the MassDEP permit program unnecessarily overlaps with POTW permitting of industrial sewer users. ACE is concerned, however, that MassDEP's elimination of its program could result in some projects escaping MEPA review and would eliminate public notice, comment, and appeals on an important class of environmental permit.

ACE suggests that MassDEP eliminate its permit program by designating POTW permits as MassDEP permits. The POTW permits would thus be state permits for MEPA jurisdictional purposes. MassDEP should also require POTWs to notice its proposed permits for public comment and should allow appeals to MassDEP from POTW permits.

MassDEP should allow public access to eDEP's new electronic/online Discharge Monitoring Report ("NetDMR") program reports. If MassDEP ceases to issue industrial sewer user permits, the agency should develop a process to receive public complaints and comments about facilities that would have been subject to a state permit prior to implementation of the regulatory reform.

MassDEP should maintain its ability to require individual permits in situations that present public health or environmental threats including facilities that discharge priority pollutants and facilities that are causing a publicly owned treatment works facility to violate its National Pollutant Discharge Elimination System permit or who demonstrate on a quarterly basis that the facility is exceeding permitted limits based on DMR review. MassDEP should issue guidance to discuss how it plans to maintain its ability to require individual permits.

14. Wastewater: Targeted Groundwater Discharger Inspections

If MassDEP will target facilities for inspections based on DMR reviews, complaints received, and compliance issues, then MassDEP should clearly delineate a process for receiving public complaints about such facilities.

15. Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities

a. Permits by Rule for Certain Post Closure Use Activities

While in certain cases it may be feasible to allow passive recreation without structures on closed landfills, closed landfills must be monitored and properly maintained. The theoretical safety of a landfill is based on perpetual maintenance, which includes repairs to the leachate collection system and replacement of the cap.

b. Permits-by-rule for renewable energy reuse projects

While in certain cases it may be feasible to transform old landfills into solar and wind projects, MassDEP needs to determine for each closed landfill that the dangers inherent to such sites do not pose a threat to human health or the environment. Capped landfills are not uniformly safe;

routine maintenance and monitoring is necessary to ensure there are no leaks or other threats. Over time, closed landfill sites are likely to require increased monitoring to determine that settled material and new plant growth are not interfering with post closure use activities.

c. **Permits-by-Rule for Small Transfer Stations**

Certain materials are banned from disposal, including recyclable paper, glass and metal containers, asphalt pavement, brick, concrete, cathode ray tubes, clean gypsum wallboard, leaves and yard waste, and more. MassDEP must strictly enforce these waste bans. Waste ban compliance guidelines should be strengthened and permits for all transfer stations should be conditional upon compliance with the revised guidelines. Strict compliance with waste bans is urgently needed to combat climate change, conserve energy and material resources, and protect public health and the environment. MassDEP has the authority, by a statute revision passed by the legislature in 2010 and retained in 2011, to prohibit acceptance of materials at transfer stations in the interest of waste reduction and promoting recycling. ACE suggests that MassDEP add language to the reform plan that requires adherence to the waste bans.

Small transfer stations should continue to be defined by the threshold of less than or equal to 50 tons per day and not increased to 100 tons per day.

d. **Self-Certification Transfer Station Permit Renewals**

Presumptive approval for permit renewals where no modifications were made and where the facility has a track record of compliance is workable only if frequent and unannounced inspections take place at transfer stations.

16. **Solid Waste: Certified 3rd Party Inspectors for Active Landfill Inspections**

a. **Certified Solid Waste Inspectors**

- All solid waste facility inspectors should be certified by the state. MassDEP should frequently update the list of certified solid waste inspectors to ensure that inspectors' licenses are current and that no disciplinary action is pending for independent inspectors.

- Each landfill should be required to have unannounced inspections by inspectors throughout the year.

- Inspectors should not give advance notice to landfill operators as to the date when the inspection will take place.

- Inspectors should not be paid directly by landfill operators as this poses a conflict of interest. To avoid the potential influence of landfill operators on the outcome of inspection reports, inspectors should be compensated directly by MassDEP, even though the funds will originate from landfill operators.

b. **MassDEP Auditing Procedures**

- Auditing procedures should include a facility's compliance with waste bans.
- Auditing procedures should take into account public complaints about facilities.

Additional Regulatory Reforms

One regulatory reform that is not included in this Action Plan that MassDEP should consider is the newly delegated Prevention of Significant Deterioration (PSD) Program. EPA had implemented the program for years and there seems no reason for MassDEP to keep the program if it has budget and personnel constraints that require it to reduce its work where there is overlap.

Sincerely,

Staci M. Rubin

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-and-

Eugene B. Benson

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December 5, 2011

Via Electronic Mail
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RE: AECOM Comments on the MassDEP Draft Regulatory Reform Action Plan

Dear Ms. Childers,

AECOM is pleased to submit to the MassDEP comments concerning the Commissioner's *Draft Action Plan for Regulatory Reform*. AECOM understands the need to streamline processes and procedures within MassDEP to correct "a workload-resource imbalance," and AECOM applauds the Commissioner for this initiative and the chance to provide input. AECOM understands that the initiatives are presented conceptually without a lot of details at this time.

D. Waste Site Cleanup

Comments are provided below on the two Massachusetts Contingency Plan (MCP) proposed reforms. AECOM also hopes that MassDEP seriously considers reforms and initiatives that have been in the works for a number of years, including LNAPL, Vapor Intrusion, garden pathway and historic urban fill. We hope that what has been captured and learned from the various internal and external workgroups and draft guidance related to these subjects is also incorporated in reforms and regulatory changes in 2012. AECOM also assumes that MassDEP recognizes that some of these subjects are related to the proposed reforms listed below.

17. <u>Site Cleanup: Simplify Activity & Use Limitations (AULs)</u>

AECOM supports the concept of simplifying the AUL or deed restriction process for MCP sites. Keeping in mind that an AUL is a legal document and it is intended to protect citizens from residual impacts remaining at a site. AECOM agrees that streamlining the required forms, public notice procedures and therefore possibly reducing review time by MassDEP would benefit all stakeholders. This coupled with issuing a revised AUL Guidance to capture other possible related MCP regulatory changes noted above would be a very worthwhile reform.

18. <u>Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)</u>

This concept also seems favorable for all stakeholders, and AECOM supports it. Any changes to the system should not impact the clarity on how a site enters and exits the MCP process, how risk is determined, and what timeframes are applicable.

If you wish to discuss any of our comments, please do not hesitate to contact the undersigned at (978) 905-2100.

Sincerely,

David G. Austin, LSP, PG
Senior Project Manager

David L. Espy
Office Manager

Association of Massachusetts Wetland Scientists
109 Whitney Street
Northborough, MA 01532-1429
508/523-2053 www.amws.org

December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Dear Commissioner Kimmell:

As the primary professional organization for practicing wetland scientists in the Commonwealth, the AMWS membership consists of stakeholders who use the wetlands regulatory process(es) in their daily professional practices. Changes to either processes, policies or Regulations are therefore of considerable interest to this group.

We have examined the Draft Action Plan and our Board of Directors is generally in support of the measures proposed to effect a reduction in staff demands while protecting the public interests upheld by the Regulations protecting our Wetlands, Waterways and Coastal Resources. We acknowledge the need to utilize Department staff time in as efficient a manner as possible, particularly in the austere economic climate we currently experience. We also believe that any such changes should be made with careful consideration and input from stakeholder organizations including the AMWS.

Below are brief comments on the individual proposed draft amendments for wetlands regulations:

Wetlands Waterways and Coastal Resources

1. We believe the development of a common permit application for **Coastal/Dredging** activities will provide a welcome change in process and potentially reduce permitting redundancy for all concerned parties and we look forward to commenting on the format of the consolidated permit as it is developed.

2. We believe that a considered alignment of **c. 91 licensing with the MEPA** process will similarly facilitate the process with little risk of diminution of resource protection.
3. Streamlining and standardizing of **c. 91 License Terms** via establishment of a publicly vetted policy is also a favorable measure to preserve Departmental staff resources.
4. A **General License for Small Docks & Piers**, if carefully written into Regulation will allow staff resources to be applied to larger, significant projects without compromising protective interests, and may make the process more affordable for landowners as well. Such a general license should have clearly defined limitations to assure that minimal practicable alteration of the resource is required and procedures for compliance assurance if the General License is abused. Standard dimensions, materials and construction type (structurally anchored or floating) should be specified in order for a project to qualify for the General License, and presumably, standard Notices of Intent will still be required for review. We look forward to examining the Draft Regulations when prepared.
5. **Targeted Review by DEP** is also meritorious, <u>provided that</u> the Circuit Rider Program is adequately funded and staffed to support municipalities, and in particular those with limited staff or no staff.

   We believe that automatic/immediate issuance of File Numbers is desirable. This will avoid unnecessary delays that are sometimes experienced with filings and sometimes protracts otherwise simple environmental review. This does however, limit the quality assurance of submittals to the municipality only. There is some risk that approved, but incomplete filings could lead to increases in appeals, and although it is presumed that municipalities conduct thorough scrutiny of filings, that burden would then be exclusively theirs.

   The potential diversion of departmental staff time to higher order matters and support of municipalities as, and when needed, would potentially increase the effectiveness of the Program while discouraging frivolous appeals. Provision of adequate support of municipalities is however, critical to acceptable amendments of this kind.

6. A **General Buffer Zone Permit** will require careful consideration in order to make it have adequately broad applicability to justify this revision while adequately protecting the statutory interests. Accurate identification of the resource area projecting the buffer zone remains important in order to avoid

abuse of this G.P. We presume and advocate that such approvals will remain reviewable under a Request for Determination.

Exemptions from the General Buffer Zone Permit in some sensitive areas should be balanced with the practicality of application of the G.P. to encourage and incentivize avoidance of the inner buffer zone. Restrictive measures to protect the inner buffer zone from subsequent degradation, with, or without permitting should also be considered prior to issuance of a G.P.

7. In particular, the **exemption of created stormwater management structures** is a desired update. Currently, applicants must often provide the same deference for aging stormwater facilities as for natural wetlands systems. Archaic stormwater facilities that represent discharge directly to (formerly) natural wetlands should not qualify for this exemption.

   Careful revision could obviate excess regulation of stormwater structures placed into service prior to 1996 and reduce project constraints while reducing departmental staff time demands. Nonetheless, rehabilitation or expansion of these facilities should still be made to meet current stormwater standards.

8. AMWS would like to participate in the working group for **Expedited Permitting of Ecologically Beneficial Projects**. Such revision may increase the inclination and ability of organizations to undertake these projects if the burden of exhaustive permitting is lightened and the goals appear more achievable.

9. The adoption of **Limited Project Status for Renewable Energy Projects**, with appropriate considerations and limitations may facilitate the Commonwealth's renewable energy goals and objectives. Wind and solar projects typically have reduced stormwater management requirements in comparison with comparably sized commercial or residential developments yet may have difficulty meeting certain performance standards of the Act. AMWS looks forward to reviewing the draft language for this proposed regulatory amendment.

10. The allowance of clearly identified, and closely chronicled **New Technologies** will allow these methodologies to be evaluated in the Commonwealth rather than rely on results from other states to guide policy and regulation in

Massachusetts. AMWS also anticipates participation in the adoption of these new policies and procedures.

AMWS acknowledges the difficulties of continuing meaningful and effective environmental protection with reduced fiscal resources available to DEP. We believe that the conceptual changes presented in the October 24, 2011 Commissioner's Action Plan are a preferable approach to transferring the processes to a self-certifying, privatized approach as has been presented during earlier considerations of wetlands regulatory reform. With careful consideration and input from stakeholders, we believe that an appropriate suite of amendments, both with regard to policy and regulatory change, can be effected.

Thank you for the opportunity to comment on these proposed changes, and we look forward to participation in their refinement.

Sincerely,

Brian O. Butler, President
Association of Massachusetts Wetland Scientists

AMWS is the ONLY professional organization providing information and continuous educational opportunities for area wetland scientists. Founded in 1991.

CITY OF BOSTON
THE ENVIRONMENT DEPARTMENT

Boston City Hall, Room 805 • Boston, MA 02201 • 617/635-3850 • FAX: 617/635-3435

December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

The Boston Conservation Commission ("the Commission") has reviewed the Commissioner's Draft Action Plan (the "Draft Plan") for Regulatory Reform at the Massachusetts Department of Environmental Protection (DEP) and appreciates the opportunity to offer comments.

The Draft Plan recommends revisions to several regulations which serve to protect the public health and environmental resources of the Commonwealth. The Massachusetts Wetlands Protection Act Regulations, which the Commission administers and enforces within Boston, is one regulatory area where changes are anticipated. The Commissioner notes the regulatory revisions are being proposed due to DEP's budgetary constraints. The guiding principles for the regulatory reforms as enumerated by the Commissioner include: maintaining environmental protection standards; increased time savings to provide for the management of responsibilities within existing staffing levels; implementation of reforms by DEP without legislative changes; not transferring responsibilities onto municipalities; and maintaining obligations under federal funding agreements. The Commissioner also specifies the proposed reforms will not reduce public process; will incentivize better environmental outcomes through revised permitting procedures; will eliminate duplication of permitting review; and, allow for more focused staff time on significant environmental issues by reducing oversight of routine activities while enhancing enforcement mechanisms.

The Commission offers the following general remarks on the Draft Plan, and specific comments on Section A. Wetlands, Waterways and Coastal Resources; and Section E. Other Areas:

The Commission understands the budgetary constraints and regulatory demands DEP is now challenged with and concurs with the Commissioner's guiding principles. The Commission, however, is concerned with the establishment of a precedent that will allow for the revision of regulations to remedy problems associated with staffing constraints. The existing regulations were promulgated to ensure the Commonwealth's environmental resources and public health are properly and effectively protected and preserved. Revisions to public health and environmental regulations should only occur when there is a need to enhance those standards, when there is clear regulatory redundancy or duplicative permitting procedures, or when standards are not serving the intent for which they were established. If regulatory changes are implemented as part of this initiative there should be periodic review of the new standards to determine if they are meeting the aforementioned goals and guiding principles, and upholding environmental and public health standards.

> Section 1. Coastal/Dredging Programs: Permit Consolidation – recommends the development of a common permit to reduce permitting time and submission of redundant information under the Wetlands Protection Act, Chapter 91 and 401 Water Quality Certification permitting processes. Consolidation of permit applications is reasonable provided applicants are required to submit adequate project related information for the regulatory bodies to properly review and condition

permits. The second provision of this section proposes permit-by-rule for certain projects that are "Adequately Regulated" by another program. This would obviate the need for filing for certain permits where projects are deemed to be adequately covered by another permitting process. As the Wetlands Protection Act, Chapter 91 and 401 Water Quality Certification regulations cover different aspects of coastal project and dredging work, DEP will need to carefully and clearly specify those types of projects that would be subject to permit-by-rule status. The proposed regulatory change should not diminish any of the regulatory entities' capacity for project oversight and enforcement.

Section 5. Wetlands: Targeted Review by DEP - suggests issuance of a DEP File Number upon submission of a Notice of Intent (NOI) allowing for Commissions to act without DEP review of the filing. Currently this is often the case, where the Commission reviews and votes on filing matters prior to receiving DEP comment. DEP comment is in many cases helpful and of value to the Commission, particularly with the stormwater standards. Understanding staff resources are limited, DEP should endeavor to at least provide timely comments to Conservation Commissions on projects with the highest potential for adverse impacts to wetland resource areas, as well as projects with substantial stormwater infrastructure improvements. This section also notes that DEP will limit review of NOI's to concentrate on projects involving sensitive resources. DEP will need to provide for public review the criteria by which it will determine sensitive and less-sensitive resources areas. Consideration should also be given to the magnitude of project impacts regardless of whether a resource area is determined to be sensitive. DEP may need to establish quantitative thresholds for impacts to resource areas and create "red flags" on NOI filing forms to alert DEP staff to such thresholds and resource areas.

Section 6. Wetlands: Buffer Zone General Permit - proposes a general permit for certain activities in the outer fifty feet (50') of the buffer zone. The intent of the general permit is to streamline the permitting process, reduce permitting timelines and incentivize the siting of certain projects to the outer 50-feet of the buffer zone. DEP must be circumspect in determining activities that will be subject to the general permit as the buffering capacities of buffer zones differ, as do the sensitivities of resource areas. To complicate matters inland resource areas often fall within the buffer zones of other resource areas. The standard, found at CMR 10.02(2)(b), which requires the filing of a Notice of Intent (NOI) if work in the Buffer Zone *is determined to alter* an Area Subject to Protection, should be a guiding principle in the development of a general permit; activities with minimal disruption to the Buffer Zone and little possibility of altering a resource area may be subject to the general permit, where larger projects that will likely alter a resource area should be subject to the existing NOI filing process.

Section 7. Wetlands: Exemptions for Stormwater Management Structures - proposes an exemption to wetland resource areas created by man-made stormwater management structures constructed prior to 1996. The Commission supports an exemption or streamlined permitting process for review of maintenance and upkeep of stormwater management structures. Proposed work that will remove or significantly alter stormwater management structures should be reviewed under the existing Notice of Intent process as such alterations can impact adjacent wetland resource areas and the overall function of the stormwater management system.

Section 8. Wetlands: Expedited Permitting for Ecological Restoration Projects - recommends streamlining of the permitting process for aquatic and ecological restoration projects. The Commission recognizes these projects enhance and improve wetland resource areas, however, local Conservation Commission review and oversight, as well as public process should not be limited through regulatory changes. Projects involving dam removal, inlet widening and stream day-lighting can have significant impacts upon wetland resource areas during construction and demolition activities. Local commissions must be able to fully vet such projects and require adequate environmental controls through the permitting process. Regulatory changes should

also not limit commissions' capacity to require construction and post-construction monitoring which are often included in restoration project permits to ensure the restoration activity has the desired effects and/or meets quantitative and qualitative restoration standards. Additionally, community and neighborhood organizations can have strong interests in restoration projects, particularly those that include historic resources such as dams, or sensitive resources such as salt marsh. Public review and comment on such projects should not be limited through regulatory changes.

Section 9. Wetlands: Limited Project Status for Renewable Energy Projects, suggests the streamlining of permitting for wind and solar projects. Limited Projects under the Wetlands Protection Act Regulations allow commissions more flexibility in the application of resource area performance standards when permitting certain types of projects, as specified in the Regulations. The Commission understands the value and importance of renewable energy projects, however, such projects can have a significant environmental footprint with their siting, construction and utility and access requirements. Regulatory revisions should define the project type, size and scope that will be subject to the limited project status. Local commissions should again have the capacity to fully review and condition such projects, and require environmental mitigation when necessary.

Section 10. Wetlands: Improved Regulatory Mechanisms for Approving New Energy Technologies - proposes changes to a coastal permitting program for approval of innovative projects. DEP must provide greater clarity on how these technologies would be defined and what would constitute a "pilot" basis. The Section references unknown and uncertain environmental impacts from these projects. As regulations and the permitting process are designed to limit and control negative environmental impacts, DEP should be prepared to develop specific monitoring and reporting requirements for pilot projects. Due to the uncertainty of project impacts environmental mitigation and restoration requirements must also be considered to compensate for detrimental environmental impacts that occur after the initial review and permitting of pilot projects.

Section 19. Many Programs: Self Certification for Certain Permit Renewals - recommends presumptive approval of permit renewals where there have been no changes to the project and the project has maintained compliance with the applicable regulations and permit. The provisions in the Wetlands Regulations for Extension Permits should not be altered as extension requests are typically reviewed by the local conservation commissions and do not involve DEP oversight and resources. Streamlined permitting renewals may be applicable for environmental permits with a term of a year or less and for projects and activities with limited environmental impacts. Given the three year term of a wetland permit the Extension Permit review process provides an important and timely opportunity to review project changes, site conditions and permit compliance. The Commission has found Extension Permits to be an important regulatory tool in its oversight of projects.

Section 20. Many Programs: Revise Fees to Incentivize Better Results - proposes the use of fee structures to reduce environmental impacts. The Commission supports this proposal to the extent that it can limit environmental impacts and redirect project disturbance away from sensitive wetland resources such as salt marsh and bordering vegetated wetlands. A revised fee schedule for wetland permitting should also establish higher fees for activities that are generally more disruptive and have a greater impact upon wetland resource areas. The Commission also supports means to facilitate greater e-filing of applications and permits.

The Commission looks forward to further review and comment on the final action plan and proposed regulatory changes to the Wetland Regulations. As the regulatory review process proceeds we trust that

proposed changes to the Commonwealth's environmental and public health and safety standards will enhance those protections while achieving DEP's goals.

Thank you for the opportunity to offer comment.

Charles Button, Chairman
Boston Conservation Commission

From:	Bois, Bob
To:	Commissioner, MassDEP (DEP)
Cc:	White, Martha; Chenard, Bill
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Tuesday, November 01, 2011 11:43:01 AM

Dear Commissioner Kenneth L. Kimmell,

I've attached a letter the Town of Natick sent to then Commissioner Golledge, dated November 13, 2003. A copy of the letter is attached. In the Letter to Commission Golledge, the Town outlined a serious and costly concern it shared with other communities to the Department's regulatory approach governing the disposal of street sweepings and catch basin residues. In addition to summarizing its concern, the town gave recommendations it thought the Department could used to fix the problem. Unfortunately, the Department's response to the town letter was to express a need for additional regulations to the BUD requirements. These new regulations were never promulgated and the draft of the BUD amended regulations were even more problematic and costly. In the mean time, we're assuming that there still remains about 351 communities across the Commonwealth who continue to collect very large volumes of street sweepings and catch basin residues. Thank you for your consideration and good luck in your effort to put outcome over process.

PS The Town spends about $10,000 a year testing its sweeping and catch basin residues and both have tested well below levels of concern. We started testing both residues in 2003.

Town of Natick
Massachusetts
01760

Philip E. Lemnios
Town Administrator

November 13, 2003

Robert W. Golledge Jr.
Commissioner
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

Subject: Street Sweepings

Bob

Dear ~~Commissioner~~ Golledge;

The growing scarcity of landfill space, the ever increasing disposal cost for street sweepings as solid waste and the sometime burdensome and costly regulatory policy directing reuse of the sweepings can result in unanticipated outcomes - increased non-compliance with various requirements governing the storage, disposal and reuse of street sweepings, the potential for increased environmental harm and, the diversion of Department resources from high priority environmental issues.

I'd like to suggest an improvement to the present approach of managing street sweepings that could benefit the environment using an existing regulatory framework while potentially saving municipalities significant costs. The suggestion is to allow a municipality greater flexibility to reuse street sweepings without prior Department approval if the municipality adopts a Street Sweeping Best Management Practice Control Measure (BMP) and includes the BMP in its Municipal Phase II Storm Water Management Plans. Under this scenario, the regulatory oversight for managing street sweepings could be provided through the federal Phase II National Pollution Discharge Elimination System (NPDS) program.

By way of background, the Town of Natick on average collects about 1,000 tons of street sweepings every spring. Prior to 2001, collected road sweepings were taken to

the town-owned landfill as a solid waste and used as daily cover at the landfill. The Town's landfill was close, capped and converted to a municipal golf course by 2001.

Presently, the town is storing, with Department knowledge, three years of collected street sweepings at the town-owned Oak Street Gravel Pit and has four (4) choices to dispose of its sweepings. It can:

1. Dispose of sweepings as a solid waste – This is costly and uses scarce landfill space.

2. Use sweepings as daily cover at a landfill – This is costly and the competition with other soils and remediation waste limits locations.

3. Use sweepings as fill or a compost additive in Public Ways – The use in road way projects is limited and would only use a small amount of residential sweepings.

4. Use sweepings for a beneficial use – This is costly, time consuming and requires prior Department approval (Beneficial Use Determination) for each location specific project or reuse.

The Town chose to ask the Department for a Beneficial Use Determination (BUD) for a five year project to reuse its street sweepings to mix with compost to manufacture soil needed to close a town-owned gavel pit and convert the approximately 15 acre property to recreational fields and parks. The reuse of the sweepings in this manner is a common practice as noted in a literature review completed during the preparation of the BUD application.

The original application was submitted to the Department in late April 2003 for the reuse of about 2000 tons of sweepings. The cost to develop the application was approximately $14,000 and included analytical work and a risk characterization to the public if the sweepings-compost mixture was used for soil at the gravel pit. Although not required, the risk characterization used a modified MCP Method 1 criterion to evaluate the risk to visitors using the future park. The risk evaluation concluded that the potential exposure to chemicals in the sweepings do not pose a significant risk of harm to adolescent and adult recreational users of the future park.

The Department was reluctant to approve the April 2003 BUD because of the size and length of the BUD request. At the request of town, the Department agreed to review a second BUD application to reuse approximately 40 tons of street sweepings mixed with sixty cubic yards of compost as a pilot. In addition to a pilot and the information collected during a pilot, the Town needed the space to collect new compost material at its Department approved compost area. The second BUD request was submitted to the Department in May, 2003.

In the mean time, the Town received a call from its consultant in early June of 2003 notifying it of an opportunity to dispose all its stored sweepings (2000 tons) at a construction project at the North Reading Landfill. The only cost to the town would be the cost of transporting the sweepings to North Reading. Once contacted, the consultant overseeing the North Reading project explained to the Town that, although he could accept remediation waste directly with a Bill of Lading signed by an LSP, the sweepings were considered a solid waste and as such, needed prior Department approval before being allowed to reuse of sweepings at the North Reading Landfill.

Neither BUD request submitted to the Department at that time identified the North Reading Landfill for the reuse of sweepings. At the request of the Department, the May, 2003 BUD application was amended by the Town to include the reuse option at the North Reading Landfill. An amendment to the May BUD application was submitted in July 1, 2003 and approved by the Department on July 3, 2003.

Following the July Department approval of the amended May BUD application, the construction consultant was contacted and the town was disappointed to find that because the North Reading project had an adequate supply of material it was now charging nine dollars a ton for material in addition to the transportation costs. The Town decided not to pay the additional $20,000 plus cost for disposal. As of the date of this letter, the Town continues to store its sweepings at the gravel pit waiting a determination from the Department on its April 2003 BUD application.

As you can see, the existing approach to regulating street sweepings result in: (1) inconsistent regulatory requirements across Department programs (e.g. contaminated soil from a 21E site can be accepted with a Bill of Lading signed be an LSP when similar or less contaminated street sweepings require location specific BUD approvals); (2) high cost to a municipality if it chooses to reuse rather than dispose of sweepings; (3) incentives to use scarce landfill space for the disposal of sweepings (mostly sand); and, (4) increased potential for illegal storage and disposal of sweepings. The unintentional environmental consequences of the existing regulatory framework potentially creates a negative impact to water resources (ground water and surface water) when the preference for salt over sand is made during winter months and sand is left longer on the roads in the spring in attempts to reduce the amount of sweepings needing to be managed.

Moving or combining the regulatory oversight of the sweeping issue from solid waste to the NPDES Storm Water program makes sense and could promote the reuse of sweepings and pollution prevention. A sweepings BMP could help towns reduce the amount of sweepings, reduce the impact to the environment, and hold down the cost of managing sweepings appropriately. The BMP could include schedules for road and parking lot work and could include analytical work on collected sweepings. It could include standards for reuse and storage and it can provide flexibility for reuse of sweepings if standards are met.

Our immediate need is to receive a determination from the Department on our April 2003 BUD application.

I would be happy to work with you and the Department on implementing these and other improvements on issues impacting municipalities. Please call me at (508) 647-6452 if you have any questions with regard to this letter. Thank you in advance for your anticipated consideration.

Sincerely,

Robert Bois
Environmental Compliance Officer

CC: Arlene O'Donnell, Department of Environmental Protection
Edward Kunce, Department of Environmental Protection
Carol Rowan West, Office of Research and Standards
James Colman, Bureau of Waste Prevention
Heidi O'Brien, Bureau of Waste Prevention
Steve DeGabriele, Bureau of Waste Prevention
Helen Waldorf, Bureau of Waste Prevention
James Doucett, Bureau of Waste Prevention
John Carrigan, Bureau of Waste Prevention
Massachusetts Municipal Association
Philip Lemnios, Natick Town Administrator
Charles Sisitsky, Natick Department of Public Works
Paul Hogan, Bureau of Resource Protection

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CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.
Executive Director

December 5, 2011

Mr. Kenneth L. Kimmell, Commissioner
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

RE: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

The Berkshire Regional Planning Commission commends many of the proposals made in the Draft Action Plan for Regulatory Reform at MassDEP. It appears that the large majority of proposals make sense and will reduce both the burden on those who have to comply with regulations and DEP staff. Specific areas where the plan appears to make appropriate reforms are:

- Chapter 91 licenses
- Many (but not all) of the Wetlands permit changes
- Many (but not all) of the Wastewater permitting changes
- Solid waste management changes
- Waste site cleanup changes
- and the proposals made for Other Areas

We do have concerns with a few specific proposals contained in the draft plan.

We oppose granting Renewable Energy Projects Limited Project Status under the Wetlands Protection Act. In the Berkshires, wind turbines are built on the ridgelines, at the headwaters of low-order, high-gradient streams. Construction in these environments requires enhanced erosion and sediment controls and the Wetlands Protection Act provides the only standard regulatory mechanism to review and permit these impacts. As we have stated in other contexts, we do not believe that it is appropriate to grant one type of development, even if it has laudable overall purposes, a "pass" on meeting other important public policy objectives, in this case, the protection of the state's waters and important wetlands resources.

We also question the elimination of sewer extension and connection approvals by DEP, at least in their entirety. We realize that DEP still would have regulatory authority to ensure that the receiving wastewater treatment plants have overall adequate capacity and are not exceeding their permitted flows. However, the MEPA review which can be triggered by a sewer extension based on its needing a sewer extension permit is important in maintaining the Commonwealth's Sustainable Development principles. Sewer extensions are a primary tool in promoting further greenfield development outside of more urbanized areas which is something that the Commonwealth has been trying to carefully manage for several decades. We believe that relaxing the State's permitting of extensions will lead to further sprawl development, which then is working against the Commonwealth's greenhouse gas reduction strategies. While it may be appropriate to review thresholds for requiring a state sewer extension permit, we believe that at some level such permits should still be required.

We would like all of the proposed regulatory reforms to be further reviewed through the lens of their impacts on the scarce or non-existent resources at the municipal level. While it appears that many would probably not trigger an increased work-load or demands on local officials, knowing that almost all of our municipalities are struggling to maintain existing services, expecting them to pick up work that previously had been done by DEP is not justifiable.

Finally, we are concerned with the elimination of the DEP Wetlands Technical Assistance program. We believe this program has been invaluable over a long period of time in providing guidance to local Conservation Commissions. In Berkshire County, many of our conservation commissions have no professional staff and consist of volunteers who have relied on the DEP technical assistance to help them to carry out their responsibilities.

If you wish to discuss our comments further, please feel free to contact me at 413-442-1521, ext 26 or by email at nkarns@berkshireplanning.org.

Sincerely,

Nathaniel W. Karns, AICP
Executive Director

Cc: The Honorable Benjamin B. Downing, State Senator
The Honorable Gailanne Cariddi, State Representative, 1st Berkshire
The Honorable Paul Mark, State Representative, 2nd Berkshire
The Honorable Tricia Farley-Bouvier, State Representative, 3rd Berkshire
The Honorable Smitty Pignatelli, State Representative, 4th Berkshire
The Honorable Therese Murray, President, State Senate
The Honorable Robert DeLeo, Speaker, State House of Representatives
Secretary Richard K. Sullivan, Jr., Executive Office of Energy & Environmental Affairs
Mr. Jeffrey Beckwith, Massachusetts Municipal Association

From:	Tom Brownrigg
To:	Commissioner, MassDEP (DEP)
Subject:	comments on DEP Draft Action Plan
Date:	Monday, December 05, 2011 4:14:19 PM

Dear DEP,

I am a member of the Carlisle Conservation Commission. Our commission did not submit comments at its last meeting (and I was not present), but I wanted to submit comments an interested individual.

Thank you,

J. Thomas Brownrigg

Commissioner's Draft Action Plan for Regulatory Reform at MassDEP
Comments
Tom Brownrigg
11/29/11

I have two comments regarding work in the buffer zone and a comment regarding the Circuit Rider Program.

DEP's Draft Action Plan states:

Wetlands: Buffer Zone General Permit

"MassDEP will establish a general permit or other similar regulatory provision for certain activities that are proposed for the outer fifty feet (50') of the buffer zone to inland wetlands. This proposal will reduce DEP staff time spent on SOOC review for buffer zone cases, and it has the potential to significantly benefit the environment by providing incentives for applicants to concentrate activity greater than 50' from the resource area. It will also save time for project proponents and for Conservation Commissions. This concept was previously deployed but was ultimately deemed unsuccessful because categorical restrictions limited the universe of eligible projects to a very small category. DEP will revisit that effort with an eye towards expanding the applicability of the general permit from the prior iteration."

1. Activities in the buffer zone

1. In 1999, DEP issued Policy 99-1 regarding activities in the buffer zone. In order to obtain a Negative Determination of Applicability, the project had to meet five criteria, two of which were:

1. Alteration within the buffer zone is less than 5,000 square feet or 10% of the buffer zone on the lot, whichever is less.

2. At a minimum a 50-ft. wide area of undisturbed vegetation in the buffer zone along the resource area is provided.

I suggest the following:

a. Allow more (temporary) alteration of the buffer zone during construction, provided that a 50 ft. wide area of undisturbed **or restored area** is provided after construction is complete. The restored area must replanted with native trees and/or shrubs, and cannot be converted to lawn.

b. The other provisions in Policy 99-1 look OK to me and I would not change them, with one exception. The fourth criterion says "does not border an Outstanding Resource Water…(i.e. certified vernal pool…)"; I would suggest changing this to "certified or **documented** vernal pool" since a potentially certifiable vernal pool might not have been certified at the time of the filing.

2. Tree removal in the buffer zone

I believe that Kelly Guarino suggested simplifying the review process for removing trees. I think this is a good idea, since in many cases the trees are white pines close to houses or driveways and have shallow root systems.

Suggestion: Allow removal of up to 10 trees (identified in an RDA) in the buffer zone, provided (1) the trees are replaced with native trees and/or shrubs, and not lawn; (2) stumps are left in the ground, but may be ground down to below ground level; (3) the trees to be removed are not within five (5) feet of a wetland, unless the trees present a safety hazard.

3. Circuit Rider Program

I was very happy to hear that DEP is keeping the Circuit Rider Program. This program provides a very valuable service to ConsCom members (mostly retired or unemployed) and administrators. We should indicate our appreciation in our comments to DEP.

25 Greens Hill Lane
Rutland, VT 05701
(802) 775-0325 main

casella
waste systems, inc.

December 5, 2011

Mr. Kenneth Kimmell, Commissioner
c/o Jakarta Childers, Assistant to the Deputy Commissioner for Policy and Planning
Massachusetts DEP
Commissioner's Office
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: MassDEP Draft Regulatory Reform Action Plan

Dear Commissioner Kimmell:

We appreciate the opportunity to provide the following comments on the '*Commissioner's Draft Action Plan for Regulatory Reform at MassDEP*' issued October 24, 2011 and available for public comment until December 5, 2011.

II. C. 16. Solid Waste: Certified 3rd Party Inspectors for Active Landfill Inspections

MassDEP proposes to expand on the existing condition in most solid waste landfill permits for a private annual compliance inspection by creating a list of certified solid waste inspectors and annually assigning these inspectors a specified number random inspections of each of the 24 active landfills (at the permit holder's expense). This will allow MassDEP to focus its staff on highest priority activities and will benefit environmental compliance. Third-party inspection results would be forwarded to MassDEP for auditing and enforcement follow-up, and would therefore allow MassDEP to target its own inspection resources to those facilities with the greatest need for agency attention. This proposal will also allow MassDEP to require facilities to undergo review and inspection more frequently than MassDEP's resources currently allow. MassDEP will establish specific measures to impose third-party inspector accountability through eligibility and competence criteria and reporting requirements. MassDEP will also establish specific auditing procedures to screen and oversee the work performed by third parties.

Some Solid Waste Facilities already have permit conditions that provide for third party inspections, with significant success. At the permit holder's expense, the facility is required to be inspected by a qualified professional engineer experienced in solid waste management four times per year. This structure has provided third party oversight of the facility by a qualified inspector knowledgeable in all of the site's complex systems (liner, leachate collection, gas collections systems, etc.)and permits. This allows for a consistent, complete and cost effective compliance review of the site.

We would not recommend a regulatory framework where site inspectors are randomly assigned or selected. This would require the inspector to spend significant time familiarizing themselves

with the site, and would also require the site operator to devote significant resources bringing new inspectors up to speed on the site's features.

MassDEP could more widely implement the current permit condition that already requires the use of a third party inspector, and allow operators implementing this program to continue to utilize their current third party inspector that is already familiar with the history of the site. This process is not dissimilar to the site being assigned one consistent regulator that has intimate familiarity with the facility and has a higher level of awareness to any site-specific matters. MassDEP could establish specific auditing procedures to screen and oversee the work performed by the third party inspectors.

II. E. 21. Asbestos Abatement Requirements

MassDEP proposes to shift its current management and oversight of asbestos abatement activities to focus limited agency resources on the highest priority asbestos matters. This reform will increase environmental and public health benefits while simplifying the regulatory process for stakeholders. Specific initiatives will include, but not be limited to:

- *Reduce the regulatory burden on homeowners by creating more flexible requirements for abatement of non-friable at owner-occupied residences;*
- *Provide greater flexibility to businesses and institutions by establishing operation and maintenance standards to deal with small scale asbestos abatement projects that currently require individual notifications; and*
- *Provide greater clarity and a mechanism for businesses and institutions to receive alternate work practice permits in situations where traditional asbestos abatement is not feasible.*

To continue sufficient oversight of this important health-protective program, MassDEP will focus its inspections on highly sensitive asbestos removal projects where the risk of exposure is the greatest and work with municipal building departments to conduct outreach assistance. In addition, to ensure homeowners keep themselves and others safe from asbestos fiber exposure, BWP will publish and make available a guidance document titled "Asbestos in the Home: A Homeowner's Guide" to assist homeowners in learning both health and regulatory issues associated with asbestos removal. MassDEP will coordinate with the Department of Labor Standards which licenses asbestos abatement contractors.

We ask that MassDEP consider the requirements for disposal in its evaluation of this potential regulatory change. Relaxation of the ACM regulatory requirements may cause homeowners to be uninformed on the risk of improper disposal. If non-friable ACM is inadvertently placed at the curb for routine collection it could become friable and potentially a health risk for waste handling workers.

II. E. 19. Many Programs: Self-Certification for Certain Permit Renewals

MassDEP proposes to streamline certain permit renewals by providing for presumptive approvals where the applicant can certify that there have not been changes to either the project or applicable regulatory standards, since its initial approval and where the project has

maintained its compliance status. This change has the potential to save DEP staff resources spent reviewing renewal applications that are identical to the previously-approved project applications and where regulatory standards have not substantively changed in the interim period. This will also save time & resources for the project proponents. MassDEP will review permits agency-wide to determine which categories of permits this option should be applicable to. This option will only be available to projects/parties that are currently in compliance and MassDEP will retain the ability to audit and take enforcement with respect to the submitted certifications.

MassDEP requests public comment on which programs are good candidates for this reform. MassDEP will not consider applying this reform to Air Operating Permit renewals (because such change would potentially conflict with federal requirements) or to Water Management Act permit renewals, because the standards for those permits are currently being reviewed in another context.

Re-applying for approvals, where the activity and material remains unchanged, can be costly and time consuming. For operators or permittees in good standing, with no negative compliance history, and who do not wish to make modifications to a permit, MassDEP could develop an expedited self-certification process to allow for re-issuance.

Approvals of Sustainability (AoS) are currently issued with a two- year term. MassDEP could consider extending the permit term to five years with earlier renewal only if there are changes to the process by which the material is generated, or a change in the quality of material, as would be indicated or confirmed by laboratory analysis.

It is important for the applicant of any environmental project to gain input from the local boards to make sure local needs and concerns are addressed. One stated objective of the reform was not to limit or restrict home rule or local control; however many local boards may not have the depth of technical expertise or broad State-wide perspective the MassDEP provides. MassDEP could develop a specific response/review period to assist local boards with technical assistance and experience. This schedule will identify critical points and ensure the applicant addresses both technical and environmental related issues in a timely manner.

Thank you for your consideration, we appreciate the opportunity to provide comment on this policy.

Sincerely,

CASELLA WASTE SYSTEMS, INC.

Karen G. Flanders, Director
Sustainability and Regulatory Affairs

C: David G. Carpenter

From: Andrew Smith
To: Commissioner, MassDEP (DEP)
Subject: Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date: Monday, December 05, 2011 5:01:44 PM

December 5, 2011

Commissioner Kenneth Kimmell
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

{Via email}

RE: Response to Draft Action Plan, dated October 24, 2011 for Regulatory Reform at Mass DEP

The Holyoke Conservation Commission appreciates the opportunity to participate in the Massachusetts Department of Environmental Protection's (MassDEP's) Regulatory Reform Initiative and to comment on the Commissioner's Draft Action Plan for Regulatory Reform (Draft Plan). We understand that the financial constraints imposed by the current, and ongoing, financial crisis are significant and real. However, the Commission is interested in making sure the Wetlands Protection Act continues to function as a model piece of environmental legislation. To that end, we submit the following comments, regarding items #5 and #9 of the proposed Draft Plan.

#5 Targeted Review By DEP
Automatic issuance of DEP File Numbers would not necessarily result in an increase in wetlands protection, especially in the Western Region. DEP's Western Regional Office Circuit Rider's process of providing comments, via the issuance of a file number, is an excellent service. Frequently, these comments enhance protection of the functions and values of wetlands through facilitating the proper application of the Wetlands Protection Act. These comments are timely, incisive, sincere and accurate. Automatic issuance of a file number could potentially eliminate this service, resulting in a loss of protection to the regulated resource areas of Western Massachusetts. It is widely known that many of the Commissions in Western Massachusetts are entirely staffed by volunteers who oftentimes rely on the Circuit Rider's guidance alone to interpret the Wetlands Protection Act and its Regulations. It is not clear that the proposed Draft Plan would provide an equal level of protection. Unfortunately, removal of the Circuit Rider's comments would result in new responsibilities to municipalities in the Western Region—towns that also are straining under budget decreases—and would be inconsistent with the guiding principles of the Regulatory Reform Initiative. The Holyoke Conservation Commission is opposed to the current language in the Draft Plan.

#9. Wetlands: Limited Project Status for Renewable Energy Projects
The Holyoke Conservation Commission supports sustainable development, inclusive of renewable energy. However, Limited Project status should be determined not on the type of project being proposed, but on the scope of the environmental impact of the proposed project. The placement of renewable energy facilities within jurisdictional resource areas should be carefully evaluated for environmental impacts, and it is not entirely clear that the Draft Plan would provide Conservation Commissions with adequate opportunity to review the environmental impacts of renewable energy facilities.

The Draft Plan does not provide guidance on what qualifies as a Renewable Energy Project. For example, the construction footprint of a biomass facility would not be the same as that required for a wind or solar facility, yet such a facility could be reviewed as a Limited Project. This is a distinction that should be further clarified. Morever, the current proposed language does not provide a distinction between small-scale residential, or agricultural, facilities and large-scale commercial facilities. From a permitting standpoint, it makes sense to distinguish between small-scale and large-scale projects. The current Draft Plan does not address this distinction. Moreover, the amount of renewable energy that must be produced in order for a facility to be considered a

renewable energy project is not clearly established. Currently, there is not enough information in the proposed language to determine whether or not a facility that produced 75% of its power from coal and 25% of its power from wind would qualify as a renewable energy project. Finally, the proposed Draft Plan does not take into consideration that fact that there are already existing Limited Project provisions for projects that require the construction of access roads across wetlands to gain access to upland sites for development, and for utilities, including electric distribution or transmission lines.

From a local permitting standpoint, the proposal to grant Limited Project Status to Renewable Energy Projects has not been fully evaluated and is not fully developed. Therefore, he Holyoke Conservation Commission does not support this amendment to the regulations, as we do not have sufficient information to evaluate the potential impacts to resource areas that might be created as a result of this amendment.

The Commission respectively requests that you take the above statements of concern under advisement, prior to acting on these proposed regulatory reforms. Thank you for the opportunity to provide comments on these proposed regulatory reforms.

Regards,

Andrew Smith
Conservation Agent
City of Holyoke

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City of Holyoke
Conservation Director
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Mayor Elaine A. Pluta **Conservation Commission**

City of Holyoke **Andrew B. Smith, Director**

December 5, 2011

Commissioner Kenneth Kimmell
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

{Via email}

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From a local permitting standpoint, the proposal to grant Limited Project Status to Renewable Energy Projects has not been fully evaluated and is not fully developed. Therefore, he Holyoke Conservation Commission does not support this amendment to the regulations, as we do not have sufficient information to evaluate the potential impacts to resource areas that might be created as a result of this amendment.

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Mayor Elaine A. Pluta **Conservation Commission**

City of Holyoke **Andrew B. Smith, Director**

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Regards,

Andrew Smith
Conservation Agent
City of Holyoke

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December 1, 2011

Commissioner Kenneth L. Kimmell
Executive Office of Energy & Environmental Affairs
Department of Environmental Protection
One Winter Street
Boston, MA 02108

RE: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner:

I have reviewed your Draft Action Plan for Regulatory Reform at MassDEP and provide this letter as comment. After reading through the action plan, I am concerned that rather than creating true efficiencies within the department, the environmental protections the agency is charged with upholding will be compromised. This concern is exemplified by the first guiding principle used in developing the action plan: *"Proposed reforms will not weaken or undermine environmental protection standards. Changes that reduce direct oversight will be coupled with robust compliance and enforcement mechanisms."* I am assuming the "direct oversight" reference means that the Department will not be providing direct oversight. What are the proposed *robust* compliance and enforcement mechanisms? How can compliance and enforcement be robust without oversight? No clarification of what this means or how it is proposed to be implemented is provided in the action plan.

I am particularly concerned with the proposed reforms for wetlands protection and permitting. In some ways the proposed changes are not so different from the way DEP currently operates. Currently DEP provides very few comments on NOI and ANORAD filings. Also, when an applicant has been denied by a Commission and seeks a Superseding Order of Conditions, invariably the DEP issues an SOOC for any project where the proposed work is only within the buffer zone. This is often the case even when the Conservation Commission has demonstrated a very likely potential for impact to the resource area or that alternatives exist that would result in less impact to the buffer zone.

Most Conservation Commissions were not supportive when the DEP previously tried the concept of a general permit for work outside the 50' buffer zone. The reason this type of permit was not utilized by developers in its previous rendition was largely due to the restriction that prevented an applicant from submitting applications for additional work at the site within three years of taking advantage of the general permit. Presumably the reason for that limitation was recognition by MassDEP that cumulative development of the buffer zone to a resource area will, in fact, impact the resource area in time. The Wetlands Protection regulations recognize the importance of the buffer zone to the functional integrity of wetland resources. The regulations further recognize that persistent development within the buffer zone has a cumulative effect that may likely impair the functions of wetland resources.

The action plan proposes MassDEP limit review of NOI's to those cases where an appeal has been filed for a Superseding Order of Conditions (SOOC) and that the SOOC review will be streamlined where projects only impact the buffer zone (or involve minor residential alterations). We are concerned that this streamlining will result in carte blanche issuance of SOOCs when the work is *only* in the buffer zone. Minor activities aside, many "buffer zone only" projects are proposed in areas where the buffer zone is historically developed. The streamlined review could quickly become inadequate in evaluating the wetland resource impacts from cumulative buffer zone activity.

The issue over exempting older wetlands created by stormwater management structures in particular is a tricky one and likely should be studied further. On the surface it makes sense to perform maintenance or repairs to a stormwater structure is not functioning as designed. However, it may also make sense to ensure <u>some</u> level of regulation over structures designed as constructed wetlands or that have developed wetlands characteristics over time. These structures likely become integral to the overall hydrologic scheme of the area over time and many may be providing valuable wildlife habitat, including breeding habitat.

I understand the particulars of the action plan need to be developed and the details of how it would be implemented worked out and I appreciate the opportunity to provide comment at this time.

Sincerely,

Stephanie Danielson
Land Use Planner

From:	Kurt Tramposch
To:	Commissioner, MassDEP (DEP)
Subject:	Comments (revised and attached) - Cmr"s Action Plan for Reg. Reform
Date:	Tuesday, December 06, 2011 12:25:46 AM

December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Submitted: MassDEP.Commissioner@state.ma.us

Comments: *Commissioner's Draft Action Plan for Regulatory Reform* (Oct. 24, 2011)

Focus: Section 9, "Wetlands: Limited Project Status for Renewable Energy Projects"

I am writing to express my concern over DEP Comissioner's proposal to expand the "limited projects" category in the Wetlands Protection Act regulations in a way that will create "a more streamlined and predictable permitting pathway" for wind or solar projects with the intent or "reducing MassDEP permitting time and streamlining project proponent processes". I propose that a careful consideration of the adverse consequences of this "Section 9" reform proposal demonstrates that it not be advanced to specific regulations for full implementation at this time.

1. Wind facility projects in Massachusetts create environmental and health impacts of unprecedented scale and complexity and should require a more rigorous review of proposals than they currently require. Regarding this, EEA Secretary Ian Bowles had previously stated:

   "The Executive Office of Energy and Environmental Affairs supports the development of wind power as a sustainable means to meet existing and future energy needs, to create jobs and as part of the Commonwealth's efforts to position Massachusetts as a leader in the renewable energy field. However environmental impact review of wind facilities requires that each site and projects be carefully analyzed to ensure that the project will avoid, and where avoidance is not possible, minimize and mitigate potential environmental impacts." *(Certificate on the Expanded ENF for Douglas Woods Wind Farm, Sept. 22, 2010).*

2. Wind facility projects typically involve considerable direct impacts to the project land and water resources, including major roadway and pad construction, extensive stormwater rerouting; drainage and/or alterations to wetlands, vernal pools, river and stream buffer zones for project staging, access, maintenance and removal; wholesale removal of trees and vegetation to allow for unfettered wind; storage or replenishment of hazardous materials including oils, greases, hydraulic fluids, transformer oils, etc.; creation of 40'-wide access roads and considerable impervious surfaces; construction related impacts including traffic, compaction, vibration, blasting, etc.; disturbance of existing infrastructure for stormwater management, groundwater infiltration, water supply, gas or petroleum pipelines, electric lines, etc.

3. Multiple wind turbine installations on a project site are complex and, in the words of Sec.

Bowles, require an EIR which “should identify the impacts of each of the alternatives on land alteration, creation of impervious are and work with the buffer zone to wetlands” (Douglas Woods Certificate Letter). Wetland reviews for wind facility projects are often the only opportunity communities have to determine these impacts in a comprehensive fashion. In the Douglas Woods review, the developer had created a patchwork of various properties in order to accommodate eleven 2.5MW x 497’ wind turbines and some properties were not properly delineated for wetland impacts and approximately 30 acres of property was clear-cut and tree stumps removed by the developer even in the absence of a permit and Conservation Commission Orders of Conditions, resulting in the permanent alteration of significant wetland areas for a project which is now suspended. This work was done in the absence of an approved wetland impacts mitigation program, without the implementation of an erosion and sedimentation control program during construction, and without the development of a preliminary stormwater management plan.

4. As local conservation commissions review wind-water interactions for wind turbine siting proposals, they review water impacts such as any potential for contamination of groundwater resources; determine stormwater requirements; and review possible perchlorate contamination from blasting. Wind projects raise issues regarding possible interference of surface and groundwater drinking water supplies and impairment of water quality, including public water supply wellfields and private potable wells. There is generally minimal consideration of these project impacts under the current wetland reviews of wind projects and to “streamline” this process would all but guarantee that the necessary site hydrology would be insufficiently assessed.

5. Wind turbine siting of commercial, community and industrial wind turbines is a very new process in Massachusetts and each project review and turbine erection brings with it an appreciation or understanding of some new environmental impact requiring ever more attention during a comprehensive wetland review. Industrial turbine siting has spawned many new environmental concerns including noise, shadow and strobe effects, vibration migration through water and bedrock, lightning mitigation into the surrounding ecosystem, transient voltage surges, electrical sub-station impacts, bird-bat concerns, impacts to nearby trails, rail-trails, parks, recreation areas, etc. With such an expanding list of possible turbine impacts – and an increasing body of supporting research validating such impacts on surrounding wildlife – a shortening of the review of wind turbine projects would run counter to the satisfactory mitigation of these additional important issues.

6. Wind energy projects have come under increasing scrutiny for over stating potential carbon savings and GhG mitigation and as beneficial in reducing oil dependence and reducing coal emissions. While laudable goals, actual wind energy gains in these areas have fallen seriously short of projections. Requirements in other countries to perform a comprehensive “Health Impact Assessment” (HIA), “Life Cycle Assessment” (LCA), “carbon footprint” or “water footprint” of wind turbines have demonstrated significant turbine impacts that have been relegated to “externalities” in the United States. Wind is not so beneficial a “clean energy” as to deserve fast-tracking and “streamlining” in its environmental reviews.

I respectfully suggest that Cmr. Kimmell entirely pass over the proposed “streamlining” of wetlands reviews of wind turbine projects for the above stated reasons.

Kurt Tramposch MPH

Environmental Planner

2 Weir Meadow Path
Wayland MA 01778

December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Submitted: MassDEP.Commissioner@state.ma.us

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November 23, 2011
Commissioner Kenneth L. Kimmell
Department of Environmental Protection
One Winter Street
Boston, MA 02108
Attention: Jakarta Childers, Commissioner's Office

Subject: DEP's Draft Action Plan for Regulatory Reform

Dear Commissioner Kimmell:

Thank you for the opportunity to comment on DEP's Draft Action Plan for Regulatory Reform. We have reviewed DEP's Draft Action Plan for Regulatory Reform and offer the following comments:

5. Wetlands: Targeted Review by DEP
In order to most effectively deploy the significant agency resources spent on Wetlands Protection Act (WPA) Permitting, DEP will prioritize a variety of program activities, including immediate issuance of file numbers; increased focus on Superseding Orders of Condition; and increased priority based on significance of wetlands resource impacts. This will reduce agency time spent on lower-value added tasks and will reduce delays for project proponents and Conservation Commissions. MassDEP will prioritize its WPA efforts in the following ways:

- DEP will assign WPA File Numbers immediately upon submittal of a Notice of Intent (NOI) to a local Conservation Commission. This will allow Conservation Commissions to act without needing to wait for DEP review of the NOI, which is increasingly difficult to do in a timely manner given staffing constraints.
- DEP will limit its review of NOIs and its oversight on local actions in order to concentrate resources on cases in which there are appeals to DEP (SOOCs). DEP intervention or participation in the local proceeding will be unusual and reserved for cases where there are particularly sensitive resources at issue. Note that DEP will continue to provide technical and regulatory assistance to the local conservation commissions and others via the Wetlands Circuit Rider program and other activities.
- DEP will also strategically deploy its SOOC review efforts to concentrate on projects with significant resource area impacts, and conduct streamlined review of projects that solely impact the buffer zone, or that involve minor residential alterations. By concentrating DEP efforts in this manner, DEP will ensure it has adequate resources to give the appropriate level of scrutiny based on potential for environmental harm. These management efforts to more effectively target staff efforts may also allow DEP to redirect Wetlands Program staff to provide increased direct municipal assistance.

The City of Leominster supports the immediate issuance of the DEP file number. This process could further be enhanced by requiring the use of EDEP for on line filing. The system is underutilized and should be a requirement of all appropriate wetland filings. As we understand the process, the paperwork is sent to DEP and then the DEP staff is required to input into the edep system. This is costly and time consuming and could easily be eliminated by passing the duty to the applicant/engineering firm.

We do not support the omission of the review process and comments by the DEP. The Commission finds that the comments made by the DEP are extremely valuable. If this review process is being omitted then a new standardized review process, policies and training must be provided at a local level.

The Circuit Rider program is crucial to all of these changes. Presently Leominster does not have an assigned Circuit Rider. We encourage full staffing of these crucial positions. The Circuit Rider provided valuable knowledge and support to local Commissions and Agents.

6. Wetlands: Buffer Zone General Permit
MassDEP will establish a general permit or other similar regulatory provision for certain activities that are proposed for the outer fifty feet (50') of the buffer zone to inland wetlands. This proposal will reduce DEP staff time spent on SOOC review for buffer zone cases, and it has the potential to significantly benefit the environment by providing incentives for applicants to concentrate activity greater than 50' from the resource area. It will also save time for project proponents and for Conservation Commissions. This concept was previously deployed but was ultimately deemed unsuccessful because categorical restrictions limited the universe of eligible projects to a very small category. DEP will revisit that effort with an eye towards expanding the applicability of the general permit from the prior iteration.

We support restrictions and universal applications for control of work within the inner 50 feet of a wetland. We do not support free reign on the outer 50 feet since it sends a message that the outer buffer is not important. There is already confusion and ambiguity in the present regulations under minor activities. We ask that any changes also include clarification on minor exempt activities as related to site plans. We have had two appeals that have been upheld by DEP, where a developer took the liberty of clear cutting large trees and cutting in roads that went through wetlands to conduct test boring and dig soil pits. The developer cited that test pits/borings are exempt for site planning. We disagree and ask that this be revised and that at the very least an RDA must be submitted. We do not support the expansion of the general permit, but recommend clear definitions and regulations.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management
Structures MassDEP will propose regulations to exempt wetlands "resource areas" created by stormwater management structures (e.g. man-made stormwater retention basins) that were constructed prior to 1996, if the stormwater system meets DEP's performance standards. This will reduce agency time spent and streamline processes for external stakeholders by reducing the need to address these man-made stormwater structures under the more time-consuming process for regulated resource areas. This proposed change follows on regulatory changes previously made to exempt stormwater management structures that were constructed after 1996.

We agree with the proposal to exempt man-made stormwater retention basins constructed prior to 1996. We suggest that the exemption include standards, definitions and defined role responsibilities. We have encountered retention/detention basins that contain wetland replications that must be maintained. In addition, many basins have not been maintained and require extensive corrective measures to bring them up to code. We suggest that regulations be enacted that require maintenance plans be filed with the local commission and DPW, and that annual self-reporting be instituted.

8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g.
Dam Removal, Inlet Widening; Stream Daylighting, etc.

In coordination with the Department of Fish and Game (DFG), MassDEP has recently launched an aquatic restoration regulatory working group to identify ways to make the regulatory process less complex and

more efficient for pro-active ecological restoration projects such as dam removals, culvert replacements, inlet widening, stream daylighting, etc. This will provide expedited permitting for these projects that will affirmatively enhance the environment while decreasing the amount of agency time needed to review and issue approvals and simplifying proponent processes. This effort will build on prior successful efforts to streamline permitting for dam removal projects. MassDEP expects that this working group will identify changes to the Wetlands Protection Act regulations and, potentially, other regulations in the next couple of months.

The City of Leominster supports this new expedited permitting and looks forward to commenting on the final recommendations.

9. Wetlands: Limited Project Status for Renewable Energy Projects MassDEP will propose changes to create clear, categorical standards for renewable energy projects by expanding the categories of “limited projects” in the Wetlands Protection Act regulations. This change will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and streamlining project proponent processes. Renewable Energy Projects will be defined as projects that are eligible for Renewable Energy Credits (RECs). It is currently anticipated that the changes would involve, primarily, new limited project status for wind or solar projects and their utility or access requirements.

The City of Leominster supports a streamlined limited project on Renewable Energy projects and look forward to commenting on the final recommendations. Many of these projects will result in clear cutting large parcels of land in areas of critical habitat and within watershed protection areas.

10. Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies -- Other New Technologies MassDEP will propose changes to one or more of the coastal permitting programs (Wetlands, c. 91, 401 WQC) to provide opportunities for approval of innovative projects, particularly for clean energy projects, on a “pilot” basis. This will help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and establishing predictable review and approval pathways for project proponents. In MassDEP’s experience, it can be difficult to review and approve proposals for new technologies or pilot projects. This is because these projects can have impacts that are different from those types of impacts contemplated when regulatory performance standards were drafted, or impacts that are unknown with a typical degree of certainty. Rather than prohibiting projects with uncertain impacts to go forward at all, MassDEP will concentrate on allowing limited pilot projects to proceed with appropriate monitoring and reporting safeguards to prevent damage to the environment.

We support the pilot approach and look forward to the final recommendations.

11. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval
Connections to and extensions of a local sewer distribution system require a permit from either a local Department of Public Works or Sewer Department prior to applying to DEP for approval. The DEP approval typically does not apply different criteria nor add significantly different conditions than the local permit. This proposal would eliminate the current certification and permitting for all sanitary and industrial connections and extensions of the public sewer systems. Through DEP’s operation and maintenance regulatory authority, we will shift resources from duplicating local permitting to instead focus on wastewater treatment and collection system issues such as infiltration/inflow (I/I), capacity issues, sanitary sewer overflows and industrial pretreatment programs. In addition, with eDEP’s new electronic/online Discharge Monitoring Report (“NetDMR”) submittal program (expected to be fully implemented by late spring 2012), DEP will be able to track more closely facility flows reported on a daily basis. DEP will maintain its ability to require individual permits in situations that present public health or environmental threats, such as systems that experience excessive sanitary overflows, capacity issues, or discharges that potentially could cause problems at a treatment facility. MassDEP acknowledges that the elimination of these permit categories

will, potentially, result in a small number of projects no longer being required to file an Environmental Notification Form under the MEPA regulations. MassDEP also acknowledges that the current right to appeal these permits would not exist if the permits are eliminated. However, based on the numbers of such permits issued by MassDEP in recent years, and based on MassDEP's general experience with these projects, MassDEP believes that in practice only a few projects will forgo MEPA review due to this change. In addition, MassDEP notes that it has only had one permit appeal in the past three years.

Please clarify what projects would no longer require a MEPA review. There should be no elimination of MEPA/ENF and the regulations should be changed to reflect that filing is not optional. MEPA and ENF are all threshold driven. We do support the elimination of the duplicity and support local oversight.

12. Wastewater Title 5: Innovative/Alternative Program – 3rd Party Review MassDEP proposes to streamline the review of "innovative and alternative" Title 5 (septic system) wastewater treatment technologies by placing greater reliance on third parties in researching, reviewing and vetting new treatment technologies. Specifically, DEP will explore options for relying on existing organizations or services that are already performing this activity (such as Barnstable County's Massachusetts Alternative Septic System Test Center, in Sandwich, Massachusetts), rather than duplicating the work with MassDEP personnel. This will allow DEP to save scarce resources while developing partnerships to provide streamlined and effective review for environmentally beneficial treatment technologies. DEP would still play a role in setting standards and provide some level of oversight technology review. DEP will also develop an auditing protocol ensure results are demonstrated in the field.

This makes perfectly good sense, as long as the Test Center is fully funded. What measures will be taken to ensure that this project continues to be funded and remains neutral and objective to the introduction of new technology?

13. Wastewater Title 5: Eliminate Duplicative State Approvals
MassDEP currently permits Title 5 septic system variances and "shared system" approvals, which are also reviewed and permitted at the municipal level. MassDEP proposes to eliminate this duplicative approval, which will save scarce MassDEP review time while simplifying the process for project proponents. MassDEP's experience indicates that MassDEP rarely overturns the decision of the local permitting authority (local Board of Health). However, in those cases where there are particularly sensitive resources at issue, or where the project is unusually complex, MassDEP's existing regulations allow it to intervene in the local permitting process and MassDEP plans to use this existing mechanism to ensure proper oversight of particularly sensitive cases. (See 310 CMR 15.003(2)(e), allowing MassDEP to require direct approval from MassDEP in cases where necessary to protect public health, safety, welfare and the environment).

We support the elimination of the duplicity of DEP oversight and support leaving the permitting and approvals at the local level.

14. Wastewater: Targeted Groundwater Discharger Inspections
Based on recent assessments of its groundwater discharger inspection program, MassDEP has found that routine annual inspections of groundwater discharge facilities do not correlate well with compliance (i.e., inspections performed do not always disclose non-compliance demonstrated by DMR review). Rather than continuing with this under-performing method of compliance inspections, MassDEP proposes to reduce the current levels of routinely-selected inspections to instead focus inspection resources on facilities based on actual compliance data. Facilities will be targeted for inspections based on DMR reviews, complaints received and ongoing compliance/enforcement issues. In addition, MassDEP will continue inspections of all facilities as planned for the five year **basin** schedule. MassDEP believes this approach will result in increased compliance with less direct staff time from DEP. To further bolster the ongoing oversight of all facilities, groundwater dischargers would also be required to hire a qualified professional to conduct a periodic compliance/structural assessment of the facility based on the design life of the facility and

expected need for repair and/or replacement. This assessment could include process evaluations as well and MassDEP will work with stakeholders to establish a workable system for third-party facility assessments by establishment of standardized review and inspection protocols and establishment of minimum qualifications for the certifying professionals. MassDEP will also conduct compliance audits to ensure the effectiveness of the third-party facility assessments, and would retain a monitoring and enforcement role with respect to all data and facilities submissions.

In sentence three there appears to be a spelling error – basin? We agree that targeted inspections will achieve a better outcome than routine annual inspections on all groundwater dischargers. Local cities and towns do not have funding to arbitrarily sample all outfalls on an annual basis.

C. Solid Waste

15. Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities MassDEP proposes to shift its current management and oversight of solid waste facilities to focus agency resources on those specific sectors/facilities where there is the greatest need for oversight while finding alternate methods to permit activities that are increasing environmental benefits and simplifying processes for permittees. Specific initiatives will include, but not be limited to:

- Permits-by-Rule for Certain Post Closure Use Activities: Passive recreation without structures; renewable energy reuse projects, and potentially others.

- Permits-by-Rule for Small Transfer Stations: Eligible transfer stations could be less than/equal to 50 tons-per-day (tpd), or 100 tpd.

- Self-Certification Transfer Station Permit Renewals: Shift to self-certification with presumptive approval for permit renewals where no modifications were made and where the facility has a track-record of compliance, rather than individual review.

These changes will be coupled with specific measures to promote accountability such as creating new permit conditions, record keeping requirements, and certification statement requirements that will ensure that applicants are under appropriate obligations to monitor and report environmental conditions. MassDEP will also audit the submissions and impose appropriate violations for failure to meet all required obligations.

We look forward to the final recommendations and will provide comment at that time. We support inclusion of BMP's to accommodate the addition of impervious surfaces introduced by the addition of large solar parks.

D. Waste Site Cleanup

17. Site Cleanup: Simplify Activity & Use Limitations (AULs) MassDEP proposes to streamline the required elements for the deed restrictions put in place to limit future use of properties where some amount of residual contamination remains after cleanup (known as AULs). This effort will likely involve development of simplified forms and streamlined public notice procedures to facilitate simpler and more understandable forms of restrictions, and it will also reduce time spent on review and approval by MassDEP. This effort will also focus on increasing availability of on-line information about recorded use limitations. This will save agency review time and will provide improved public access to AUL data.

Automation and an online database is supported. Although this data is also located on the individual Registry of Deeds, it is often very time consuming and difficult to find.

18. Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS) MassDEP proposes to streamline or potentially eliminate the numeric ranking system, Tier Classification and permitting processes. Reducing time spent processing tier classifications/permits or NRS scores can help MassDEP focus on priority cleanup sites while improving

efficiencies for the Potentially Responsible Parties which could help speed cleanup efforts. MassDEP believes that other mechanisms are already in place to address the relative priority or significance of sites (e.g. by focusing on exposure pathways, imminent hazards, etc.) without need for tier classifications/permits. DEP will therefore explore whether elements of this process can be streamlined or eliminated where functionally duplicative of other aspects of the regulatory-mandated site cleanup process (known as the Massachusetts Contingency Plan [MCP]).

This entire program is cumbersome and difficult to understand. We support streamlining the site clean up processes.

E. Other areas

19. Many Programs: Self-Certification for Certain Permit Renewals

MassDEP proposes to streamline certain permit renewals by providing for presumptive approvals where the applicant can certify that there have not been changes to either the project or applicable regulatory standards, since its initial approval and where the project has maintained its compliance status. This change has the potential to save DEP staff resources spent reviewing renewal applications that are identical to the previously-approved project applications and where regulatory standards have not substantively changed in the interim period. This will also save time & resources for the project proponents. MassDEP will review permits agency-wide to determine which categories of permits this option should be applicable to. This option will only be available to projects/parties that are currently in compliance and MassDEP will retain the ability to audit and take enforcement with respect to the submitted certifications. MassDEP requests public comment on which programs are good candidates for this reform. MassDEP will not consider applying this reform to Air Operating Permit renewals (because such change would potentially conflict with federal requirements) or to Water Management Act permit renewals, because the standards for those permits are currently being reviewed in another context.

20. Many Programs: Revise Fees to Incentivize Better Results

Based on feedback from numerous stakeholders indicating that fees can be a powerful tool to facilitate desired outcomes, MassDEP will explore ways to incentivize reduced environmental impacts through fees. For example, increasing fees on the categories or permits or activities with the highest potential for environmental impact could reduce the number of projects that fall into those categories. Similarly, MassDEP will also explore ways to incentivize (or perhaps require) e-filing of applications. E-filing saves the Department significant time in reduced data entry, and fosters greater public access to information. Please note that for virtually all fee programs, MassDEP does not currently retain the fees it collects, so this is not intended as a budgetary strategy for MassDEP. Rather, it will be designed to facilitate the outcomes noted above. MassDEP will need to work with the Executive Office of Administration and Finance and other offices within the Administration on this effort.

Since much of the work is being eliminated at State level we support the increase in fees and we also suggest that the ratio of State to City filing fees for NOI submittals be recalculated. We also support the mandatory use of edep filing programs. E-Filing simplifies the application process and eliminates wasted time and paper on behalf of applicants, DEP and the local Commissions.

21. Asbestos Abatement Requirements

MassDEP proposes to shift its current management and oversight of asbestos abatement activities to focus limited agency resources on the highest priority asbestos matters. This reform will increase environmental and public health benefits while simplifying the regulatory process for stakeholders. Specific initiatives will include, but not be limited to:

- Reduce the regulatory burden on homeowners by creating more flexible requirements for abatement of non-friable at owner-occupied residences;

- Provide greater flexibility to businesses and institutions by establishing operation and maintenance standards to deal with small scale asbestos abatement projects that currently require individual notifications; and
- Provide greater clarity and a mechanism for businesses and institutions to receive alternate work practice permits in situations where traditional asbestos abatement is not feasible.

To continue sufficient oversight of this important health-protective program, MassDEP will focus its inspections on highly sensitive asbestos removal projects where the risk of exposure is the greatest and work with municipal building departments to conduct outreach assistance. In addition, to ensure homeowners keep themselves and others safe from asbestos fiber exposure, BWP will publish and make available a guidance document titled "Asbestos in the Home: A Homeowner's Guide" to assist homeowners in learning both health and regulatory issues associated with asbestos removal. MassDEP will coordinate with the Department of Labor Standards which licenses asbestos abatement contractors.

We look forward to this change and will comment on the final recommendations and the proposed Homeowners Guide.

V. Request for Public Comments.
Commissioner Kimmell requests that interested parties submit written comments on this draft Action Plan. The Commissioner is specifically requesting comments to address the following questions:

- Are there regulatory reform ideas that have not been included in this Action Plan that should be considered by MassDEP?
- Should any of the proposed reforms be revised, eliminated, or pursued in a more expansive or limited manner?
- What, if any, additional safeguards, auditing, or public process should be included as these reform ideas move forward?
- Do the proposed reforms have any impact on environmental justice considerations?

Submit your comments no later than Monday, November 21, 2011 to the following:
Email: MassDEP.Commissioner@state.ma.us, or **Hard-Copy:**

Respectfully,

Joanne DiNardo – Environmental Inspector

Cc: Dean Mazzarella, Mayor
Leominster City Council
State Senator Jennifer Flanagan
State Representative Dennis Rosa

Peter E. Harley
Environmental Manager
New England

December 5, 2011

VIA ELECTRONIC MAIL (MassDEP.Commissioner@state.ma.us)

Commissioner Kenneth L. Kimmell
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

Re: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

National Grid applauds your draft proposal for regulatory reform dated October 24, 2011 and respectfully submits the following comments and suggestions. National Grid is an international energy delivery company with its US headquarters in Waltham, Massachusetts. Through its subsidiaries, New England Power Company, Massachusetts Electric Company, Nantucket Electric Company, Boston Gas Company and Colonial Gas Company, National Grid provides electricity and natural gas to millions of customers in Massachusetts.

National Grid routinely interacts with MassDEP on permits and approvals for expansions and upgrades to and maintenance of National Grid's extensive transmission and distribution systems in Massachusetts as well as the construction of new energy infrastructure. National Grid and MassDEP staff have successfully collaborated on initiatives to improve permitting efficiencies, and National Grid strongly supports your efforts to identify additional opportunities for such efficiencies throughout MassDEP. These reforms can be broadly beneficial. They can speed permit approvals, allowing job-creating activities to move forward in these difficult economic times, and at the same time they can enhance environmental protection by allowing MassDEP staff to focus on the most important environmental matters. Moreover, these reforms can be beneficial for National Grid's customers, who ultimately pay the cost of our capital projects. These reforms can result in lower project costs, which savings would be passed on to our customers. We believe that your landmark effort to achieve comprehensive regulatory reforms is a prudent approach to address MassDEP's reduced budget and expanded responsibilities. In support of this effort, National Grid provides comments on some specific proposals in the October 24, 2011 draft plan and identifies some additional regulatory reforms which we believe would benefit both MassDEP and the regulated community.

I. Comments on MassDEP Proposals

What follows are National Grid's comments on several of the specific proposals in the draft plan.

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A. Coastal/Dredging Programs: Permit Consolidation

National Grid strongly supports the concept of a common permit application for Wetlands Protection Act permits, Chapter 91 licenses, and Water Quality Certifications. This is a good example of a reform that would reduce unnecessary burdens on both MassDEP and permit applicants.

National Grid also strongly supports the elimination of permitting redundancy, for example by allowing permit by rule for Water Quality Certifications for projects with Orders of Conditions. Not only would this reduce burdens on MassDEP and the regulated community, but it could significantly shorten the permitting timeline, because a Water Quality Certification can only be obtained after the applicant obtains a final Order of Conditions and MEPA Certificate.

National Grid commends MassDEP for already taking steps to eliminate redundant reviews of projects for which temporary construction mats (placed over wetlands to allow access to the project site) are the only impact to wetland resource areas. National Grid obtained an Individual Permit from the U.S. Army Corps for the general use of temporary construction mats for maintenance projects within Massachusetts, for which MassDEP issued a Water Quality Certification with certain conditions, including the use of best management practices. MassDEP applied this approach more widely when it issued a Water Quality Certification for the U.S. Army Corps Massachusetts Programmatic General Permit allowing the use of temporary construction mats for utility maintenance projects, without the need for individual project-specific Water Quality Certifications in most cases.

Another opportunity to eliminate permitting redundancy is to eliminate the requirement to file a Request for Determination of Applicability ("RDA") or Notice of Intent ("NOI") for utility projects on existing rights of way ("ROWs") that are covered by the U.S. Environmental Protection Agency NPDES Construction General Permit. The Wetlands Protection Act and the NPDES Construction General Permit are in many ways duplicative; both involve the development of an erosion and sedimentation control plan. While commercial and residential developments can involve complex design issues that may be best addressed through conservation commission review, utility ROW projects are straightforward and should not require duplicative oversight and requirements. DEP could go farther and eliminate RDAs and NOIs for all utility projects within existing ROWs that comply with best management practices and National Grid internal standards that would be approved annually by the DEP. National Grid currently has such an arrangement with the Massachusetts Natural Heritage and Endangered Species Program for maintenance work within rare species habitat.

B. Chapter 91 Licensing: Revise Restrictions on Timeframes

National Grid strongly supports regulatory changes allowing both the Chapter 91 licensing process to run concurrently with MEPA review and a Chapter 91 license to be issued before a final wetland Order of Conditions is obtained. The current sequential review process increases permitting time and cost, with no apparent environmental benefits.

C. Chapter 91 Licensing: Establish a Policy for License Terms

National Grid supports the suggestion of expanding the standard terms and conditions of Chapter 91 licenses, especially recurring Chapter 91 licenses such as those for utility infrastructure projects. This will help reduce the time and resources spent on each license. Utility transmission line crossings of waterways (especially inland waterways) and other small-scale, water-dependent utility projects are good candidates for the establishment of standard license terms, taking into account specific issues typical of utility projects.

D. Wetlands: Buffer Zone General Permit

National Grid supports MassDEP's proposal to expand the universe of wetlands projects that are eligible for streamlined review because their impacts are limited to the outer 50' of the buffer zone. This will reduce time spent by MassDEP staff on projects with minimal environmental impact and will provide an incentive to applicants to avoid the inner 50' of the buffer zone when siting projects. National Grid believes that this concept could be successfully expanded. National Grid has, in the past, used the abbreviated NOI process (Wetlands Protection Act Form 4) for installations of new utilities in Riverfront Area ("RFA"), Bordering Land Subject to Flooding ("BLSF"), or Buffer Zones. We suggest a streamlined process be created for work that meets the following criteria:

(a) located only in the outer 50 ft of buffer for inland wetlands, only within BLSF, or only within the outer riparian zone of the Riverfront Area; AND
(b) no Department of the Army Individual Permit, 401 Water Quality Certification, or Chapter 91 license is required; AND
(c) the work will disturb less than 2,500 square feet in any single wetland system.

The streamlining could be effected by a general permit or a regulatory provision, allowing such projects subject to specified best management practices. We also suggest that the stormwater management measures be waived for projects meeting these criteria.

E. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening, Stream Daylighting, etc.

National Grid supports the proposal to streamline permitting for projects intended to provide an environmental benefit. National Grid suggests that site assessment and remediation projects carried out under M.G.L. c. 21E be included in the categories of projects eligible for such streamlined permitting.

F. Wetlands: Limited Project Status for Renewable Energy Projects

National Grid supports giving "limited project status" under the Wetlands Protection Act regulations to renewable energy projects. The designation should explicitly include the interconnection equipment as well as the facility itself. National Grid also supports the establishment of clear, categorical standards for all public utility limited project status activities (not just renewable energy projects).

G. Site Cleanup: Simplify Activity & Use Limitations (AULs)

National Grid supports streamlining the elements and process for putting Activity and Use Limitations (AULs) in place. National Grid also strongly suggests that, in a related effort to minimize the burden on utilities that undertake work in areas subject to AULs, MassDEP adopt regulatory language expressly stating that Health and Safety Plans (HASPs) are not required to conduct emergency utility work in such areas. The existing regulations require that, to file a Response Action Outcome (RAO) that includes use of an AUL, landowners must establish a condition of No Significant Risk for current site uses and that current site uses by definition include emergency utility work. It follows that, if an area subject to an AUL poses No Significant Risk, a HASP should not be required to perform emergency utility work there. For many years, however, licensed site professionals (LSPs) have relied on a case study in the MassDEP's "Guidance on Implementing Activity and Use Limitations, Interim Final Policy #WSC 99-300," dated May 1999, to require a HASP for such emergency utility work. Now would be an excellent occasion for MassDEP to correct this costly and burdensome contradiction concerning AULs.

H. Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)

While National Grid supports most of MassDEP's proposed reforms, National Grid believes that the current Tier Classification and numeric ranking system (NRS) process generally works well to appropriately prioritize sites, and that the elimination of this process would be counterproductive to MassDEP's streamlining goals. The Tier Classification/NRS process ensures a consistent ranking and prioritization of contaminated sites and is the first step in determining the appropriate level of scrutiny and DEP involvement. The "other mechanisms already in place to address the relative priority or significance of sites" (e.g., exposure pathways and imminent hazards) cited in the proposal do not provide a complete enough evaluation to be relied solely upon and thus could lead to inappropriate priority-setting (for example, flagging a site with multiple "imminent hazard" determinations that are actually attributable to background concentrations). Additionally, an alternative, ad-hoc prioritization of sites by LSPs will ultimately lead to inconsistencies (even errors) in the evaluation and ranking of sites, resulting in compounded mistakes from early on in the MCP process. The current "discretionary section" of the NRS gives LSPs authority to use site specific factors to "custom fit" the ranking into the appropriate Tier Classification; this is the appropriate level of flexibility.

II. National Grid Proposals for Additional Regulatory Reform

National Grid also has the following additional reform ideas for your consideration.

A. Water Quality Certification: Streamline or Eliminate Variance Requirement for Utility Maintenance Projects within Certain Outstanding Resource Waters

National Grid suggests that MassDEP eliminate the requirement in its Water Quality Certification regulations that utility maintenance projects within certain specified Outstanding Resource Waters ("ORWs") obtain a variance.

Utility maintenance activities are allowed in ORWs under the provision at 314 CMR 9.06(3)(c), which covers:

> "…maintenance, repair, replacement, reconstruction but not substantial enlargement of existing and lawfully located structures or facilities including buildings, roads, railways, utilities, and coastal engineering structures…"

However, 314 CMR 9.06(4) negates this exemption for certain ORWs (specifically, vernal pools and areas within 400' of a public water supply). National Grid recognizes that the Massachusetts Surface Water Quality Standards dictate these requirements (at 314 CMR 4.06). However, because some utility maintenance projects unavoidably take place in such areas, National Grid believes that the variance requirements in 314 CMR 9.08 could be revised to allow streamlined approval of such projects. The regulation could recognize that utility maintenance projects are "justified by an overriding public interest" and could delegate to the appropriate MassDEP Regional Office the authority to ensure that "[a]ll reasonable measures have been proposed to avoid, minimize and mitigate adverse effects on the environment."

B. Wetlands: Treat Construction Mats as a Best Management Practice

National Grid suggests that MassDEP make a determination that the use of temporary construction mats does not constitute "fill" of wetlands. Construction mats are temporary and are designed to protect and minimize impacts within wetlands; they should be treated as a best management practice, not an impact.

C. Wetlands: Exemption for Utility Installation on Roads, Road Shoulders, and Railroad Rights of Way

National Grid suggests that MassDEP create an exemption under the Wetlands Protection Act regulations to the installation of new utilities along the shoulder of roadways, along the lines of the Rhode Island Department of Environmental Management Freshwater Wetlands Rule excerpted below.

> 6.10 Utility Lines. Installation, in accordance with Rule 6.01, of new utility lines, poles, structures, equipment or facilities only where installation occurs on, above, or beneath existing or approved paved or unpaved roadways and their existing or approved cleared shoulders, or existing or approved railroad beds and their existing or approved cleared shoulders; and anti-seepage collars are used as appropriate to prevent sub-draining effects on wetlands provided that:

A. Existing culverts and the flow of water under bridges in roads or highways are not permanently blocked or disrupted by going under or attaching to such structure;
B. The project does not cause any diversion of ground or surface water to or from any wetlands;
C. The preconstruction contours are restored immediately upon installation;
D. All work in any wetlands in the easement is undertaken during low-flow periods;
E. All disturbed areas are revegetated after restoring contours; and
F. The project design incorporates best management practices for dewatering excavated areas.

This provision is similar to the exemption in the Massachusetts Endangered Species Act regulations at 321 CMR 10.14(10). These exemptions implicitly recognize that road-shoulder work has less environmental risk as long as certain standards are met.

D. Wetlands: Stormwater Standards Exemption for Small Utility Projects

National Grid suggests adding an exemption from the Massachusetts Stormwater Standards for small utility projects (less than 10 acres) with no discharges to Critical Areas, similar to the exemption for Small Residential Subdivisions.

E. Wetlands: Clarification of Utility Maintenance Exemption

The exemption in the Wetlands Protection Act for utility maintenance, repair and replacement projects is crucial to allow National Grid to maintain reliability of energy supply infrastructure, including carrying out activities required by state and federal mandates. These types of activities take place across the Commonwealth on a daily basis. The flexibility that this exemption affords National Grid to do this work on a timely basis is essential to meeting the needs of its customers. In 2008, the Wetlands Protection Act regulations were revised to include (at 310 CMR 10.02(2)(a)(2)) the "utility exemption" clause, which had previously been contained only in the statute. The regulation contains the following sentence, which is not in the statute:

> A project proponent claiming that work to remove, fill, dredge or alter an area specified in 310 CMR 10.02(1) does not require the filing of a Notice of Intent has the burden of establishing that the work is not subject to Regulation under M.S.L. c. 131, § 40.

Because there is no detailed definition of what constitutes a utility maintenance project, this provision leads to the filing of unnecessary permit applications. National Grid suggests that this sentence be omitted and/or that MassDEP define the parameters of the exemption as follows:

> Utility work that does not require the filing of a Notice of Intent includes, but is not limited to, the following:
>
> 1. For electric transmission and distribution lines: replacement of poles and conductors, cross-arms, insulator, guys, anchors, or other appurtenances; truss installation; tower painting; repair or replacement of towers or tower footings; pole inspections; access road gate repairs; road maintenance; and in-kind culvert replacement.

2. For electric substations: repair or replacement of fences or gates; repair of Spill Prevention, Control, and Countermeasure (SPCC) structures; repair or replacement of equipment (including the foundation if necessary); repair or replacement of underground cables; and vegetation removal.
3. For gas transmission and distribution infrastructure: repair or replacement of liquid natural gas equipment, take station equipment, regulator station equipment, lines, valves, or other appurtenances; corrosion protection; and inspection and cleaning of lines and associated equipment.
4. Site preparation work (e.g., exploratory borings) in support of the aforementioned activities.

F. Wetlands/WQC/Chapter 91: Exemption for Utility Work to Reestablish Service or Prevent Service Interruption

To both reduce burdens on MassDEP staff and ensure reliable power supplies for residents of the Commonwealth, National Grid suggests an exemption in each of MassDEP's water, wetlands and waterways permitting programs for non-exempt utility work necessary to reestablish service or prevent service interruption in certain time-critical situations. First, weather events, natural disasters, and other events beyond National Grid's control (such as vehicle accidents) can interrupt service, requiring immediate response. Second, certain federal mandates (e.g., the FERC standard for clearance below overhead lines) require shutdown of service if not addressed within a very short time period of discovery of any need for corrections. National Grid believes that eliminating the need for MassDEP approval before undertaking such time-critical work would reduce unnecessary interruptions of MassDEP staff's attention to other projects and would greatly benefit utility customers by minimizing service interruptions. To ensure environmental protection, MassDEP could identify appropriate general best management practices, require that work be completed within a specified time frame, and require documentation of work. This exemption could be similar to the emergency regulations promulgated by MassDEP for damage cleanup and repair activities following Hurricane Irene and the October 29-30, 2011 snowstorm, but narrowly limited to utility work necessary to reestablish service or prevent service interruption.

G. Chapter 91 Licensing: List of Jurisdictional Non-Tidal Rivers and Streams

The Chapter 91 regulations, at 310 CMR 9.04(1)(e), require Chapter 91 licenses for projects on:

> …any non-tidal river or stream on which public funds have been expended for stream clearance, channel improvement, or any form of flood control or prevention work, either upstream or downstream within the river basin, except for any portion of any such river or stream which is not normally navigable during any season, by any vessel including canoe, kayak, raft, or rowboat; the Department may publish, after opportunity for public review and comment, a list of navigable streams and rivers...

The permitting process is made more burdensome for MassDEP and applicants by the ambiguity in the definition of navigability and the necessity for applicants to prove that no public funds have been expended. It would be helpful (and a significant time and resource savings in the long run) for MassDEP to publish a continuously updated list of navigable streams and rivers on which public funds have been expended.

H. Chapter 91 Licensing: Streamlining for Certain Utility Projects

National Grid applauds the work of MassDEP's Waterways staff in developing a streamlined form for minor modification requests for National Grid's utility projects. National Grid believes that some minor regulatory changes could provide additional streamlining for utility projects with minimal impacts.

First, National Grid suggests adding a reference to overhead wire crossings in the Minor Modification section of the Chapter 91 regulations at 310 CMR 9.22(3)(a), as shown in bold below:

> (3) Minor Project Modifications. The licensee may undertake minor modifications to a licensed project, or a project exempt from licensing pursuant to 310 CMR 9.05(3)(b) through (h), without filing an application for license or license amendment. Such modifications are limited to:
>
> (a) structural alterations or replacements which are confined to:
>
> **(i)** the existing footprint of the fill or structures being altered and which represent an insignificant deviation from the original specifications of the license, in terms of size, configuration, materials, or other relevant design or fabrication parameters; or
>
> **(ii) overhead electric wires which do not reduce the height between the existing lowest wire and the jurisdictional waterway.**

Second, MassDEP should also consider moving replacement of subsurface utilities from the "Minor Modification" section of the regulations to the "Maintenance and Repair" section (310 CMR 9.22(1)), as shown in bold below:

> (1) Maintenance and Repair of Fill and Structures. During the term for which the license is in effect, the licensee shall maintain and repair all authorized fill and structures in good working order for the uses authorized in the license, and in accordance with the conditions specified therein. No application for license or license amendment shall be required for such activity. Maintenance and repair include, among other things, the following activities:
>
> (a) replacement of old pilings, decking, or rip-rap**, or overhead or submerged utility infrastructure,** all with material of the same dimensions and quality and in **approximately** the same locations and elevations as that authorized in the license;

Finally, National Grid suggests a slight expansion of the license exemption in 310 CMR 9.05(3)(g) to include, not just projects for which a final wetlands Order of Conditions has been issued, but also projects where no wetlands Order of Conditions is required (e.g., an electric line crossing with no supporting structures in jurisdictional areas under the Wetlands Protection Act).

CONCLUSION

National Grid hopes that you find these comments and suggestions useful. We stand ready to provide any assistance we can to MassDEP in developing and implementing these important

regulatory reforms, including proposing additional language changes to specific regulatory provisions or serving on advisory committees. Please do not hesitate to contact me at 781-907-3701 if you have any questions or would like further input.

Sincerely,

Peter Harley
Environmental Manager, New England

cc: Wendy Levine, Esq., Senior Counsel, National Grid
Joseph Newman, Director, Governmental Relations, National Grid
Joshua Holden, Lead Environmental Scientist, National Grid

Comment on Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

I am currently the Chair of the Estuaries Project Committee in the Town of Westport and this committee is charged with the responsibility for carrying out the Massachusetts Estuaries Project (MEP) within the Westport River watershed. I am a member of the Board of Councillors at the Manomet Center for Conservation Sciences. I was President of the Westport River Watershed Alliance for five years, and am currently participating in the meetings of the Massachusetts Water Infrastructure Finance Commission, to provide a voice for small rural communities in meeting their needs for water infrastructure financing, including meeting the TMDL targets set under the MEP. I offer the following comments deriving from my recent experience in these activities and dealings with DEP.

Recommendation 12. Wastewater Title 5: Innovative/Alternative Program - 3rd Party Review.

I strongly support this proposal. DEP has been slow to approve new technologies and the application requirements for such things as piloting of new technologies, that have been in use in neighboring states for years, are onerous. Proprietary technologies are pushed by the suppliers, but non-proprietary technologies have limited backing and slow responses. Rhode Island has a good record of testing and approving new wastewater treatment technologies and Massachusetts might consider blanket approval for general use all those technologies that have been approved in Rhode Island and possibly other neighboring states. There is much cost involved and little to be gained by duplicate or triplicate testing of the same technologies. Perhaps a regional collaboration of all the New England states could expedite this process and eliminate much wasted effort.

Recommendation 13. Wastewater Title 5: Eliminate Duplicative State Approvals.

I strongly support this recommendation for the reasons stated in the recommendation.

III. Need for Additional Reform.

No mention is made in this document of the Massachusetts Estuaries Project (MEP) that is administered by DEP. My experience has been that DEP oversight has greatly prolonged the process of producing an initial report for our estuary and obtaining the TMDL targets that we are expected to achieve. DEP advice has mainly consisted of recommendations that we not take any action until the report is completed and then to delay the completion process.

It is my recommendation that DEP should shift its focus to assisting communities and watershed organizations to implement the programs, planning and projects that will be needed over the coming years to meet the TMDL targets. Because DEP staff is probably not oriented towards or experienced with these kinds of activities, it may be

advisable to look for third parties that have such experience and expertise and then provide funding to engage them in the effort of implementation. The Manomet Center for Conservation Sciences is one such group that has already played important roles in addressing the issues of wind power and bio-fuel energy production for the State. They have experts on nutrient-reduction programs and climate change that could be very helpful in finding solutions to nitrogen reduction in our estuaries.

David C. Cole
PO Box 142,
Westport Point, MA 02791
508-636-6594

11/07/11

Massachusetts BAYKEEPER®

December 5, 2011

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108
Via Email: MassDEP.Commissioner@state.ma.us

RE: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

Massachusetts Baykeeper, Inc. ("MBK") appreciates the opportunity to comment on the Commissioner's Draft Action Plan for Regulatory Reform at MassDEP. MBK is a nonprofit organization dedicated to the protection, restoration, and preservation of Massachusetts Bay, and its surrounding watershed. We are specifically concerned with water quality issues, and corresponding environmental and public health effects.

MBK is well aware of the challenges faced by MassDEP due to major budget cuts and reduction in force. We support MassDEP's efforts to increase efficiency of the department, particularly in revising the current management configuration, and upgrading the information technology infrastructure. We wholeheartedly agree with the Commissioner's guiding principles: that proposed reforms should not weaken or undermine environmental protection standards, reduce public process, nor transfer additional responsibilities to municipalities. These principles should be strictly adhered to in assessing the merit of all proposed reforms. As such, our concerns lie with proposals that we feel diminish environmental protection standards and place a greater burden on municipalities.

While MBK is interested in all of the regulatory reforms presented by MassDEP, we have limited our remarks to areas most directly affecting the water quality of Mass Bay. Please see below:

Comments on Proposed Reform A) Wetlands, Waterways, and Coastal Resources

1. Coastal/Dredging Programs: Permit Consolidation
   While we are generally in favor of reducing submission of redundant information, MBK strongly opposes creating a permit-by-rule for Section 401 Water Quality Certifications (WQCs) for applicants that secure Orders of Conditions or Superseding Orders of Conditions. Permits-by-rule ignore the requirements of section 401 of the Clean Water Act. The purpose of Section 401 is to provide states an opportunity to address the environmental impacts of federally issued permits and licenses.[1] Under this statute, a federal agency cannot issue a permit or license "for an activity that may result in a discharge to waters of the US until the state or tribe where the discharge would originate has granted or waived 401 certification".[2] We are concerned that by creating permits-by-rule, the Commonwealth could be deemed to have waived 401 certification. WQC is a critical tool in protecting water quality, and it is imperative that it remains in the control of the Commonwealth. Further, we feel that Conservation Commissions do not have the technical expertise or resources required to make WQC determinations.

2. Chp. 91 Licensing: Revise Restrictions on Timeframes
   MBK supports revising timeframes for Chp. 91 licenses so long as the revision preserves public comment opportunities during Chp. 91 licensing or MEPA review.

3. Chp. 91 Licensing: Establish a Policy for License Terms
   We support establishing a policy for license terms for non-water dependent uses under Chapter 91, provided that there will be ample opportunity for public comment and review. It is essential that all public rights are preserved under Chapter 91.

4. Chp. 91 Licensing: General License for Small Docks and Piers
   MBK understands that under Chapter 91, MassDEP is able to provide a general license for small docks and piers. To ensure compliance with environmental protection standards, we suggest that the definition of these "small-scale" structures is adequately detailed. Also, "small-scale" projects can create large-scale harm if aggregated. We urge MassDEP to couple the general license with a strong compliance and enforcement program to ensure appropriate oversight.

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[1] USEPA Office of Wetlands, Oceans, and Watersheds, Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool For States and Tribes, April 2010, p.1, *available at* http://water.epa.gov/lawsregs/guidance/cwa/upload/CWA_401_Handbook_2010_Interim.pdf
[2] *Id.*

5. Wetlands: Targeted Review by DEP
   MBK recognizes the need for MassDEP to prioritize its allocation of resources for Wetlands Protection Act permitting. We are in favor of assigning WPA File Numbers immediately upon submittal of a Notice of Intent, however, we feel that there should be a mechanism in place to trigger initial DEP oversight for more complex projects. Otherwise, time will be wasted at both the municipal and state level re-examining more complicated projects.
   Also, the proposal limiting DEP's intervention to cases where there are "particularly sensitive resources" at issue, is very vague, and needs to be defined in detail. We caution against any proposal that would diminish much-needed technical and regulatory assistance to conservation commissions.

6. Wetlands: Buffer Zone General Permit
   We oppose establishing a general permit for activities proposed for the outer fifty feet of the buffer zone. Buffer zones are of critical ecological importance, and limiting DEP review of these projects would greatly reduce wetlands protection. In addition, it is not clear what types of projects are contemplated for the general permit.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures
   MBK supports an exemption for "wetland resource areas" created by stormwater management structures constructed prior to 1996, if they meet DEP performance standards. This would mean that to qualify for the exemption, operations and maintenance records and inspection reports indicate that the "resource area" is functioning properly.

8. Wetlands: (and others) Expedited Permitting for Ecological Restoration Projects
   We support expedited permitting for ecological restoration projects, so long as the projects achieve the benefits intended, and do not cause additional harm. Also, these ecological restoration projects must be adequately defined to ensure proper expedited permitting status.

9. Wetlands: Limited Project Status for Renewable Energy Projects
   MBK supports responsible renewable energy development. That said, we caution against any proposal that will alter regulations and have the effect of minimizing wetland protection.

10. Wetlands Chp. 91, 401, etc.: Approving New Technology
    MBK supports improved review and approval pathways for innovative projects and new technology. However, we cannot offer substantial commentary regarding this proposal due to its vague nature. We would like to know what types of endeavors would be considered "limited pilot

projects". Further, we feel that monitoring and reporting safeguards alone are insufficient to protect against environmental harm, and we strongly caution against approving projects without first assessing potential ecological impacts.

Comments on Proposed Reform B) Wastewater

11. Sanitary & Industrial Wastewater: Eliminate Sewer Extension and Connection Approval
    MBK strongly opposes eliminating sewer extension and connection approvals. Most importantly, MassDEP needs to maintain its ability to require individual permits, and MEPA review. This proposal would severely diminish environmental protection standards, and would reduce public process. Additionally, municipalities have little incentive to deny extension and connection approval for new economic development projects that would stretch the capacity of the treatment facility. Thus, state oversight is imperative.

12. Wastewater Title 5: Innovative/Alternative – Third Party Review
    We support MassDEP's proposal to rely on third party review of "innovative/alternative" Title 5 wastewater treatment technologies, provided that an extensive auditing protocol is implemented to keep third parties honest.

13. Wastewater Title 5: Eliminate Duplicative State Approvals
    MBK opposes eliminating state approvals for Title 5 septic systems and "shared system" approvals. Given the extensive nutrient-loading problem throughout the state, we are concerned that reducing oversight will serve to increase our existing problems. Further, eliminating state approval will put additional pressure on municipalities as the only line of defense. Also, the threshhold for MassDEP intervention in sensitive cases is not adequately defined.

14. Wastewater: Targeted Wastewater Discharger Inspections
    MBK is concerned that relying on DMR review and complaints to trigger inspections would result in great problems going undetected for long periods of time. If this proposal is accepted, we feel that a strong audit system would need to be implemented to ensure that proper enforcement is maintained (ie. that DMRs are accurately reported). Additionally, third party inspectors should be chosen by MassDEP, NOT by the individual dischargers. The inspectors should be required to maintain certain bonding requirements to keep their licenses, and the dischargers should have to pay into a fund to support the inspection process.

Comments on Proposed Reform E) Other Areas

19. Many Programs: Self-Certification for Certain Permit Renewals
    MBK strongly opposes self-certification for permit renewals. The permit renewal process brings to light changing impacts to the environment that only agency oversight can adequately address. If this oversight is eliminated, there will be no opportunity for review of potentially dangerous cumulative impacts to our natural resources.

20. Revise Fees
    We strongly support fee-based incentives to encourage projects that exceed minimum environmental compliance standards. We feel that a performance-based fee structure will be most appropriate in wetlands permitting. Additionally, we are in favor of increasing and/or requiring e-filing to decrease the administrative burden on both the DEP and applicants, as well as to provide greater public access to this important information.

In conclusion, MBK supports MassDEP's general principles and overall quest for efficient reform. However, we are most concerned that reduction of direct MassDEP oversight will result in diminished environmental protection standards, and place a greater burden on financially strained municipalities. During these difficult economic times, we want to ensure that environmental protection does not fall by the wayside.

Again, we appreciate the opportunity to comment on these proposed regulatory reforms, and we look forward to working with MassDEP on these and other important issues. Please feel free to contact us at (845) 987-9394 with questions or comments.

Sincerely,

Brianne D. Callahan
Massachusetts Baykeeper/Executive Director

Massachusetts Chemistry & Technology Alliance, Inc.

December 8, 2011

Mr. Kenneth Kimmell
Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Dear Commissioner Kimmell:

I would like to congratulate you, on behalf of the Massachusetts Chemistry & Technology Alliance, for developing the Regulatory Reform initiative at MassDEP. This is the first comprehensive undertaking by a DEP Commissioner to identify effectiveness of agency programs and to streamline MassDEP processes and procedures. We applaud your directive to seek regulatory and permitting reforms that will help MassDEP prioritize regulatory requirements within the agency's control.

We agree with your directive that reforms should not transfer new responsibilities or costs to local municipalities, which could cause them to increase local property taxes on manufacturing sector employers. In this same manner, MassDEP regulatory reforms should not transfer costs to manufacturing sector employers, further widening regulatory compliance costs between the Commonwealth of Massachusetts and business-friendly states in the South and Midwest.

I would like to mention three specific areas of concern that we would like to offer further suggestions on in order not to place Massachusetts manufacturing employers at further competitive regulatory cost disadvantage. These sections are: B. Wastewater, 11Sanitary & Industrial Wastewater; 16.Solid Waste-Certified 3rd Party Inspectors; and E. Other Areas, 20 Revise Fees to Incentivize Better Results.

I have asked MCTA Legal Counsel Chris Foster to facilitate a meeting for MCTA company representatives with Deputy Commissioner Alicia Barton McDevitt to discuss manufacturing sector concerns in greater detail and identify proactive solutions consistent with the directives you established for regulatory reform.

Very Truly Yours,

David J. Wawer
CEO

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617-451-6282 FAX: 617-227-5532
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CONNECTICUT RIVER WATERSHED COUNCIL
The River Connects Us
15 Bank Row, Greenfield, MA 01301

December 6, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd floor
Boston MA 02108

Re: **Commissioner's Draft Action Plan for Regulatory Reform at MassDEP**
Commissioner Kenneth L. Kimmell, October 24, 2011

Dear Ms. Childers and Commissioner Kimmell,

The Connecticut River Watershed Council (CRWC) is the principal nonprofit environmental advocate for protection, restoration, and sustainable use of the Connecticut River and its watershed. We have been working to protect this four-state watershed since 1952. Making MassDEP as effective and efficient as possible has direct and indirect benefits for the Connecticut River and its tributaries, therefore it is in our organization's interest to review plans for regulatory reform.

In general, we strongly support the Commissioner's asserted "guiding principles" that the proposed reforms not weaken or undermine environmental protection standards, not reduce public process, and maintain opportunities for public involvement and citizen appeals. We also support efforts to improve DEP's computer technology in order to significantly enhance the efficiency of DEP's operations and increase public access to information through the web. MassDEP is behind other New England states on making water quality data accessible online. We are eager to see DEP provide more and accurate environmental information on-line, as there are significant difficulties with EPA's ECHO website. Several of the proposed actions do not seem in keeping with the stated guiding principles.

Our specific comments follow:

<u>4. Chapter 91 Licensing: General License for Small Docks & Piers</u>
Docks along the Connecticut River fall under Chapter 91 permitting, and we intend to review the new regulations whenever they are drafted. We are interested in seeing what DEP's definition of "small-scale" is, and where docks for educational institutions would fall. The Western Regional office has already had a hard time providing sufficient oversight for permitting all the docks on the CT River (less than one staff person is assigned to this program, which also makes us wonder if changes will truly much in the way of DEP's resources), and we worry that reducing this oversight will lead to additional non-permitted and sprawling structures. We understand that general licenses for small-scale and routine projects can work well to streamline permitting for applicants as well as reduce pro-forma review of projects by staff. However, any proposal for general licensing requires a specific commitment to compliance and enforcement monitoring of projects covered by a general license. We would like to see a specific proposal in this regard.

WWW.CTRIVER.ORG MAIN OFFICE: 413-772-2020, FAX: 413-772-2090 CRWC@CTRIVER.ORG
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5. Wetlands: Targeted Review by DEP

This proposal is very vague, as it is unclear what DEP considers to be significant resource impacts. The provision could lead to weakened wetlands protection in western Massachusetts, where many Conservation Commissions do not have paid staff and members have widely varying levels of experience and/or personal connections with project proponents. Many Conservation Commissions rely on DEP oversight in order to ensure arm's length review and provide more expert input on projects. We're glad that DEP is saying that it will continue to provide assistance via the Circuit Rider Program, which seems to be at risk of being cut almost on a yearly basis. We would like to see DEP's commitment to this proposal by making the position a permanent, benefitted position.

6. Wetlands: Buffer Zone General Permit

There is a large body of research showing the importance of upland buffer zones in protecting aquatic resources. One UMASS project, for example, showed that more than 50% of wetland wildlife species use habitat beyond 100 feet from the edge of a wetland (online at http://www.umass.edu/nrec/pdf_files/final_project.pdf). CRWC thinks that any impacts within 100 feet of a wetland should be restricted; therefore we oppose this provision. The Massachusetts Association of Conservation Commissions has offered some constructive comments on this proposal that should be considered by MassDEP.

8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening, Stream Daylighting, etc.

We fully support the proposal to expedite and streamline permitting for ecological restoration projects, such as dam removals, where environmental benefits are expected to significantly outweigh impacts. We are convinced that the many removal and restoration projects that have been accomplished over the last decade or so demonstrate these projects limited initial impacts are far outweighed by the benefits. As well these projects have become routine and are conducted by a wide range of experienced and professional contractors. We look forward to see what the working group proposes for regulatory changes.

9. Wetlands: Limited Project Status for Renewable Energy Projects

CRWC opposes this proposal. The description says that the anticipated changes would involve primarily wind or solar projects and their utility or access requirements, and we aren't sure why these projects, if located next to wetlands or rivers, deserve special status. Terrestrial wind turbine projects are installed on ridge lines and mountain tops, which have fragile ecosystems and headwaters for pristine streams. Given the photos and videos we've seen of wind turbine installation on mountain tops in New England, we don't think these projects should have streamlined permitting or limited project status. It would be one thing if we had lots of experience with each kind of renewable energy project in the state, but installing solar, wind, and biomass are new and we aren't familiar with all the environmental issues they can bring up yet. Therefore, it's not appropriate to streamline until we have many projects under our belt.

11. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

We are concerned with DEP's proposal to eliminate sewer extension and connection approvals and think it is important for DEP to retain its authority to require individual permits as well as MEPA review and appeal rights. The Neponset River Watershed Association has submitted detailed comments on this proposal, and we are interested in seeing DEP's response to these comments.

13. Wastewater Title 5: Eliminate duplicative State approvals

We are potentially supportive of this revision provided that the DEP still receives information on local Title 5 applications in order to independently evaluate whether there are issues on which they would want

to intervene. If the only way that DEP will be aware of problematic applications is through someone providing comment on a local permit, then we do not believe there is sufficient oversight of a local approval. In small towns in our watershed, it is the local volunteer board of health members who do the Title 5 inspections. As such, the inspections range in quality, and of course there is the possibility of double-standards for neighbors, friends, relatives, the Chief of Police, etc. State oversight in these cases remains very important.

Staffing of any proposed changes

In terms of offering DEP other constructive ideas, CRWC went through the employee lists at the various field offices to see how many staff people were in each program. Most of the regional offices conduct regional business, but Worcester has several state-wide duties. We tried to do the same for the Boston office, but found no such list online nor through several phone call inquiries. A search in the DEP employee lookup indicates that there are 493 staff people in the Boston office. We were not able to determine which programs were staffed by the Boston office or why the office is that large. Our point in undertaking this quick review was to evaluate whether there is sufficient field coverage in those programs under review for changes. We are not convinced that there are presently enough field staff, and we are unclear how that would change as a result of this initiative. We think you must consider how changes in the front-end of programs at permitting can be sufficiently and appropriately implemented by ensuring there is staff working at the back-end of projects in the regions and in the field.

As you develop the scopes for any of the ideas that will be moved forward for refinement and then implementation, we feel very strongly that the resulting staffing changes need to be described in detail in order to allow for improved understanding of how these changes will occur.

Thank you for the opportunity to comment. If you would like to contact me, I can be reached at 413-772-2020 x. 205 or adonlon@ctriver.org.

Sincerely,

Andrea Donlon
River Steward

cc: Julia Blatt, Massachusetts Rivers Alliance

From: Peter Cutting
To: Commissioner, MassDEP (DEP)
Subject: Commissioner"s Draft Action Plan for Regulatory Reform at MassDEP
Date: Thursday, December 01, 2011 6:57:21 PM

I am pleased with the reform initiative that the DEP is undertaking but certain aspects should be reconsidered. Specifically, the Self-Certification process for permit renewals on a given project is not the best approach. I am concerned that projects entitled to automatic renewal may have originally been approved under different circumstances – circumstances that may have dramatically changed.
Furthermore, as the topic of sustainability gains heightened interest across all sectors of society, the automatic renewal for a project - like a large "big box" retail project for instance - may be shortsighted. Historically, these type of developments have not incorporated sustainable design principles into the projects. There are many other "green design" opportunities that will be lost if automatic renewal becomes the standard operating procedure.

I would also strongly recommend that a partnership be established between the agency and the extensive higher educational system in our state. This can be done in the form of student internships or graduate research projects. This could entail diverting some of the more mundane taxing oversight activities to students who are eager to understand regulatory challenges in the environmental sector. Ultimately, it would free up much needed resources at the agency. Another area that would be relatively easy for higher education collaboration would be the alternative fine mechanism. Students could research and present to the offending parties a proposal that provides environmental benefits to the community as an alternative resolution to the imposed fines. Currently, very few violators undertake this approach.

I would like to applaud the comprehensive undertaking in revamping the technology as there are many opportunities for upgrading the efficiency of DEP operations - the records keeping operations are archaic at best. I strongly encourage an approach that incorporates more online access for reviewing documents.

I'm also heartened by the proposal for changes in siting renewable energy projects. The replacement of dirty energy is one of the most important challenges the Commonwealth faces. Anything that speeds up the growth of the clean energy sector should be pursued expeditiously. My only concern is that there might be too tight a qualifier on the definition of a renewable energy project by requiring the project to be eligible for RECs.

Thank You

Peter Cutting

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Thank You

Peter Cutting

NAIOP
COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
MASSACHUSETTS

December 5, 2011

Commissioner Ken Kimmell
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Via Email: MassDEP.Commissioner@state.ma.us

Re: NAIOP Comments on DEP Action Plan for Regulatory Reform

Dear Commissioner Kimmell:

NAIOP Massachusetts, the Commercial Real Estate Development Association, commends the Department on the Commissioner's draft *Action Plan for Regulatory Reform at DEP*. The results of the Plan clearly illustrate the wide range of stakeholders involved in its development. There is no question that the recommendations will result in increased efficiencies for the Department while ensuring continued protection of the environment.

NAIOP supports many of the concepts outlined in the Plan including the following: the proposed changes to Chapter 91 including the revised restrictions on timeframes (#2) and the establishment of a policy for license terms (#3); the buffer zone general permit (#6); exempting wetlands "resource areas" created by stormwater management structures (#7); the elimination of current certification and permitting for all sanitary and industrial connections and extensions of the public sewer systems (#11); and the increased use of self-certification for certain permit renewals (#19).

Though we believe these reforms will reduce redundancies and hopefully allow the Department to better operate at the "speed of business," NAIOP does have some concerns and comments about how some of the proposed changes will be implemented. Many of our comments focus on the need for additional specifics and details. NAIOP looks forward to an opportunity to participate in the various stakeholder groups that will be created as a result of this process.

The following comments are provided in the order they are listed in the Plan:

- **Coastal/Dredging Programs: Permit Consolidation (#1)** – We strongly support the move to create a common permit application that will allow applicants to reduce the submission of redundant information. We urge the Department to expand this beyond "coastal" projects. Dredging in many ponds experience the same redundancy in permit reviews and the streamlined process should be applied to those projects as well. In addition, while the use of general permits and "permits

by rule" have the potential to create significant efficiencies, specifics are needed on how they will be applied, who will be eligible, and the required procedures.

- **Wetlands: Targeted Review by DEP (#5)** – Lessening of wetland NOI reviews and the focusing of resources on SOOCs seems to have great merit, but this could also pose a handicap in certain cases where private parties are faced with inconsistent or contrary local Conservation Commissions. Access by private parties to a MassDEP "Circuit Rider" in cases of disputes could serve to address this concern.

- **Wetlands: Buffer Zone General Permit (#6) –** NAIOP strongly supports this recommendation. We were involved in the 2004 effort to revise the Department's buffer zone policy. Due to last minute changes to the policy, which significantly limited its applicability and were opposed by NAIOP, it was used less than five times over a three year period. If implemented correctly, we believe this recommendation will reduce DEP's workload and encourage work outside the first fifty feet of the buffer zone. The General Permit must be clear and simple while truly incentivizing work outside of this area.

- **Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures (#7) -** Since the 2008 revisions to the Wetlands Protection Act, stormwater management structures constructed prior to January 2, 2008 have been treated as protected wetland resource areas. This effectively prevents any substantial upgrade or relocation that would alter these so-called "wetlands." However, those structures constructed on or after that date can be modified or replaced subject to stormwater-related performance standards and are not regulated as wetland resource areas. There is no basis for this distinction, since both sets of basins are required by DEP for the express purpose of protecting actual wetland resources and are operated identically. Thus, NAIOP strongly supports the proposed recommendation outlined in the Plan, which states that regulatory changes will be made to exempt wetland "resource areas" created by stormwater management structures that were constructed prior to 1996, if the stormwater system meets DEP's performance standard***s***.

  However, the Plan goes on to say that such a change "follows on regulatory changes previously made to exempt stormwater management structures that were constructed *after* 1996." NAIOP is unaware of any regulatory change that generally exempts structures created after 1996. It is imperative that the final regulatory changes apply to any existing systems constructed or improved under DEP stormwater standards (regardless of when they were constructed***)***, and allow for maintenance and alteration of the existing structures without treating them as wetland resources. Changes to stormwater structures (alteration, replacement, reconstruction, or upgrades) should be allowed under standards that would protect the stormwater functions being changed, much the same way they are allowed for structures constructed on or after January 2, 2008.

- **Wetlands: Expedited Permitting for Ecological Restoration Projects (#8) –** An expedited process for such projects is needed and should be a high priority. As part of this process, NAIOP encourages the Department to consider moving forward with a wetlands restoration/replication banking program. The Department should modify its Limited Project categories to allow wetlands resource area banks to be established by private initiatives. The public benefits are: (1) restored or created wetlands which are sufficiently large to have enhanced environmental qualities, contributing to better protection of the interests of the Wetlands Protection Act; and (2) Conservation Commissions would gain an alternative to requiring numerous small mitigations from individual home and commercial owners, thus simplifying filing reviews and monitoring requirements. The private benefits would be improved regulatory certainty and reduced process times and costs for subsequent applicants who could utilize the bank. Given the enormous success of such programs in many other states, NAIOP would be very interested in working with other stakeholders to create such an initiative in Massachusetts.

- **Wastewater Title 5: Innovative/Alternative Program – 3rd Party Review (#12) –** NAIOP believes that third party review of these projects will be a benefit, as long as the criteria are well defined and applied consistently.

- **Site Cleanup: Simplify Activity & Use Limitations (AULs) (#17) –** NAIOP supports the development of simplified forms and streamlined public notice procedures to create more understandable forms of restrictions. NAIOP would encourage the Department to involve a real estate conveyancer in the development of the revised forms. We frequently hear that conveyancers find the current version confusing and having their input early in the process may save everyone time and needless confusion upon implementation.

- **Many Programs: Revise Fees to Incentivize Better Results (#20) –** NAIOP has some serious concerns with this recommendation. In particular, we do not agree that "increasing fees on the categories or permits or activities with the highest potential for environmental impact could reduce the number of projects that fall into those categories." We do not believe the two are related. More importantly, fees should only be based on the Department's cost to review the application, not the perceived environmental impacts.

- **Section III: Need for Additional Reform –** NAIOP is very interested in participating in the stakeholder groups that will be working to explore more substantial regulatory reforms that might be feasible over a longer period of time. We strongly support the increased use of self-certification and third party experts (similar to the current LSP model) and urge the Department to seek out additional areas where this could be used.

Finally, we encourage the Department to evaluate the effectiveness of all of the proposed reforms every 5 – 7 years in order to maintain or expand programs that are working and

modify or eliminate those that are not. This would be similar to the regulatory review provisions contained in Chapter 240 of the Acts of 2010.

Thank you again for the opportunity to provide comments on this important initiative. Please contact us if you have any questions or if you need additional information on any of our comments.

Sincerely,

David I. Begelfer
Chief Executive Office
NAIOP Massachusetts

Tamara C. Small
Director of Government Affairs
NAIOP Massachusetts

Cc: Deputy Commissioner Alicia McDevitt, MassDEP

From:	decoulos@gmail.com on behalf of James J. Decoulos
To:	Commissioner, MassDEP (DEP)
Cc:	Tamara Small; Wendy L. Rundle
Subject:	Comments: Commissioner"s Draft Action Plan for Regulatory Reform
Date:	Monday, December 05, 2011 10:36:59 PM

Commissioner Kimmel,

As a professional civil engineer and licensed site professional in the Commonwealth, it is a pleasure to have an opportunity to provide comments on proposed regulatory reform at the Massachusetts Department of Environmental Protection (MassDEP or the Department). My practice reaches into most of the divisions of the Department, which includes air permitting, septic systems, sewer planning, solid waste, stormwater management, waste site cleanup, water management, waterways and wetlands. I am also an active member of the Licensed Site Professional Association (LSPA) and the Boston chapter of the National Association of Industrial and Office Properties (NAIOP).

One of the issues I know you are addressing is the isolation of each division of the Department (or the "silo effect.") It can be frustrating to demonstrate how cumulative environmental impacts reach across multiple divisions. For instance, non-point source pollution (under the domain of stormwater) can lead to significant releases of oil or hazardous materials (under the domain of waste site cleanup); or, best practices for activity and use limitations (AULs), which include paving contaminated soil areas, run contrary to best practices in water management, which are trying to infiltrate and replenish groundwater resources. The silos need to come down.

Another major focus of reform should be improved transparency. The Governor has clearly articulated this effort across all branches of government. See http://www.mass.gov/transparency/ MassDEP is not always held accountable and has been known to keep information hidden from public scrutiny.

As an active participant in AUL education and reform in the LSPA, I was told by MassDEP staff that we would have an opportunity to review and work together with the Department to update old AUL policies. Without any notice or invitation, the Department issued an updated policy late last year. I hope the private sector has greater involvement in the proposed simplification of AULs.

Similar uncooperative or stagnant relationships have been encountered in the Light Non-Aqueous Phase Liquid (LNAPL) and Historic Fill workgroups. Last year, in an effort to obtain LNAPL workgroup documents through a public records request, I was informed by the Department that the documents would not be released because they fell "under the deliberative process exemption" of General Laws Chapter 4, Section 7(26)(d). See attached response from MassDEP attorney Kathleen Delaplain. There needs to be a more efficient and transparent process for the public and private sectors to protect the environment and work effectively together.

The privatized waste site cleanup program has been successful and the same program format should be adopted in the solid waste, wastewater and wetlands programs. I applaud the reform initiatives to eliminate the tier classification process in waste site cleanup and make every effort to keep the program privatized (as opposed to the regulatory creep of a "semi-privatized" program.)

The Department has taken significant technology steps with its eDEP service. The program should be mandatory for all programs (i.e. air permitting, solid waste, waterways and wetlands). As you may know, there are occasional delays or failures with the service (which I hope the Department is addressing by either upgrading or outsourcing their servers). Similarly, the effort to scan reports is a great first step, but occasionally runs into problems when the scanning fails to honor the order of the reports or scan a hand written MassDEP field form in grayscale format. It is frustrating to conduct a physical file review for scanned documents that should be readable. Regardless, all of the divisions of the Department should be moving towards paperless submission and review.

Recommended technology improvements I suggest include the use of webcams (by both the

Department and applicants); creating dedicated project photo albums in either Flickr (the current Yahoo service being used) or Picasa (the comparative Google service) with photos that are geo-tagged (showing their location); creating dedicated video sites in either Vimeo or YouTube; creating WiFi hotspots at every MassDEP office or field station for public use; and, working with MassDOT to share a new GPS reference station network (that offers centimeter level accuracy for locating discharges, infrastructure, resources and spills).

Lastly, while it is encouraging to see the Department willing to work with the Massachusetts Association of Conservation Commissions (MACC), I hope similar outreach is made to housing and business organizations. MACC has been the key player in pushing home rule boilerplate bylaws across the state and these rules can stifle projects and make MassDEP wetlands reform meaningless. True wetlands reform cannot occur unless the laws, regulations and policies can be applied consistently and predictably throughout the Commonwealth.

Please feel free to contact me if you would like further information or examples on these recommendations. Thank you.

James J. Decoulos, PE, LSP
Decoulos & Company, LLC
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James Decoulos <decoulos@gmail.com>

FW: LNAPL Workgroup / John Fitzgerald Public Records Request

4 messages

Delaplain, Kathleen (DEP) <Kathleen.Delaplain@state.ma.us> **Thu, Nov 4, 2010 at 3:36 PM**
To: "James J. Decoulos" <jamesj@decoulos.com>

Enclosed please find records responsive to your public records request, referenced above, as well as a log of records which MassDEP considers exempt under the law. This letter completes MassDEP's response to your request. If you have any questions please contact me at (617) 654-6546.

Pursuant to M.G.L. c. 4, § 7(26)(d), the following documents fall under the deliberative process exemption and are therefore exempt from disclosure:

1. 1/11/10 Kendall Marra Email to John Fitzgerald
2. 6/16/10 John Fitzgerald Email to Nancy Bettinger
3. 6/17/10 John Fitzgerald Email to John Miano
4. 3/12/10 Kendall Marra Email to Elizabeth Callahan
5. 6/10/10 Kendall Marra Notes
6. 2/1/10 Kendall Marra Email to John Fitzgerald
7. 10/29/08 Kendall Marra Email to Elizabeth Callahan
8. 9/23/09 John Miano Email to John Fitzgerald
9. 3/11/10 Jack Miano Memorandum to Elizabeth Callahan
10. 4/28/09 John Miano Email to Kendall Marra
11. 11/24/09 John Fitzgerald Memorandum
12. 6/08/09 Kendall Marra Email to John Fitzgerald
13. 3/18/10 John Fitzgerald Email to Kendall Marra
14. 6/17/10 John Miano Email to John Fitzgerald
15. 3/15/10 Elizabeth Callahan Email to Kendall Marra
16. 2/2/10 Elizabeth Callahan Email to Kendall Marra

17. 2/2/10 Kendall Marra Email to Elizabeth Callahan

18. John Fitzgerald 10/28 Notes and 10/28/08 Kendall Marra Email to John Fitzgerald

Pursuant to M.G.L. c. 4, § 7(26)(d), the following documents fall under the deliberative process exemption and are therefore exempt from disclosure. However, the deliberative process material in these documents has been redacted, and the redacted electronic versions are attached to this email.

1. January 2010 John Fitzgerald Draft Memo (LNAPL.redacted.doc)
2. January 2010 John Fitzgerald Draft Memo (LNAPL_2.redacted.doc)
3. 1/21/10 John Fitzgerald Draft Memo (LNAPL_3.redacted.doc)
4. 1/29/10 John Fitzgerald Draft Memo (LNAPL_4.redacted.doc)
5. 1/29/10 John Fitzgerald Draft Memo (LNAPL_Fitz_1_29_10.redacted)
6. 12/02/09 John Fitzgerald Draft Memo (NAPL Thoughts_12_01.redacted.doc)
7. 6/10/10 Kendall Marra Notes (marra comments 6_10_1)
8. 3/18/10 Kendall Marra Email to John Fitzgerald (new british columbia Inapl.docx)

Sincerely,

Kathleen Delaplain
Counsel II
Office of General Counsel, Mass-DEP
One Winter Street, 3rd Floor
Boston, MA 02108

Phone (617) 654-6546
Fax (617) 338-5511

Massachusetts Society of Municipal Conservation Professionals, Inc.
P.O. Box 2620 Duxbury, MA 02331

MSMCP, Inc. is a 501(c)(3) non-profit, educational organization under the Federal tax code, Tax Identification Number 22-3061734.

December 5, 2011 (email sent)

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108

RE: COMMISSIONER'S DRAFT ACTION PLAN FOR REGULATORY REFORM AT MassDEP

Dear Commissioner Kimmell:

The Massachusetts Society for Municipal Conservation Professionals is pleased to offer the following input regarding the "Commissioner's Draft Action Plan for Regulatory Reform at MassDEP", dated October 24, 2011. Our organization is made up of and supports the paid local staff that is in charge of administering the Massachusetts Wetlands Protection Act. As such we have a strong interest in ensuring that the MA DEP and local communities function well together to protect the natural resources of the Commonwealth. As a full Board we wanted to be sure to be engaged with this process but we hope that Towns are also submitting their own comments. We have not had time as a group to fully sort through the Draft Action Plan. However, two of our Board members will be participating with the Wetlands and Waterways Regulatory Reform Advisory Committee at the invitation of Lealdon Langley, Director of the Wetlands and Waterways Program for DEP. We look forward to this participation and the opportunity to have input.

We are a partner organization with the Massachusetts Association of Conservation Commissions (MACC) and we do endorse their comments and believe they are in line with those of our board and our membership. Our organization strongly supports protection of all natural resources. Where the proposed changes can save time and money without sacrificing our State's high level of protection then they will generally be viewed positively. However, we also really want to be sure that this round of potential change is not simply a reduction in staffing due to financial constraints. In the long term it

is hard to imagine how environmental protection can be sustained at a high level with reduced staff and resources to handle compliance. Please remain committed to analyzing any changes that occur and being open to making additional changes or reverting to past policies if changes do not have positive results.

One of our largest concerns is with communities that do not have strong Conservation Commissions or their own bylaws. When this is the case it is really DEP that is the main arm of enforcement and we would hate to see this capability diminish. Also please be sure to maintain the Circuit Rider Program, and to reinstate it in regions where one is not currently active. We have heard from some Administrators that they are not currently being served by this program.

Please feel free to contact me for any additional discussion or feedback and thanks again for this opportunity to be involved with the evolving program at MassDEP

On Behalf of the MSMCP Board,

Thomas Gumbart
President MSMCP &
Lincoln Conservation Director

TOWN OF LINCOLN

CONSERVATION COMMISSION

CONSERVATION DEPARTMENT
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781-259-2612

December 5, 2011 (email sent)

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108

RE: COMMISSIONER'S DRAFT ACTION PLAN FOR REGULATORY REFORM AT MASSDEP

Dear Commissioner Kimmell:

The Lincoln Conservation Commission appreciates the opportunity to submit comments regarding the "Commissioner's Draft Action Plan for Regulatory Reform at MassDEP", dated October 24, 2011. Massachusetts has always been a progressive State when it comes to environmental protection. We realize that the current economic situation calls for changes but it is important to be sure that the proposed changes do not weaken the current level of protection. Healthy natural resources, such as clean drinking water and productive wildlife habitat, benefit all Massachusetts residents and visitors. A variety of changes in DEP's regulations are proposed but the area of focus for these comments is on inland wetlands protection, as administered by the Lincoln Conservation Commission.

Overall one of our biggest concerns is that the public will see these changes as a sign of diminishing environmental control from MA DEP and this could lead to residents questioning why we need stringent local control. DEP has strong authority in wetlands matters and we do not want this position weakened. The comments below follow the section numbering that is in the Draft document itself:

5. <u>Wetlands: Targeted Review by DEP</u>

We appreciate the move to having file numbers issued immediately for Wetlands Protection Act Notices of Intent. This will help all involved with the process. Also it does make sense to prioritize review in relation to the significance of potential impacts to protected resource areas. However, this has probably already been happening to some degree. We are concerned that at some point a reduced level of review will result in inadequate oversight from the State. This will especially be an issue for communities without their own wetlands bylaws and regulations.

The Circuit Rider program has been beneficial to us here in Lincoln and to others in the Northeast Region. We are pleased that DEP remains committed to this program. Hopefully there will be ongoing review of

any new policy so that if it is not working properly there will be serious efforts made to reinstate any lost staff or even to augment staffing levels.

6. Wetlands: Buffer Zone General Permit

This effort, as stated in the document, did not go well several years ago. Many of the same problems will arise with this next effort to establish a General Permit. One of the major ones is making sure that all decisions are based on accurate wetlands delineations and accurate plans. Without some level of ConCom review it is hard to see how this will work. Requests for Determination of Applicability can already be used for many simple projects and offer a simpler more basic level of review.

Again, we raise the concern that these may well be viewed by MA residents that the 50 to 100 foot buffer zone does not have much real value and this will undermine our local bylaw efforts to protect this area as a resource area in and of itself. So much of potential impact is site related. Work in the outer buffer zone may be fine on a flat existing lawn but on a steep gravelly slope it may not be appropriate.

We urge DEP to acknowledge the strong connection between healthy natural buffer zones and healthy wetlands systems. If any changes are made they need to reflect this connection. It is hard to envision how any General Permit will result in adequate protection to buffer zones.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

The Conservation Commission is concerned that this will create a situation where property owners will use this as an opportunity for altering (dredging, vegetation clearing etc.) stream channels and ponds that do receive stormwater but have long been parts of functioning wetlands systems. It seems that it would be appropriate to have formal review prior to initiating major projects of this sort to ensure there are no downstream adverse impacts. We do not object to having maintenance on older stormwater management systems but there needs to be State and/or local review prior to new initiatives on older systems.

8. Wetlands (& Others?); Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening; Stream Daylighting, etc.

In general the Commission is supportive of restoration or enhancement projects and remains interested in how this proposal will be accomplished. Some projects may need full review even if they are "restoration". For example, removal of a large dam would have many environmental impacts. Even if the net result is positive there is a lot of information that would need to be reviewed and analyzed. Projects also need to be accessible to the public for their review and comments.

9. Wetlands: Limited Project Status for Renewable Energy Projects

Although we are very much in favor of renewable and alternative energy production we are quite wary of any new Limited Projects. Typically low wetland sites are not the best for solar or wind but we do not

want wetland sites to suddenly be viewed as potential development sites for energy production. This is an area where we need more information before supporting this initiative.

We do appreciate DEP's efforts to deal with the budget constraints that we are all currently enduring. However, some of the proposed changes, although they are well-intentioned, could result in an overall reduction in wetlands protection for the Commonwealth. Please take time to review these and all the other comments and feedback you receive and do your best to address them. No matter what happens over the coming few years we encourage you, as Commissioner, and all current or future MA staff dealing with natural resource issues to be open to expanding staff and regulatory oversight in the future.

On Behalf of the Lincoln Conservation Commission,

Thomas Gumbart
Lincoln Conservation Director

TOWN OF PLYMOUTH

11 Lincoln Street
Plymouth, Massachusetts 02360

(508) 747-1620
FAX: (508) 830-4062

November 8, 2011

Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

The Town of Plymouth Environmental Management Division is writing to express its support for the Commissioner's Draft Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (DEP) issued by Commissioner Kenneth L. Kimmell on October 24, 2011. Specifically, we would like to express our strong support for two items in the Draft Action Plan that have the potential to make dam removal and river restoration permitting more efficient: Specifically, those items are:

- Item #1 states that DEP will develop a common permit application for the Wetlands Protection Act, Chapter 91, and the 401 Water Quality Certification. A common permit application will significantly reduce the amount of time it takes dam removal applicants to prepare permit applications while still requiring the information necessary for DEP and Conservation Commissions to effectively protect the environment. Reducing the number of permit applications that are required will primarily serve to reduce duplicative information and duplicative reviews. The proposed changes will bring Massachusetts more in-line with surrounding states like New Hampshire and New York who have had unified permit applications for many years.
- Item #8 in the Draft Action Plan states that DEP will develop expedited permitting for aquatic habitat restoration projects, including dam removal.

As a leading municipal advocate for dam removal and stream restoration projects the Town of Plymouth strongly believes that this type of regulatory reform will accelerate the pace at which our rivers are restored. As a community we have removed several dams and undertaken large scale aquatic restoration projects at Town Brook, Eel River, Red Brook and Wellingsley Brook and know first hand the amount of time and expense spent on a duplicative permitting process. We hope that these proposed changes not only accelerate the pace of restoration but may also result in increased public safety, as more aging dams are removed. Therefore, we strongly support the proposed changes.

Sincerely,

David Gould
Environmental Manager

Printed on Recycled Paper

TOWN OF WEST TISBURY
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PH 508-696-6404 FAX 508-696-0103
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December 5, 2011

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108 via Email: MassDEP.Commissioner@state.ma.us

Re: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

Thank you for the opportunity to provide comment on the Commissioner's Draft Action Plan for Regulatory Reform (Draft Plan). On behalf of the West Tisbury Conservation Commission (West Tisbury Commission) I am writing to endorse the comments and suggestions made by the Massachusetts Association of Conservation Commissions (MACC) in its letter to you dated November 29, 2011 concerning the Draft Plan and to offer the following additional comments.

1. Coastal/ Dredging Programs: Permit Consolidation: Partial Support.
   A single permit application is acceptable but the loss of review and analysis by DEP staff with respect to Chapter 91 licensing and 401 Water Quality Certification would place a much greater burden on the local municipalities.

2. Chapter 91 Licenses: Revised Restrictions on time frames: Support

3. Chapter 91 Licensing: Establish a Policy of License Terms: Support

4. Chapter 91 Licensing: Partial Support

   General License for Small Dock and Piers: West Tisbury is a small coastal town without a harbor. The Selectmen act as Harbor master. The Commission receives Notice of Intent applications for seasonal floating docks in the Tisbury Great Pond and in coastal waters. These types of docks are also covered under Chapter 91 Section 10A. In September 2003 DEP's Waterway Division published a very useful guide entitled, "Permitting, Small, Pile Supported Docks and Piers." Section III B. of this guide contains design and construction standards for small docks, piers and related structures for both inland and coastal areas. It would be very helpful if the wetland regulations included these standards.

5. Wetlands: Targeted Review by MassDEP: Support:

The Circuit Rider program is an invaluable tool for local boards who do not have technically trained staff. Comments included in the DEP file number letter are very helpful to Commissioners especially when an application is lacking detail. Some applicants will complain that DEP did not have any comments on the application and ask why the Commission needs more information if DEP does not. DEP comments add validity to a Commission's request for more information.

6. Wetlands: Buffer Zone General Permit: We support MACC's proposed alternative approach.

   The West Tisbury Commission has not had one application using the simplified review process. West Tisbury's local wetlands bylaw treats the Buffer Zone as a defined Resource Area in which the first 25 feet is a No-Disturbance Zone and the first 50 feet is a No-Build Zone. The majority of filings in West Tisbury are for work in the Buffer Zone. We strongly urge DEP to give serious consideration to MACC's suggestions. The Buffer Zone is increasingly under more development pressure, especially in coastal communities.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures: Support

8. Expedited Permitting for Ecological Restoration Projects. Dam Removal Inlet Widening Stream Daylighting etc.: Strong Support

9. Wetlands: Limited Project Status for Renewable Energy Projects: Support MACC's comments

10. Wetlands, Chapter 91, 401: Improved Regulatory Mechanism for Approving New Energy Technologies-Other Technologies: Support MACC's comments.

Other suggestions: Please give serious consideration to the expansion of definitions concerning structures that qualify for engineered coastal structures for shoreline protection in the coastal regulations. Please define what constitutes "reconstruction" in 310CMR 10.30 (3).

On the Cape and Islands, so many beach front and ocean front summer cottages have been and continue to be completely torn down with new excavation for concrete foundations and rebuilt on greatly expanded footprints. They are truly no longer houses that existed prior to August 1, 1978.

Thank you for your consideration of these comments.

Very truly yours,

Maria McFarland
Board Administrator

Cc: West Tisbury Commissioners
MACC

Based on the discussions held at Weston & Sampson over the past few weeks, following is a list of some points brought up regarding the "Commissioner's Action Plan for Regulatory Reform" (CAPRR henceforth) that could potentially impact the businesses of Weston & Sampson and other concerned parties. Additionally, there are some suggested questions (italicized) which we wish to submit to the MassDEP for the purpose of "Public Comment".

Section B. 12. "Wastewater Title 5: Innovative/Alternative Program – 3rd Party Review"

One of the main points of this section concerning the Title 5 program is the possibility of the MassDEP deferring to a local entity (e.g. BOH or County Agency) in regard to the "vetting new treatment technologies" of Title V plants. From our discussions, as well as pointed out by Norfolk RAM in their addenda to the original CAPRR, it was concluded that based on multiple experiences, local Boards of Health are simply not able to, in large part, take on the responsibility of governing agency for wastewater compliance issues. Due to lack of engineering experience, the ability to diagnose and prescribe a solution for a known issue, or any other shortcoming, it would be unfavorable to defer the current function of the MassDEP to these agencies. The discussion of Title V systems is carried into Section B. 13 "Wastewater Title 5: Eliminate Duplicative State Approval" but the issues are the same. The approval of local Boards of Health, although rarely different from that of the MassDEP as they point out, should not be considered as reliable as the MassDEP approval for the reasons stated above.

Original text:

> "DEP will explore options for relying on existing organizations or services that are already performing this activity… DEP would still play a role in setting standards and providing some level of oversight technology review"
>
> "MassDEP proposes to eliminate duplicative approval…"

Our comments:

> *As illustrated in the Public Comment issued by other concerned parties, would the MassDEP be willing to provide some indication as to the type and scope of oversight currently being considered in order to defer considerations for new treatment technologies?*
>
> *Additionally, would the MassDEP be willing to provide a more complete list of agencies (Boards of Health, County Agencies, etc.) that the MassDEP believes have demonstrated the ability to effectively handle the responsibility of this task?*

Section B. 14. "Wastewater: Targeted Groundwater Discharge Inspections"

One of the main points brought about in the CAPRR was that wastewater permits may be subject to minimized review and scrutiny should they be able to demonstrate compliance. The regulations make note of a "Qualified Professional" to whom would fall the responsibility of generating a "periodic" report which demonstrates that a system is in compliance and operating as expected according to the design life of the facility.

Numerous questions were raised about the position, namely what the scope of the responsibilities would be and how to determine who would be qualified for such a position. Again, Norfolk RAM has a comment on the matter to the effect that one holding the position must require at minimum a P.E. license in Massachusetts. Some points during our discussion were to perhaps compare the position to the existing role played by Licensed Site Professionals (LSPs) in regard to hazardous waste remediation. Suggesting such a role as a template would allow the MassDEP to have a certification requirement which could help to insure accountability in the position.

Original text:

> "...groundwater dischargers would also be required to hire a qualified professional to conduct a periodic compliance/structural assessment of the facility based on the design life of the facility and expected need for repair and/or replacement."

Our comments:

> *The MassDEP has suggested a revision to the current practice of general inspections which would allow for the position of a Qualified Professional to conduct third-party review in lieu of an annual inspection performed by representatives of the MassDEP. This position should require some basic credentials and perhaps a certification in order to ensure that reviews are being conducted by competent parties as distinguished by the MassDEP. A similar program that comes to mind is the Licensed Site Professional (LSP) program that deals with the remediation of areas affected by hazardous waste contamination.*
>
> *Additionally, the document notes that the inspections and reports of the Qualified Professional should be done periodically. It is our belief that these should be performed at an interval no less frequent than quarterly in order to fully understand and have the capacity to respond to immediate changes in the condition of the plant. This would include a review of the DMR every month, as well as the respective Operator's log data for the site.*
>
> *Lastly, the MassDEP has noted that it "would retain a monitoring and enforcement role" which calls to question the potency of the Qualified Professional and their reports/recommendations. Our suggestion would be that, barring any changes in the liability burdens noted in respective Groundwater Discharge Permits, the Qualified Professional should perhaps have some way of requiring changes made to the treatment system or O&M of the facility in order to meet compliance and operate safely/effectively.*

Section E. 19. "Many Programs: Self-Certification for Certain Permit Renewals"

The CAPRR notes that some permit-mandated programs may be eligible for presumptive renewal should the petitioning party effectively demonstrate maintained compliance status.

Our comments:

In regard to "presumptive approvals" for permit renewals, what is the type of information needed in order to qualify? For instance, would a history of reports and/or trend data demonstrating compliance at a Groundwater Discharge Plant in addition to the Permit Renewal Application be enough or would there be more data, such as the reports tentatively compiled by the Qualified Professional? Would this have any effect on the cost of a Permit Renewal?

Section E. 20. "Many Programs: Revise Fees to Incentivize Better Results"

The CAPRR notes that certain fees may be increased in areas where it is determined that noncompliance with existing regulations may lead to the "highest environmental impact".

Our comments:

How is the MassDEP determining what areas qualify as having the "highest potential for environmental impact?" Would these considerations, for instance, be based on the existing practice of zoning?

Other Suggestions

During internal discussions, it had been pointed out that perhaps the most proactive way to address what appears to be the primary concern of the MassDEP and reason for changes in the regulations being made, a decrease of available manpower, would be to suggest a way to streamline the process of monitoring while maintaining, if not improving, the levels of compliance and accountability.

Our comments:

Based on the language included in Groundwater Discharge Permits, current and past, it is acknowledged that there are some regulations issued by the MassDEP which are either no longer required or not enforced, namely the explicit requirement of staffing and O&M protocol at Groundwater Discharge Plants in order to effectively run that system. Additionally, the reporting of certain figures, such as the flow weighted loading of regulated parameters would more clearly illustrate compliance at the plant as well as the effect of potential non-compliance on the system at large. The percent removal of certain parameters should also be more regularly calculated, as a representative illustration of treatment plant efficacy. The current reporting requirements for Surface Water Discharge plants might be a suitable template for such a reporting mechanism.

Other Suggestions (continued)

Additionally, an increased emphasis on on-site QA/QC in combination with the reporting of field tested parameters would provide a more accurate picture of the treatment system. Standardization of field testing equipment, based on the recommendations of the MassDEP would allow for reliable, more frequent reporting of plant conditions.

Lastly, regarding the current requirements of staff and engineers involved in the operation and design of treatment systems, historically the MassDEP has issued prescriptions for the time that engineering staff was required to remain available to the permitee was lengthened (i.e. one year after a successful clear-well test) in order to maintain accountability for problems that would arise during the startup of the system. On that note, the MassDEP also formerly prescribed the minimum time spent onsite by Operators. This system created greater accountability by mandating the appropriate time onsite was being met in order to effectively and safely operate and maintain a treatment system. Reinstating these prescriptions would again lead to greater accountability and arguably increased compliance as Operator's would be required to have more knowledge and control of the functions of the system.

Respectfully submitted on behalf of Weston & Sampson Services.

Kenneth Nugent

Compliance Coordinator

MassBio
MASSACHUSETTS BIOTECHNOLOGY COUNCIL

main: 617 • 674 • 5100 fax: 617 • 674 • 5101

Massachusetts Biotechnology Council
Ninth Floor, One Cambridge Center
Cambridge, MA 02142

November 21, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Dear Ms. Childers:

The Massachusetts Biotechnology Council (MassBio) applauds the Massachusetts Department of Environmental Protection for its comprehensive effort to identify and ultimately implement reforms to existing regulations, policies and practices that will allow the agency to reduce staff time spent on these activities while maintaining its high standards for environmental protection. MassBio represents more than 600 members, comprised of companies, teaching hospitals and academic institutions, the majority of which are directly engaged in research, development and manufacturing that not only represent a significant amount of jobs across the Commonwealth, but also result in the creation of new innovative products that improve the lives of people around the world.

Specifically, we wish to support the following proposed revisions found in the Department's Draft Action Plan for Regulatory Reform.

#11 Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

Currently, the system to obtain both local and state permits is duplicative and redundant. We support the proposal to eliminate the current DEP certification and permitting for all sanitary and industrial connections and extensions of the public sewer systems. We agree that a requirement to obtain a permit from either a local Department of Public Works or Sewer Department to connect to or extend a local sewer distribution system is sufficient to ensure environmental protection and accountability.

We would also support that DEP, in coordination with the Massachusetts Water Resources Authority, look at overall approval of RO reject water. Nearly all biotech and other members generate reverse osmosis (RO) water for research purposes due to its enhanced purity. These RO systems take drinking water from the water supply system and remove the normal impurities such as dissolved salts. The impurities are then concentrated in the "reject water". MWRA won't allow discharge of RO reject water directly to the sanitary sewer unless MassDEP first

specifically prohibits it from going to the stormwater system. We know of no cases where MassBio members have been allowed to discharge reject water to the stormwater system however members, the Department, and MWRA are forced to jump through these regulatory hurdles and paperwork generation to get to the same outcome i.e. a permitted discharge to the sewer.

#19 Many Programs: Self-Certification for Certain Permit Renewals

We support DEP's expressed support for streamlining certain permit renewals by providing for presumptive approvals where the applicant can certify that there have not been changes to either the project or applicable regulatory standards, since its initial approval and where the project has maintained its compliance status.

20 Many Programs: Revise Fees to Incentivize Better Results

We support efforts to revise fees to provide incentives to reduce environmental impacts. We are especially supportive of efforts to expand e-filing of applications or other submittals.

#21 Asbestos Abatement Requirements

Our university and health care members are particularly supportive of efforts to establish operation and
maintenance standards to deal with small scale asbestos abatement projects that currently require individual notifications; and for the Department to provide greater clarity and a mechanism for businesses and institutions to receive alternate work practice permits in situations where traditional asbestos abatement is not feasible.

Additional Suggestions

MCP

The Massachusetts Contingency Plan requires emergency notification for the release of 10 lbs or more of liquefied nitrogen. Nearly all biotechs and other member institutions have liquid nitrogen storage for various applications. During filling operations there can be a release however the liquefied nitrogen very quickly sublimates to gaseous nitrogen. MCP notifications, tracking, hiring of LSPs, etc. in such cases seems to be an unnecessary regulatory burden given the environmental risk.

Emergency Generators

We would request a state-wide review of stack height requirements for emergency generators since there seems to be a high number of enforcement cases in this area and the ERP self certification regarding stack height seems to be a source of confusion and misinterpretation. Moreover, there are important lessons to be learned about a well-intentioned self-certification program in which compliance ultimately hinges on DEP staff field interpretations and judgments, rather than clear guidelines and compliance with written criteria. We would be happy to meet with the Department to discuss these concerns since nearly all members have emergency generators.

Subpart K Academic Laboratories

Finally, some of our academic members continue to await the State's adoption of Subpart K Academic Laboratories Rulemaking as a RCRA regulatory reform that was first piloted and affirmed in Massachusetts at Boston College and University of Massachusetts Boston. We hope that the rule will be adopted expeditiously.

Sincerely,

John Heffernan
Vice President, Policy and External Affairs

December 5, 2011

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Via Email to MassDEP.Commissioner@state.ma.us

Re: Draft Regulatory Reform Action Plan Comments

Dear Commissioner Kimmell,

Thank you for the opportunity to provide comments on your Draft Action Plan for Regulatory Reform at MassDEP. I work as part-time staff for two Conservation Commissions made up of five and seven volunteers. The role DEP plays in wetland permit review and protection is very important to us.

Massachusetts was the leader in wetland protection in 1963 and 1965 when it adopted the nation's first wetlands protection laws for coastal and inland wetlands. Those of us who care about wetlands want Massachusetts to stay a leader in wetland protection now, and are concerned that budget cuts and the proposed regulatory reform will not allow them to continue to provide that role. Conservation Commissions play an important role in wetland permitting and protection, but we need the *professional expertise and legal authority* of the DEP to support us in that role. Eliminating DEP review of most wetland permits will place a heavy burden on the local volunteer commissions and result in weakened environmental protection of our water and wetlands. If DEP staffing levels are inadequate to handle the wetland permit reviews now by professional experienced wetland staff, how will part-time volunteer commissioners, with less wetland and regulatory training, be able to handle the work load? Many commissioners already feel the strain of trying to accurately interpret the wetland regulations in order to issue fair and legally correct decisions. Less DEP assistance during the critical early review process will add to their burden and increase the chances of incorrect interpretation of the complicated wetland Regulations.

I limit my comments to what I consider the most critical proposed changes in wetland permitting, and that I believe will definitely affect wetlands protection in Massachusetts.

A.2. Chapter 91 Licensing: Revise Restrictions on Timeframes
Proposal is to have DEP issue their c. 91 license before a final Wetlands Order of Conditions is obtained.
I feel this is unwise, since the local Commission knows more about the site and shoreline conditions than the regional DEP staff, but Commission concerns may not be addressed if the DEP license is issued before we finish our review. For example, the South Hadley Conservation Commission does not permit applicants to tie their docks to the trees on the banks of the Connecticut River. This may affect the plan for the dock, but if DEP has already issued their license, how does this condition and possibly others get included in the approved design?

I do think it would be a good to have the legal notice for the DEP license be incorporated into the legal notice for the Conservation Commission review, to reduce cost, time, and confusion for the applicant.

A.5. Wetlands: Targeted Review by DEP

Proposal is to provide immediate issuance of file numbers, limit DEP review of Notices of Intent (NOI) to concentrate on cases in which there are appeals to DEP (SOOCs), and deploy its SOOC review efforts to projects "with significant resource area impacts", with "streamlined review of projects that solely impact the buffer zone, or that involve minor residential alterations". I assume streamlined review means minimal to no review, as most Request for Determinations have now, since the last budgetary-driven reform. While the draft plan mentions delays in hearings because of waiting on DEP NOI comments, we have not experienced that problem.

I believe this Targeted Review puts a considerable new burden on the volunteer Conservation Commissions (and their part-time staff) to adequately review each NOI for full regulatory compliance. This will require more third party review to help the Commission on complicated projects, which will *cost the applicant time and money* that might have been avoided with appropriate DEP initial review. DEP waiting until the appeal stage to intercede costs the Commission and applicant more time and money, and creates a more adversarial relationship between all parties. In addition, this reliance on local commissions will probably lead to inconsistent permitting across the state, creating more uncertainty for applicants.

Possible solutions or alternatives could include:

1. DEP wetland staff will continue to review all NOI for large projects (in terms of number of units, size of area, size of impact, cost of project etc.), those within NHESP estimated or priority habitat and Biomap2 polygons or crossing permanent streams, and those with wetland alteration over a reasonable figure such as 500 square feet. There should be clear thresholds for projects that require DEP review, based on potential impact to the wetland resource areas and their interests.
2. Automatic file numbers issued, but DEP wetland staff have 10 business days to issue comments to the Commission and applicant, and public hearings cannot be closed within that time limit. This is not an unreasonable time to wait.
3. In order for DEP to provide the "technical and regulatory assistance" it is promising, funds and FTEs should be set aside to allow for at least the equivalent of one half hour of wetland review advice per week for each community in that DEP region. This minimal amount of time to help communities in need will hopefully average out week to week between those that need assistance that week and those that don't, but would help guarantee that the Commissions do not lose this important assistance. DEP needs to maintain a presence in the review process so that Commissions will not unintentionally make mistakes in interpreting the Regulations that could cause delays and appeals that are costly and time-consuming for both sides.
4. The draft plan lists as a guiding principle that the "proposed reforms will not weaken or undermine environmental protection standards". How will this be monitored? I suggest DEP monitor all Orders of Conditions, Determinations of Applicability, and Enforcement Orders and record the amount of wetland alteration being permitted on a yearly basis, and compare by region to the two years before the reforms were put into effect. If there are more wetland alterations under the new Regulatory Reform then changes are needed.

A.6. Wetlands: Buffer Zone General Permit

Proposal is for establishing a "general permit" to streamline work in the outer 50-100' buffer zone of inland wetlands. I believe that DEP has already significantly reduced protection of the 100' buffer zone, based on the lack of review now for most Requests for Determinations. Without the backup of DEP behind them, Conservation Commissions sometimes find it difficult to require good

protection of the 100' buffer zone. This is especially true in communities which do not have local wetland bylaws to provide them with the authority to protect the buffer zone from alteration.

Possible solutions or alternatives could include:
1. It is important to have performance standards established for the full 100' buffer zone, since there is enough scientific data to document the importance of the buffer zone for wetland protection, usually requiring more than 100'. It would be reasonable to provide much greater protection of the inner 50' buffer if the outer 50-100' has reduced protection through this proposed new process. Greater protection could include making the inner 50' a no-build zone.
2. Require filing a NOI to get the streamlined process, or require recording the Determination of Applicability in the Registry of Deeds to keep a legal record of the decision. Permission to receive a "streamlined review" for the outer 50-100' buffer zone should include at least a 5-year moratorium for any work in the inner 50' buffer, and that restriction would need to be recorded at the Registry of Deeds.
3. DEP must create a list of important criteria that the project has to meet to receive this streamlined review. Criteria should include, for instance, no use of this streamlined process on NHESP Estimated or Priority Habitat or within Biomap2 polygons, restrictions on steepness of slope in the outer 50', strong erosion control and limit of work barrier at the 50' boundary, and no storm water structures in or direct discharge into the inner 50' buffer.

A.7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures
Proposal is for all stormwater management structures (detention basins, retention ponds etc.) constructed prior to 1996 to be exempt from protection as wetland resource areas. This was already done for structures permitted and built after 1996.

This may be reasonable, *if certain guidelines are followed.* These should include whether the basin or pond was originally built in wetland, whether the NOI promoted it as a wetland resource or wildlife habitat at time of permitting; whether it has been maintained as a stormwater management structure for the past 10 years (as evidenced by its condition and records); and whether it is over a certain size, such as one acre. If none of those conditions apply, then the structure could be maintained without new permitting, but it should not be exempt from permitting for alteration or filling. If the structures are altered or removed, stormwater management must still be provided for the site, with new appropriate structures permitted through the Conservation Commission process and meeting the current DEP standards.

A.8. Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening, Stream Daylighting, etc.
Although this sounds like a good thing, without sufficient safeguards this could create a disaster. The impacts downstream of a poorly planned or reviewed dam removal are obviously great. Will the working group come up with selected procedures and review standards, to make sure that this work is done professionally and result in an improvement to the area?

A.9. Limited Project Status for Renewable Energy Projects.
Another proposal that sounds good for the environment, but could be disastrous if mishandled. While we do need to work on providing alternative and renewable energy solutions, it should not be at the cost of our wetlands. I am opposed to siting these energy projects in wetlands or on sites where more wetland is lost in addition to that filled for the access roads under the present limited project provisions. There are proposals coming forward for solar arrays in wetlands, and what

about small stream hydroelectric projects? These projects still need DEP permitting time and not a streamlined process if there is significant (>5,000 sf) wetland alteration. Streamlined permitting should only be for upland sites that do not have other important environmental factors such as rare species, steep slopes, or soils at high risk for erosion. In addition, there should be a stringent alternatives analysis review required at the state and local level, to prove why the wetland site is necessary for the energy project.

E.20. Revise Fees to Incentivize Better Results.

Probably the most important way to provide funds for DEP to be able to maintain staff and environmental protection is for DEP to be allowed to keep the fees received from filings. This should be a major push for the Department, and the most logical one to pursue. Charging higher fees for projects with more adverse impact may work in some instances, but should be considered carefully so that private landowners aren't tempted to avoid filing because of the large fees. It is still better to have these projects go through the review process to condition them well, than to lose them until discovered later with unpermitted alteration.

DEP should not require E-filing for all applicants or Conservation Commissions. This would create an unfair burden on applicants in rural areas and small Conservation Commissions. There are many communities in western Massachusetts that have only dial-up internet service, which could create problems during the on-line filing process, and many Conservation Commissions do not have regular access to a computer and internet. In addition, a number of larger communities have a city or town-wide database permitting system where wetland permit information is already incorporated. In one town where I work, that means if I use the town's Conservation database to record the NOI and issue the Order of Conditions, I have to redo the entire Order in E-Dep, or visa versa. Until there is a way to incorporate the e-Dep technology into the town or city database, it creates an extra layer of work to use both. The town database provides reports on the wetland filings in an access format, summarizing number of filings, by date, applicant etc. This report work includes other DEP permits such as Requests for Determinations, Extensions and Certificates of Compliance which E-Dep does not handle now. While E-filing may save DEP a lot of work, it can create an extra burden on Conservation Commissions and staff in its present form if it were required.

In summary, DEP should adhere to the guiding principles listed in the proposed plan, especially "*Proposed reforms will not weaken or undermine environmental protection standards*." I do not see how that will not happen with the proposed changes listed above. We should be fighting for more budget to keep DEP wetland protection strong, and using whatever technologies are available to make the work more efficient. We should not be removing important steps in wetland protection in Massachusetts. In addition, these proposals will put more of a burden on volunteer Conservation Commissions, in terms of time, effort and cost, especially since local wetland bylaws will have to become the last line of defense for buffer zones.

Sincerely,

Janice Stone

Janice Stone
Concerned Citizen
Shutesbury MA

cc: MACC
DEP Western Region

CONSERVATION COMMISSION

Lawrence Memorial Hall
2 Jabish Street, Post Office Box 670
Belchertown, Massachusetts 01007-0670
(413) 323-0405

December 5, 2011

Commissioner Kenneth Kimmell
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

{Via Facsimile}

RE: Response to Draft Action Plan, dated October 24, 2011 for Regulatory Reform at Mass DEP

Dear Commissioner Kimmell:

This letter is in reference to the Draft Action Plan for Regulatory Reform to the Massachusetts Wetlands Protection Department and the request for submittal of the written comments, due by December 5, 2011. The Commission understands that due to major budget cuts, DEP has experienced a significant reduction in capacity and must make decisions on how to most effectively deploy its current resources. In this context, the Commission understands DEP's efforts to seek regulatory and procedural efficiencies and prioritize its activities. Further, we concur with the guiding principles listed in the Draft Plan particularly that the proposed reforms should not weaken or undermine environmental protection standards, reduce public process nor transfer responsibilities to municipalities.

However, after reviewing the Draft Action Plan, specifically to Sections #5, Wetlands: Targeted Review by DEP and #6, Wetlands: Buffer Zone General Permit, the Commission has the opinion the Department will do just that - undermine environmental protection. Scientific research continues to yield strong evidence that many activities, including most forms of development within buffer zones, results in the degradation of wetlands. Standards restricting work in the buffer zone are needed to maintain the biological and ecological integrity of wetlands and water bodies. Now is not the time to weaken environmental regulations and protection!

Presently all projects within the 100ft. Buffer Zone require review by the local Conservation Commission and DEP through a Determination of Applicability and/or Notice of Intent application process. A general permit for activities proposed in the outer 50 ft. Buffer Zone to inland wetlands, will most certainly be abused. This will add confusion to the review process and place the burden of the regulatory process totally on the local Conservation Commissions. How will these proposed changes interact with Towns that presently have Bylaw's and Wetland Regulations? The applicant will still be required to file an application with the local Commissions to comply with local regulations. This additional workload will only place additional demands on already overworked and underfinanced Commission volunteers and staff. Permits issued under local bylaws will also no longer have the assistance and backing from DEP when dealing with compliance and/or enforcement issues.

The Western Regional Office, via the Circuit Rider, provides comments on virtually all NOI's via the file number letters. The Conservation Commission has rarely had to wait for DEP review to issue a permit. Utilizing E-DEP has reduced the waiting time significantly and has also streamlined the application process. It is also important to note that many towns in the western part of the state largely do not have professional staff. It would be a shame if projects proposed in small towns, which are located within some of the states most beautiful and scenic areas, were reviewed inadequately. These towns need a strong DEP presence! We request that the Western Regional Office continue to provide comments on NOIs and that the other regions follow.

In addition, when reviewing projects for Expedited Permitting and/or Renewable Energy, it is vital that local town bylaws and regulations are not over-ridden by state reforms. Massachusetts is a home rule state and local input on local projects remains the most effective way to permit projects. Mass DEP proposes a new limited project status for energy projects that qualify for Renewable Energy Credits, including utility and access requirements, however there are already limited project provisions for projects requiring access roads across wetlands to gain access to upland sites for development. Mass DEP does not provide evidence in its Draft Plan showing that removing regulatory impediments to renewable energy projects will not create new impacts to critical natural resources. At a minimum, any new energy projects must also include stringent alternative analysis review at the local and state level.

The Belchertown Conservation Commission strongly supports any revisions that are designed to protect Wetland Resource Areas and applauds the Department's efforts to streamline the review process. In these tough economic times, we all have to make adjustments but please make sure that these reforms do not place our natural resources at risk! The Commission respectively requests that you take the above statements of concern under advisement, prior to enacting on these proposed regulation reforms. Thank you for the opportunity to provide comments on these proposed regulatory reforms.

Sincerely Yours,

LeeAnne Connolly
Conservation Administrator

CC: DEP Western Region
MACC
Belchertown Board of Selectmen

Rene C. Wood
928 Boardman Street; P. O. Box 1177
Sheffield, MA 01257-1177

December 5, 2011

Draft Regulatory Reform Action Plan
C/O Jakarta Childers, Commissioner's Office
MassDEP
1Winter Street, 2nd Floor
Boston, MA 02108

Re: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP
Also sent via email 12.5/11 to MassDEP.Commissioner@state.ma.us

I am pleased to submit my comments on the above matter as both a resident of the Town of Sheffield, Berkshire County and a community leader. Presently I am Chairman of Sheffield's Board of Selectmen, member of Sheffield's Board of Health, Sheffield's Alternate Delegate to Berkshire Regional Planning Commission (BRPC), member of BRPC's Executive Committee and a member of the Massachusetts Municipal Association's Policy Committee on Energy and the Environment. These comments however are strictly my own.

It is truly unfortunate MassDEP has been subject to such heavy cuts in both budget and manpower and the proposed Bottle Bill shows no indication of passage, which I understand would provide a new funding source to MassDEP. I hope the Commonwealth's improved financial condition, as well as eventual passage of the Bottle Bill, will result in additional funding for this critical department.

I commend the Commissioner and his staff for using adversary as a catalyst to pursue a needed agenda of reform and automation. Both are long overdue. I do caution MassDEP to take care not to dismantle necessary regulations, which protect the Commonwealth's essential environmental protections, especially in light of ongoing national legislative efforts and exemptions to the Clean Water Act recently highlighted by hydrofracking.

I applaud the Commissioner's statement of keeping, and possibly enhancing, resources available to local Conservation Commissions and ConCom circuit riders as well as not transferring new responsibilities to local municipalities.

I have structured my comments on these proposed reforms based on the stated mission of MassDEP as taken from its website. MassDEP is "the state agency responsible for ensuring clean air and water, the safe management of toxics and hazards, the recycling of solid and

hazardous wastes, the timely cleanup of hazardous waste sites and spills and the preservation of wetland and coastal resources."

Where proposed regulatory reforms remove outdated oversights, duplications or required submissions, which may be best handled by one agency in MassDEP, call for creation of standardized or common permit applications, establish written policies, create certain expedited permitting schema and/or update the use of automation, I favor your efforts.

However, I must admit that it is difficult to understand exactly how all this will be accomplished consistent with the Commissioner's guiding principles outlined on page 2 of the Draft Action Plan and not run the risk of compromising the department's mission. As such, I will look forward to more details being made available as this effort advances.

In addition, where legislation established the basic parameters for an item, such as Chapter 91 Licensing and the parameters for Limited Projects in The Wetlands Protection Act, I would hope the Legislature would actively evaluate such changes and they would not be accomplished solely by MassDEP acting on its own.

I am most concerned with cited changes to the Wetlands Protection Act and Chapter 91, in particular how it and MEPA will concurrently operate. These changes are described under #2: Chapter 91 Licensing: Revise Restriction on Timeframes; page 4, #9: Wetlands: Limited Project Status for Renewable Energy Projects; and #10: Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies – Other New Technologies, page 6.

I do not favor providing any specific sector, in this case Renewable Energy or New Energy Technologies, status not provided to other economic sectors. And while regulations can be a brake on economic development if not applied correctly, I do not feel it is in MassDEP's mission statement to promote economic development to the potential determent of environmental protection.

In addition, having been a consistent opponent of WESRA, as currently written, I view Sections 9 & 10 as a way to gut in-place protections in the Wetlands Protection Act. I also view these sections as potentially negating local control, limiting public appeal rights and seeking to go around the current public pushback to WESRA.

In answer to one of the question listed under Request for Public Comments, page 12, my comment is the proposed reforms outlined in #2, #9 and #10 should be eliminated; I also believe they will have an adverse impact on environmental justice considerations.

As has been evidenced across the country, once water and wetlands resources are compromised or destroyed, the costs can be huge with the resources often being irreplaceable. From what I have read, this appears to be at the heart of MassDEP's argument to the EPA regarding the Housatonic River PCB cleanup. While trees will grow back, water and wetlands

are less forgiving and, as is well documented, water is quickly becoming the world's key resource.

Renewable energy projects are actively being pursued throughout the Commonwealth; they do not need "limited project" status to succeed. Multiple financial incentives, including REC's, have provided the investment returns required for developers to move forward. Let them sort it out with the local communities involved. I do not believe this is an appropriate mission for MassDEP.

I also feel MassDEP is proposing removing too much oversight in B.11: Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval, page 6. While many such permits will benefit from such exemption, those that trigger a MEPA review generally have other issues associated with them and I would urge the Commissioner to examine this category of permits more closely. Possibly there is another way to effectively deal with this permit category rather than complete exemption, especially given the Commonwealth's principles of Smart Growth and Sustainable Development.

Overall I applaud the majority of principles of reform proposed in this document. I hope I have made my objections clear where I do not agree. I also hope that sometime in the future, the Commissioner will have the opportunity to look beyond "state-only" programs and began a conversation with the U.S. EPA on reforms needed at the federal level.

Thank you for reading my comments. Should you wish to discuss any of my of them, I may be reached at 413-229-3534 or renecwood@aol.com .

Sincerely,

Rene C. Wood

Rene C. Wood
PO Box 1177
Sheffield, MA 01257-1177

cc: The Honorable Robert A. DeLeo, Speaker of the House; State House, Room 356, Boston, MA 02133

The Honorable Therese Murray, President of the Senate; State House, Suite 332, Boston, MA 02133

The Honorable Benjamin B. Downing, State Senator; Statehouse, Room 413F, Boston, MA 02133

The Honorable William “Smitty” Pignatelli, State Representative, 4th Berkshire District; Statehouse, Room 448; Boston, MA 02133

Commissioner Ken Kimmel
Department of Environmental Protection
One Winter Street
Boston MA

Re: Comments on Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmel,

The North and South Rivers Watershed Association is a 41 year old grassroots nonprofit environmental organization located on the South Shore of Massachusetts. We represent over 1100 member households who are concerned with the state and fate of our local environment and in particular with our waterways. We are particularly supportive of the reform to streamline aquatic restoration projects. One of the greatest barriers to removing stream barriers is the cost of permitting. For example, on recent estimates for a dam removal project in our watershed the cost of design and permitting was 40% of the total cost of the project. For projects that are not profit driven this cost makes it increasingly difficult to convince owners of infrastructure to remove or upgrade these structures.

We appreciate the opportunity to comment on your draft Plan for Regulatory Reform. In general, we strongly support the Commissioner's asserted "guiding principles" that the proposed reforms not weaken or undermine environmental protection standards, not reduce public process, and maintain opportunities for public involvement and citizen appeals. These principles are essential as DEP works to close the gap between its funded capacity and effectively serving its critical functions with respect to protecting the environment of the Commonwealth. We also support efforts to improve DEP's computer technology in order to significantly enhance the efficiency of DEP's operations and increase public access to information through the web. In general, we are deeply concerned about measures that would diminish environmental protection standards, outsource core DEP functions, or curb critically important public processes.

<u>Wetlands, Waterways & Coastal Resources:</u>

Chapter 91:

- DEP proposes to develop a common permit application for Chapter 91 licenses and Water Quality Certifications (WQC), and to streamline permitting requirements where there is perceived overlap – e.g., by allowing a 401 WQC permit-by-rule for applicants that secure other approvals. While we generally support common permit applications in these contexts, we strongly oppose a transition to permits-by-rule for Section 401 WQCs for applicants that secure Orders of Conditions/Superseding Orders of Conditions for reasons including the following: (a) Section 401 WQCs serve a different purpose and entail examination of different issues than

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OOCs/SOCs; (b) proper reviews and determinations for Section 401 WQCs are necessary for ensuring that state water quality standards are met; (c) neither Conservation Commissions nor DEP SOC reviewers are qualified to make Section 401 WQC determinations; and (d) such permits-by-rule would be contrary to the requirements of the federal Clean Water Act. [Response to Proposal #1, p. 3]

• DEP proposes to change its regulations to allow the Chapter 91 licensing process to run concurrently with MEPA review. If this proposal is adopted, DEP should require applicants to plainly disclose, at the outset and in detail, the "direct public benefits" of the proposed project consistent with 310 CMR §§ 9.31-9.39 and §§ 9.51-9.54. Applicants also should be required, in the same manner, to describe public detriments of the project, inclusive of private benefits, so as to allow the public and decision-makers to assess whether the public benefits exceed public detriments, as required. Further, any significant changes made during the post-comment period that would affect the project's public benefits or detriments should be subject to new disclosure and a re-opened opportunity for public comment. [Response to Proposal #2, p. 4]

• We question how the public interest in tidelands can be preserved while consolidated general licenses are issued for small docks and piers. At a minimum, aggregations of small docks and piers that are subject to any general license must go through MEPA review if any review threshold is triggered by the aggregate impacts, and DEP must ensure that all public rights and interests under Chapter 91 are fully protected, including through enforcement of public access rights.

• If DEP establishes policies for Chapter 91 license terms, including a general license for small docks and piers, DEP should ensure that robust compliance and enforcement mechanisms are financed by the licensees. To this end, we recommend that additional license fees be charged annually to support investigation and reporting of license violations. It should go without saying that the licenses must ensure public access and direct public benefits. [Responses to Proposals # 3-4, p. 4]

Wetlands:

• We are very concerned about the proposal to limit DEP review of projects in the outer fifty feet of the buffer zone. The ecological importance of maintaining significant buffer zones is beyond dispute, and buffers should be larger to be truly protective. In addition, it is not clear what activities would be subject to a general permit or similar regulatory provision if proposed for the outer fifty feet of the buffer zone. The type of activity allowed can have a significant bearing on the degree of impact. [Response to Proposal # 6, p. 5]

• The proposal to exempt wetland "resources areas" created by stormwater management structures constructed prior to 1996, if they meet DEP performance standards, makes sense so

long as operations and maintenance records can be produced and an inspection report demonstrates that the systems are functioning as designed. This proposal is likely to benefit important Low-Impact Development ("LID") projects. We anticipate that the savings to DEP are likely to be negligible, however. [Response to Proposal #7, p. 5]

• We fully support the proposal to expedite and streamline permitting for ecological restoration projects, such as dam removals, where environmental benefits are expected to significantly outweigh impacts. [Response to Proposal #8, p. 6]

• Although we are strongly in favor of responsible renewable energy development and support pending wind energy siting reform legislation that would consolidate and expedite permitting for eligible wind projects, we are concerned about the proposal to attribute "Limited Project" status to all projects that are eligible for "Renewable Energy Credits". Although the proposal suggests that such changes would be applied primarily to wind and solar projects, the Massachusetts Renewable Energy Portfolio Standard provides REC eligibility for a broad range of projects including biomass facilities (including those with cooling water intakes and discharges), as well as hydropower and hydrokinetic resources that are situated in and around waterways and associated resource areas. The rules should not be revised in a manner that would reduce or discourage the avoidance, minimization and mitigation of impacts to wetlands. [Response to Proposal #9, p. 6]

• Although we support efforts to improve regulatory/permitting clarity for new energy technologies, the proposal to change coastal permitting programs for "limited pilot projects" is so vague that it is nearly impossible to supply meaningful feedback. What project types, scales or durations would qualify as a "limited pilot project"? What regulations would be modified, and in what respects? All energy projects have impacts, and we do not believe that monitoring and reporting safeguards are sufficient to prevent damage to the environment without meaningful up-front efforts to evaluate and avoid, minimize and mitigate impacts. [Response to Proposal #10, p. 6]

Wastewater:

• We are very concerned with DEP's proposal to eliminate sewer extension and connection approvals – it is important for DEP to retain its authority to require individual permits as well as MEPA review and appeal rights. This proposal would cause a truly significant reduction in environmental protection standards and would eliminate opportunities for public input and comment.

• Most sewage treatment plants (other than MWRA) do not have the capability of identifying or treating more than a handful of toxic pollutants in sewer discharges. Such pollutants are most likely to be contained in wastewater from heavy industry, chemical

laboratories, hospitals, and certain commercial operations.

•Before DEP even considers elimination of state permitting for industrial and commercial sewer discharges, it must first fully enforce the industrial toxic reporting provisions of the regulations that it adopted in 2006 but never implemented. Those regulations were designed to identify and reduce toxics in wastewater before they are discharged into our surface waters.

• Because nearly all local sewer permits are issued by municipal sewer authorities and not by (often regional) publically owned treatment works (POTWs), municipalities have little incentive to deny sewer permits for large new economic development projects that may overwhelm the POTWs treatment capacity. Thus state oversight permitting is especially important for large projects. [Responses to Proposal #11, pp. 6-7]

• With respect to DEP's proposal to outsource review of "innovative and alternative" Title 5 wastewater treatment technologies, it would be essential for the associated DEP auditing mechanism(s) to be robust. [Response to Proposal # 12, p. 7]

• Regarding DEP's proposal to eliminate "duplicative" state approvals for Title 5 septic systems and "shared system" approvals, we are concerned that the supposed safeguard proposed by DEP – i.e., the *possibility* of intervention in local permitting processes – provides little assurance that problems will be avoided on a systematic basis. In addition, given significant nutrient-loading problems in the Commonwealth, we question the wisdom of reducing oversight of systems that risk exacerbating the existing problems. [Response to Proposal #13, pp. 7-8]

• With respect to DEP's proposal to cease routine annual inspections of groundwater discharge facilities and instead rely on a combination of (a) focusing on compliance data and (b) establishing a requirement for groundwater dischargers to hire private qualified professionals to conduct periodic compliance assessments, we are concerned that this proposal will either entail significant up-front investment by DEP for training the third party inspectors or would reduce the reliability of inspections and enforcement – or both. If this proposal should be adopted nonetheless, dischargers should be required to pay into a fund to support third party inspectors chosen by DEP, not by the dischargers. Robust audits also would be important for ensuring the quality of third party inspections. [Response to Proposal #14, p. 8]

Other Areas:

• Given the inherent risks associated with moving from agency oversight to self-certification, we are very concerned with the broad, vague proposal to streamline "certain" permit renewals by providing for presumptive approval based on self-certification of compliance with regulatory standards. Permit renewals generally provide key opportunities to re-evaluate projects

and facilities based on evolving impacts, including shifting cumulative impacts, to air, water and other natural resources. Without meaningful agency review at the time of permit renewal, opportunities for such critical re-evaluation – and for consequent modifications to renewed permits – will be lost. [Response to Proposal #19, p. 10]

• We strongly support efforts to significantly expand or require e-filing of applications, given that this can reduce burdens on DEP and applicants alike while promoting easier public access through DEP's website. We also support fee-based incentives for projects that are expected to substantially out-perform basic compliance with environmental protection standards and requirements. We believe that such performance-based fee incentives might work, for example, in the wetlands context. [Response to Proposal #20, p. 10]

Please let me know if you require any further information.

Sincerely,

Samantha Woods

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November 21, 2011

Dear Commissioner Kimmell:

Thank you for the opportunity to provide comments on the Draft Action Plan for Regulatory Reform (Action Plan) at the Massachusetts Department of Environmental Protection (MassDEP). On behalf of MassCommute and the coalition of 11 Transportation Management Associations (TMAs) it represents, I am pleased to provide you with our comments, which we believe are consistent with Governor Patrick's public commitment to "achieve environmental regulation at the speed of business." Specifically, I would like to address a regulatory reform idea that has not been included in the Draft Action Plan.

For many years, MassCommute has collaborated with DEP to promote compliance with the *Massachusetts Rideshare Regulation* (310 CMR 7.16) by helping our corporate members adhere to the survey standards and provide the required programs, services, and documentation. During this time, MassCommute TMAs have received many comments from their members regarding DEP's annual survey and reporting requirements. In an effort to address our members' concerns, MassCommute conducted a survey of both TMA and non-TMA members who are required to comply with the DEP Rideshare Regulation. In March 2011, the results were compiled, analyzed, and released in a report. Based on these results, MassCommute developed the "Expedited DEP Rideshare Regulation Reporting/Certification Process" (see attached) and shared this proposal with DEP in September 2011.

MassCommute proposes a partnership with DEP to encourage companies to invest in Transportation Demand Management (TDM) programs and, as an incentive for this investment, allow companies to participate in an Expedited Reporting/Certification Process (ER/CP). The ER/CP report would include a letter of compliance certifying TMA membership and supplying specific information regarding employer commuter initiatives and participation in TMA events and programs – including details regarding mode split, VMT reduction, and air quality benefits (specific information is provided in the attached proposal).

Through this partnership with DEP, our goals are to strengthen the regulation, streamline the reporting process, increase both compliance levels as well as the number of companies participating, and reduce the burden on the most compliant businesses via their commitment to TDM as active members of TMAs. We believe the ER/CP adheres to the guiding principles you have established for your agency; and we view our proposal as similar to other proven alternative regulatory approaches which makes greater use of a third party inspector, supported by MassDEP oversight and audits.

As indicated in the Draft Action Plan, "The current staffing levels at MassDEP are inadequate to assure municipalities and the public that we will maintain the technical outreach … or to maintain compliance and enforcement levels that are sufficient to protect the environment". The MassCommute TMAs are committed to working with DEP to develop a more efficient and informative way for companies to comply with the Commonwealth's Rideshare Regulation. We believe our proposal supports DEP's Regulatory Reform Initiative and will create cost savings as well as staff-time savings, while at the same time provide increased air-quality benefits.

Thank you again for the opportunity to provide comments on the Draft Action Plan. We appreciate your consideration of this proposal and look forward to working with you and your staff on these recommendations. We are scheduled to meet with Christine Kirby on December 14 to discuss in more detail.

Best Regards,

David A. Kucharsky
Executive Director, MassCommute

PROPOSAL FOR
EXPEDITED DEP RIDESHARE REGULATION REPORTING/CERTIFICATION PROCESS

Submitted to:
Massachusetts Department of Environmental Protection

Submitted by:
MassCommute

September, 2011

OVERVIEW

Under the provisions of the Massachusetts Department of Environmental Protection's (DEP) Rideshare regulation, some companies in the Commonwealth are required to survey employees bi-annually and submit annual reports that identify the number of employee commute trips by mode with the goal of reducing drive alone trips by 25%. Reductions of this size are typically achieved through substantial investment in TDM programs and incentives.

Through its **Regulatory Reform Initiative**, DEP is presently undertaking a review of its regulations with specific goals of a) *Reducing Staffing*; b) *Creating Efficiencies*; and c) *Maintaining High Standards* while not weakening environmental protection standards. Any new proposals to reduce DEP oversight or privatize tasks must be coupled with robust compliance and enforcement.

PROPOSAL

For many years MassCommute, the statewide Transportation Management Association (TMA) Council, has collaborated with DEP to promote compliance with the DEP Rideshare Regulation by helping our corporate members adhere to the survey standards and provide the required documentation. Through the years, MassCommute TMAs have received many comments from their members regarding DEP's annual survey and reporting requirements. The character and volume of these comments challenged us to design a strategy to further explore these concerns and present our conclusions in a format that could better inform the process. We agreed that our goal was to strengthen the regulation by building a partnership with DEP that would a) help streamline the reporting process, b) increase both compliance levels as well as the number of companies participating, and c) reduce the burden on the most compliant businesses via their commitment to TDM as active members of TMAs.

To that end, in 2010 MassCommute conducted a survey of TMA and non-TMA members required to submit DEP Rideshare Regulation reports. The survey collected specific information from businesses regarding lessons learned and the measurable costs and benefits derived from participating in the DEP surveying and reporting process. In March 2011, the results of our study were compiled, analyzed, and released in a report entitled "Findings on the Impacts of the MassDEP Rideshare Regulation." We believe this study suggests a new approach that could better meet DEP's goals of reducing traffic congestion and improving air quality by increasing private investment in TDM through proven TMA strategies.

Based on the results of the survey, MassCommute proposes to work with DEP to encourage companies to invest in TDM and, as an incentive for this investment, allow companies to participate in a DEP Rideshare Regulation Expedited Reporting/Certification Process (ER/CP). This ER/CP could be implemented on a two-year pilot basis with a limited number of companies to prove its value in data reporting, reduction in drive alone commute trips, and time/money saved by both the reporting companies and DEP.

The value of an ER/CP to DEP and the Commonwealth:

1) Encourages private investment in TDM through TMA membership resulting in increased marketing of and participation in alternative commute programs to employees. This achieves not only a mode split report , but also results in actual enhanced participation in, exposure to, education of, and advocacy for alternative commute programs and transportation infrastructure improvements.
2) Frees up time of existing DEP staff who currently must monitor compliance; answer questions; review reports for accuracy; and follow-up on an ongoing basis with participating companies to bring their reports up to compliance standards - as well as research, correspond with, and call companies who fail to conduct surveys and submit required reports.

   By implementing an ER/CP for qualifying companies, DEP staff can be reduced or reassigned to support other DEP initiatives. The ER/CP report would include a letter of compliance certifying TMA membership and supplying specific information regarding employer commuter initiatives and participation in TMA events and programs – including details regarding mode split, VMT reduction, and air quality benefits (specific information is provided below in the *Data Collection* section of this document). In the event where a company is currently not located within a TMA area, participation as a MassRIDES partner and provision of the detailed data collection identified below may allow for participation in the expedited report program.
3) Provides an opportunity for DEP to increase the number of companies required to comply with the Rideshare Regulation while maintaining the same level of staffing by using the staff time freed-up by the ER/CP , to increase the number of businesses required to report (by reducing the report trigger from 1,000 employees to a lower number of DEP's choosing).
4) Supports the goals of the Massachusetts Clean Energy and Climate Plan for 2010 for reducing greenhouse gas emissions, and vehicle miles traveled. The Commonwealth has identified transportation as the second highest emitter of GHG emissions in the Commonwealth, after buildings. Increased private sector investment in TDM can make a significant contribution to meeting this goal. As more companies are required to comply and their compliance is supported and monitored by TMAs and MassRIDES, there will be additional buy-in within the Commonwealth for companies to promote alternative commute options to employees.

Eligibility Criteria for ER/CP Participation

In order to be eligible to participate in the ER/CP program, a company must 1) be a TMA member or a MassRIDES partner located outside of a TMA service area; 2) provide a Guaranteed/Emergency Ride Home program; and 3) collaborate with other local businesses/institutions to advocate for TDM improvements.

Steps to Achieve ER/CP Certification for Pilot Project

1. Establish an internal working group consisting of representatives from DEP, MassCommute, and MassRIDES to develop a draft DEP Rideshare Regulation annual ER/CP.

2. Convene a focus group of TMA and non-TMA member companies currently complying with the DEP Rideshare Regulation to provide feedback on the proposed ER/CP.
3. Develop annual data collection requirements for ER/CP Pilot Project participants.
4. Finalize ER/CP Pilot Project by drafting a fact sheet and cover letter targeted to selected companies explaining their reporting options and inviting them to participate in the ER/CP Pilot Project. Where necessary, MassCommute and/or MassRIDES may provide in-kind support and financial assistance to cover some or all costs associated with program materials.
5. Internal working group identifies TMA and non-TMA members to participate in Pilot Project and sends letter of invitation and fact sheet to selected participants.
6. TMAs and MassRIDES, as applicable, gather report data from participant group and submit to DEP.
7. DEP evaluates results and makes modifications as needed.
8. Full implementation of final ER/CP is scheduled.

Implementation of Final ER/CP

Existing DEP Reporting Companies

1. If requested by DEP, MassCommute will notify existing companies required to file DEP Rideshare Reports of the new ER/CP. All required reporting companies must choose (within a time frame identified by DEP) whether they will opt-in to the expedited program. MassCommute will collect this information and provide it to DEP. This decision can be changed annually.
2. MassCommute TMAs (for TMA members) and MassRIDES (for MassRIDES partners in non-TMA areas) will provide an annual certification document containing the information specified below in the Data Collection section to DEP in a format (electronic or hard copy) desired by DEP.
3. Companies that participate in the ER/CP are required to have an initial base line survey report on file with DEP and must agree to survey and report to DEP in the standard DEP survey/reporting process every fifth year in order to participate in the program. As noted above, existing reporting companies that wish to change their reporting status can do so annually.

New DEP Reporting Companies

New companies entering DEP Rideshare Regulation requirement status that are members of a TMA or in non-TMA areas that are MassRIDES partners must conduct an initial base line survey and submit a baseline report to DEP using the standard process. After DEP reviews and approves this baseline report, companies that wish to participate in the ER/CP are eligible to do so following the process described in item number 3 above for *Existing DEP Reporting Companies*.

Data Collection

MassCommute proposes that the following data be collected and reported to DEP by companies in the ER/CP on an annual basis. This information will provide a broad understanding of a company's involvement, investment, and implementation of TDM strategies aimed at reducing drive alone commute trips.

TDM Measure	Previous Year	Current Year
Total # of Promotional Events		
Total # of Employees Spoken to at Events		
Total # of Participants in MassCommuter Challenge		
Total # of Bicycle Racks provided on-site for employees		
Total # preferential Carpool/Vanpool Parking Spaces		
Total # of Employee Parking Spaces (On & Off-site, not including customer/visitor/handicapped spaces)		
Charge for Employee Parking __Yes ___No		
Daily per person parking space fee – if applicable (e.g. $10)		
If a fee is charged for employee parking, specify the percent of free employee parking spaces		
Total Registrants in GRH		
New Registrants in GRH (this calendar year)		
Participants in Ridematching Databases[i]		
Participants in Incentive Programs[ii]		
Employees Provided General Commute Assistance[iii]		
Other TDM related activities (Special promotions, forums, seminars, workshops, etc.)		
Total Expenditures by Company (direct or indirect via TMA) for Alternative Commute Subsidies and/or Incentives		
Total Additional Expenditures (such as TMA member dues) by Company to actively collaborate with other businesses and institutions to support shared TDM strategies		
Total Expenditures by Company for Company/TMA-sponsored Shuttles (if applicable)		

Company Information	Previous Year	Current Year
Full-Time Company Payroll Employees		
Number of drive alone (SOV) employees		
Number of non-drive-alone (non-SOV) employees		

CONCLUSION

This expedited DEP reporting program is designed to support the Commonwealth's goals for reducing GHG emissions and VMT reduction. By facilitating the reporting process, businesses will be encouraged to increase investment in TDM strategies and shift their focus from cumbersome reporting to TDM implementation. A comprehensive ER/CP will also strengthen the bond between EOEEA and MassDOT

by furthering the goals of the Healthy Transportation Compact and the Massachusetts Clean Energy & Climate Plan for 2020.

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[i] The total number of people registered in NuRide and other company or third party administered ridematching systems.

[ii] The total number of people registered in specific incentive programs designed to promote participation in any alternative commute mode (e.g. workout to work program, gas card program, free transit pass, parking/cash-out program, etc.); this category is exclusive of people in the NuRide "rewards" program because that info is captured in the Ridematching data.

[iii] The number of people who call, e-mail, or for whom commuter assistance has been provided (e.g., people making inquiries at an event regarding any form of commuting assistance (e.g. trip planning, bike routes, NuRide program questions, GRH questions, pre-tax process questions, MBTA for schedules, etc. - I've added the word program in front of "commute" so it serves as a catch all to clarify that this means calls from member employees who need additional program or commuter info.

APCC
Association to
Preserve Cape Cod

Ed DeWitt
Executive Director

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December 1, 2011

Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

Attention: Jakarta Childers, Commissioner's Office

Subject: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

The Association to Preserve Cape Cod (APCC), Cape Cod's nonprofit environmental advocacy and education organization, submits the following comments on the "Commissioner's Draft Action Plan for Regulatory Reform at MassDEP."

As a 5,000-member environmental organization that works for the adoption of laws, policies and programs that protect and enhance Cape Cod's natural resources and quality of life, APCC strongly supports revisions to the Department of Environmental Protection (DEP) that are more efficient and cost effective, yet do not compromise the quality of protection that is given to Massachusetts' environment.

The Commissioner and DEP deserve praise for the proposed efforts at regulatory reform. If DEP genuinely wants to be a national leader in environmental protection, the heart of the regulatory reform effort should be focused on the guiding principles articulately laid out in the Draft Action Plan, rather than being driven solely by the economic realities facing the agency. Those principles are:

- Proposed reforms will not weaken or undermine environmental protection standards. Changes that reduce direct oversight will be coupled with robust compliance and enforcement mechanisms.
- Proposed regulatory or permitting changes are aimed primarily at helping MassDEP manage (its) responsibilities within DEP's current staffing levels, and every proposed reform measure will result in some time savings for the agency.

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- All identified reforms can be implemented directly by MassDEP, without the need for legislative changes.
- None of the proposed reforms will transfer new responsibilities to municipalities, as our cities and towns are also strained by budget decreases.
- None of the proposed reforms will alter DEP's obligations under (its) federal funding agreements with the United States Environmental Protection Agency (U.S. EPA) and therefore proposed reforms are largely concentrated on "state-only" programs such as wetlands, waterways, wastewater, and solid waste.

Understanding that the regulatory reforms identified in the Draft Action Plan are only conceptual, APCC recommends that any regulatory changes proposed in furtherance of this initiative include with the proposed regulation a detailed analysis of how each of the guiding principles are guaranteed. The first guiding principle is the most important, "not weaken or undermine environmental protection," but all of the principles are critical to reform success. For instance, under proposal 1. Coastal/Dredging Programs: Permit Consolidation, DEP must articulate coincident with the proposed regulation (amendment):

1. The affected environmental protection standards, how those standards are changed and what specific additional compliance and enforcement mechanisms will be implemented and funded. There is a general public perception that it is easier to receive forgiveness than permission from DEP (i.e. polluters don't pay). There is a potential with overlapping applications (trying to do too much with a single tool) to make this perception an everyday reality. In general, more precise tools yield better results than a universal tool. DEP should detail what information, if any, will be lost by switching to a common permit. A ten page application with 8 pages of "not applicable" serves no one's purpose and could overlook the actual environmental impact of a particular proposal. Explain how "Adequately Regulated" was determined for the specific permit. Describe the previous overlap and provide reasonable assurance that a gap in oversight is not created under the change.
2. The actual DEP time savings and the how the savings were determined. As noted above, a common application form in and of itself is not a time saving device. It potentially can add significant time for both an applicant and the DEP.
3. The specific authority under Mass. General Laws for the regulation. This is a fundamental element of administrative law and should already be in place. It is critical that the resource or interest identified in the statute providing the regulatory authority is in fact protected or advanced.
4. The impact of the regulatory change on municipalities. Since an order of conditions from a local conservation commission appears to be the basis for some permits by rule, will some local conservation commissions need to change any operating practices? If so, is that a municipal impact? Standardized practices among local conservation commissions is far from a reality and permits by rule based upon an order of conditions seem inherently challenging. ConCom standardization needs to occur before permits by rule.
5. Any relevant federal agreement or related federal funding.

In reducing direct DEP oversight of activities in some areas and streamlining or generalizing the permitting process in others, it is critically important that DEP adhere to its above-stated

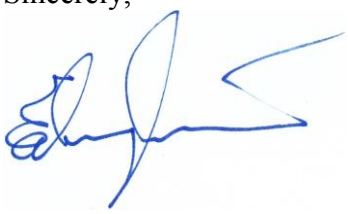
commitment to not weaken or undermine environmental protection standards. For example, in DEP's proposed "targeted review" of projects in wetland areas, the agency must ensure that protection of "lower priority" resource areas not be allowed to slip through the cracks while DEP concentrates its attention and resources on larger, "potentially significant" environmental concerns. APCC is concerned that there could be an incremental erosion of the quality of the state's natural resources due to "insignificant" impacts, creating the proverbial death by a thousand cuts.

DEP must also ensure that its proposed limited review on local actions not create a gap between DEP and local conservation commission or board of health regulatory oversight, especially in municipalities where a local board may lack the necessary resources or expertise. DEP should explain its proposed screening process that will make sure that environmental protection standards are preserved.

There is no question that regulatory reform will be a challenge. Poorly done and the Commonwealth will be in a much worse place. Properly done the Commonwealth should be better protected.

APCC thanks the Commissioner for this opportunity to comment.

Sincerely,



Ed DeWitt
Executive Director

conservation law foundation

Charles River Watershed Association

December 5, 2011

Via e-mail:
MassDEP.Commissioner@state.ma.us

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts DEP
One Winter Street, 2nd Floor
Boston, MA 02108

Re: Draft Action Plan for MassDEP Regulatory Reform

Dear Ms. Childers:

We strongly support the Commissioner's asserted "guiding principles" that the proposed reforms not weaken or undermine environmental protection standards, not reduce public process, and maintain opportunities for public involvement and citizen appeals. These principles are essential as DEP works to close the gap between its funded capacity and its ability to effectively serve its critical functions with respect to protecting the environment of the Commonwealth.

The importance of easily accessible filings, permits and data, and improved transparency in MassDEP decision-making, are critical to regulatory reform efforts. As you recognize, this is only possible with new computer technology infrastructure and citizen access to near- and real-time information. We fully support the inclusion of new IT infrastructure in the FY 2013 capital budget and will support future funding for this in any way we can. We firmly believe that technology upgrades will more than pay for themselves in terms of freeing up staff resources to focus on actual problems and in achieving environmental protection. We are concerned, however, about the misalignment of the timetables for implementing the proposed regulatory measures and the IT upgrade, since there will be a hiatus during this several-year gap when the public will not have easy access to information. It is important to consider how MassDEP will increase public access to information through the web during this time and whether some regulatory changes should be phased in to keep abreast of IT improvements.

As MassDEP recognizes, robust, and therefore, increased, enforcement and auditing are absolutely necessary with decreased MassDEP oversight. And also because public confidence in MassDEP decisions is mission critical, we ask that you

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Phone: 617-350-0990 • Fax: 617-350-4030 • www.clf.org

Charles River Watershed Association, 190 Park Road, Weston, MA 02493
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commit to year-end analyses and reporting on enforcement and auditing of adopted changes. Necessarily, this evaluation should be comprehensive and answer the question whether certain changes have weakened environmental protection and therefore require tweaking or wholesale scrapping. The agency should remain flexible in its approach, willing to pull back reforms that are not working; because changes should not unintentionally hamstring MassDEP's authority, it should explicitly maintain its discretion to require individual permits or to modify permit conditions that are failing to protect.

In general, we are deeply concerned about measures that would diminish environmental protection standards, outsource core DEP functions, hinder enforcement efforts, or curb critically important public processes. These are discussed specifically below.

Wetlands, Waterways & Coastal Resources:

Chapter 91:

• DEP proposes to develop a common permit application for Chapter 91 licenses and Water Quality Certifications (WQC), and to streamline permitting requirements where there is perceived overlap– e.g., by allowing a 401 WQC permit-by-rule for applicants that secure other approvals. While we generally support common permit applications, we strongly oppose a transition to permits-by-rule for Section 401 WQCs for applicants that secure Chapter 91 permits and Orders of Conditions/Superseding Orders of Conditions.

Section 401 WQCs serve different purposes and entail examination of different issues than Chapter 91 and OOCs/SOCs: they simply don't match up with the analyses required for a WQC. Proper reviews and determinations for Section 401 WQCs are necessary for ensuring that state water quality standards are met, and neither Conservation Commissions, nor DEP SOC reviewers or Chapter 91 program staff, have the technical expertise to make Section 401 WQC determinations. Designated and existing uses and anti-degradation, mandated under the water quality standards, are not considerations under the Wetlands Protection Act or Chapter 91. A rationale of already "adequately regulated" does not support this change, and it is disingenuous to suggest that local commissions and other programs will step in and fill this void. Because of the lack of alignment in the subject matter of these different reviews and the criteria to be applied, this change will result in less environmental protection. Such permits-by-rule would essentially abdicate the state's WQC authority, violate the purposes, if not the letter, of the federal Clean Water Act (Act), and be a lost opportunity to ensure that projects are meeting state requirements. [#1, p.3] That said, it may be acceptable for these different processes to be conducted based upon a common set of forms – so long as the forms require the information needed for each of the determinations.

• DEP proposes to change its regulations to allow the Chapter 91 licensing process to run concurrently with MEPA review. An obvious problem with this is that projects are frequently not far enough along at the MEPA stage to enable meaningful public review and comment in the Chapter 91 licensing process on whether the public

benefit is adequate to compensate for the public detriment from the loss of public trust rights.

While this proposal might compress the timeline for licensing, it will not result in DEP staff savings. If this proposal is adopted, DEP should require applicants to plainly disclose, at the outset and in detail, the "direct public benefits" of the proposed project consistent with 310 CMR §§ 9.31-9.39 and §§ 9.51-9.54. Applicants also should be required, in the same manner, to describe public detriments of the project, inclusive of private benefits, so as to allow the public and decision-makers to assess whether the public benefits exceed public detriments, as required. Further, any significant changes made during the post-comment period that would affect the project's public benefits or detriments should be subject to new disclosure and a re-opened opportunity for public comment.

Additionally, a number of projects enter MEPA because of the state action under the Wetlands Protection Act. Allowing a Chapter 91 license to be issued before a final Wetlands OOC is obtained will in many cases eliminate public review in MEPA unless the project itself trips a Chapter 91 MEPA review threshold, and we oppose this because it reduces public participation.[1] [#2, p.3-4].

• DEP adoption of a generic "guide" for non-water dependent uses: as the Action Plan points out, license terms are currently individually negotiated and, we feel quite strongly, should continue to be. This is because public benefits and access are highly site-specific. While a high set of expectations and standards for public benefit, prescribed as the floor, will assist Chapter 91 staff in negotiations, this should be the starting point of public benefit discussions, not the end. [#3, p.4]

We continue to question how the public interest in tidelands can be preserved if general licenses are issued for small docks and piers. At a minimum, aggregations of small docks and piers that are subject to any general license must go through MEPA review if any review threshold is triggered by the aggregate impacts, and DEP must ensure that all public rights and interests under Chapter 91 are fully protected, including through enforcement of public access rights. A recent study by Charles River Watershed interns found that the majority of residential docks surveyed did not appear to have Chapter 91 licenses. Appropriate signage informing the public of access rights, a Chapter 91 requirement, was almost non-existent. [#4, p. 4]

If DEP establishes policies for Chapter 91 license terms, including a general license for small docks and piers, DEP should ensure that robust compliance and enforcement mechanisms are financed by the licensees. To this end, we recommend that additional license fees be charged annually to support investigation and reporting of license violations. Of course, licenses must ensure public access and direct public benefits. [# 3-4, pp. 4]

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[1] Obtaining Chapter 91 filings is cumbersome for the public under the current process and puts an unnecessary burden on Chapter 91 staff. We propose that applicants be required to provide a full filing upon request and that contact information for requesting the application be included in the Environmental Monitor.

Wetlands:

• Assigning WPA File Numbers immediately upon submittal of a Notice of Intent (NOI) may make sense, but a size or resource impact threshold should be set for limiting of DEP's review at the initial stage. On certain large or complex projects, this early review has proven helpful. [#5, p. 4]

• It is not clear what is intended by the proposal to reserve DEP intervention or participation to cases where there are "particularly sensitive resources" at issue. DEP should define the criteria it would apply for determining whether this threshold is met. [# 5, pp. 4-5]

• We are very concerned about the proposal to limit DEP review of projects in the outer fifty feet of the buffer zone. The ecological importance of maintaining significant buffer zones is beyond dispute, and buffers should be larger to be truly protective. In addition, it is not clear what activities would be subject to a general permit or similar regulatory provision if proposed for the outer fifty feet of the buffer zone. The type of activity allowed can have a significant bearing on the degree of impact. We agree with and join in MACC's thoughtful buffer zone comments in its November 29, 2011 letter. [# 6, p. 5]

• The proposal to exempt wetland "resources areas" created by stormwater management structures constructed prior to 1996, if they meet DEP performance standards, makes sense so long as operations and maintenance records can be produced and an inspection report demonstrates that the systems are functioning as designed. [#7, p. 5]

• We fully support the proposal to expedite and streamline permitting for ecological restoration projects, such as dam removals, where environmental benefits are expected to significantly outweigh impacts and affirmatively enhance the environment. Because persons may differ on what constitutes "ecological restoration" we support the working group approach to regulatory changes. [#8, p. 5]

• Although we are strongly in favor of responsible renewable energy development and support pending wind energy siting reform legislation that would consolidate and expedite permitting for eligible wind projects, we are concerned about the proposal to give "Limited Project" status to all projects eligible for "Renewable Energy Credits." Although the regulatory reform proposal suggests that such changes would be applied primarily to wind and solar projects, the Massachusetts Renewable Energy Portfolio Standard provides REC eligibility for a broad range of projects that may have a broad range of impacts on important resource areas. The rules should not be revised in a manner that would reduce or discourage the avoidance, minimization and mitigation of impacts to wetland resources. [#9, pp. 5-6]

• Although we support efforts to improve regulatory/permitting clarity for new energy technologies, the proposal to change coastal permitting programs for "limited pilot projects" is so vague that it is nearly impossible to provide meaningful feedback. What project types, scales or durations would qualify as a "limited pilot project"? What regulations would be modified, and in what respects? All energy projects

have impacts, and we do not believe that monitoring and reporting safeguards are sufficient to prevent damage to the environment without meaningful up-front efforts to evaluate and to avoid, minimize and mitigate impacts. [#10, p. 6]

Wastewater:

• We – like many other stakeholders, such as the Neponset River Watershed Association – are very concerned with DEP's proposal to eliminate sewer extension and connection permits. Under DEP's proposal, permitting for all sanitary and industrial sewer connections and extensions would be eliminated. It is important for DEP to retain its authority to require individual permits, appeal rights and MEPA review. This proposal runs counter to the Action Plan's principles because it would cause a truly significant reduction in environmental protection standards while at the same time eliminating opportunities for public input and comment.

Most sewage treatment plants (other than MWRA) do not have the capability of identifying or treating more than a handful of toxic pollutants in sewer discharges. Such pollutants are most likely to be contained in wastewater from heavy industry, chemical laboratories, hospitals, and certain commercial operations.

Before DEP even considers elimination of state permitting for industrial and commercial sewer discharges, it should first fully enforce the industrial toxic reporting provisions of the regulations that it adopted in 2006 but never implemented. Those regulations were designed to identify and to reduce toxics in wastewater before they are discharged into waters of the Commonwealth.

Because nearly all local sewer permits are issued by municipal sewer authorities and not by (often regional) publicly owned treatment works (POTWs), municipalities have little incentive to deny sewer permits for large new development projects that may overwhelm the POTW's treatment capacity. Consequently, state oversight permitting is especially important for large projects and projects where: (1) the POTW is close to capacity, (2) the POTW regularly discharges a pollutant at or near its permitted limit into a water which is impaired for that pollutant (e.g. phosphorus or nitrogen), or (3) the POTW is a significant contributor to nutrient impairment at a local or regional scale. [#11, pp. 6-7]

• With respect to DEP's proposal to outsource review of "innovative and alternative" Title 5 wastewater treatment technologies, it would be essential for the concomitant DEP auditing mechanism(s) to be robust. Generally, the function of providing "unbiased science" is designated to regulatory agencies because of their unique status as independent from commercial interests. In order to assure that outside review, ranking, or proposed approval of wastewater treatment technologies is legitimate, DEP must make sure reviewers have no financial or commercial stake in the outcome of the review and no other conflicts of interest. DEP would still need to set standards and exercise more than "some" level of oversight over the technology review. DEP's continued role in assuring objective and reliable information about performance of these technologies is critical given that septic systems contribute

significantly at a localized or regional scale to nutrient impairments of Massachusetts waterways, and that decisions guiding nutrient pollution reduction on Cape Cod and elsewhere in the Commonwealth would be served by truly independent performance appraisals of these technologies. [#12, p. 7]

• Regarding DEP's proposal to eliminate "duplicative" state approvals for Title 5 septic systems and "shared system" approvals, we are concerned that the supposed safeguard proposed by DEP – i.e., the *possibility* of intervention in local permitting processes – provides little assurance that problems will be avoided on a systematic basis. In addition, given significant nutrient-loading problems in the Commonwealth, we question the wisdom of reducing oversight of systems such that existing problems risk being exacerbated. [#13, pp. 7-8]

• With respect to DEP's proposal to cease routine annual inspections of groundwater discharge facilities and instead rely on a combination of (a) focusing on compliance data and (b) establishing a requirement for groundwater dischargers to hire private qualified professionals to conduct periodic compliance assessments, we are concerned that this proposal will entail significant up-front investment by DEP for training the third party inspectors and may reduce the reliability of inspections and enforcement. Should this proposal nonetheless be adopted, dischargers should be required to pay into a fund to support independent third-party inspectors randomly assigned by DEP, rather than hired directly by dischargers, to ensure an arms-length relationship and the integrity of inspections. Robust audits are also important for ensuring ongoing quality of third party inspections, particularly as the program begins. DEP need look no further than its "Performance Track" program for confirmation that audits based on self-disclosure must be coupled with enforcement, in order to be effective. Groundwater is a valuable and precious resource on which our economy and population rely, and any investment in meaningful inspection and oversight of groundwater discharge permits will serve the Commonwealth's economy and residents into the future. [#14, p. 8]

Solid Waste:

• DEP's proposal to reduce its management and oversight of solid waste facilities by adopting measures including permits-by-rule for certain post-closure activities and for small transfer stations, as well as self-certification for permit renewals, raises significant concerns regarding erosion of protections with respect to the environmental and public health risks posed by solid waste facilities – risks disproportionately faced by environmental justice communities. We are strongly opposed to permits-by-rule for the siting of small transfer stations, do not believe that such a system would be consistent with Massachusetts law, and have serious concerns about the proposal to privatize active landfill inspections. Regarding self-certification for permit renewals, this would require a robust level of auditing by DEP to detect and to deter violations, ensure compliance and to promote public confidence. Self-certification for permit renewals certainly should not be available for any facility where there has been a past violation. There will be significant start-up costs for training and certification of third-party inspectors, but the independence and

selection of inspectors DEP is proposing (and which should be adopted for groundwater discharge inspectors (#14)), is important. We wonder if raising the fees and having the agency perform the work itself might make more sense. [#15-16, pp. 8-9]

Waste Site Cleanup:

• DEP has a number of requirements for filing Activity and Use Limitations (AULs) with Registries of Deeds, often requiring multiple trips to the relevant Registries. We support efforts to refine the requirements to reduce complications without sacrificing the public sharing of important information. Increased public accessibility of on-line information regarding AULs would benefit DEP and the public alike. [# 17, p. 9]

• DEP's proposal to eliminate Tier I Permits unfortunately would eliminate the option of writing special requirements into the permits. If permits were eliminated, the MCP would need to be amended to provide alternative enforcement mechanisms. [#18, p. 9]

Other Areas:

• Given the inherent risks associated with moving from agency oversight to self-certification, we are very concerned with, and oppose, the broad, vague proposal to streamline "certain" permit renewals by providing for presumptive approval based on self-certification of compliance with regulatory standards. Permit renewal is a core DEP function which should not be abdicated—indeed even the renewal process itself provides safeguards that bolster compliance.

Permit renewals generally provide key opportunities to re-evaluate projects and facilities based on evolving impacts, including shifting cumulative impacts, to air, water and other natural resources and enables DEP to implement evolving policy and program strategies. Without meaningful agency review at the time of permit renewal, opportunities for such critical re-evaluation – and for consequent modifications to renewed permits – will be lost.

We are concerned that presumptive approvals are likely to eliminate appeal rights, and will definitely eliminate meaningful public review and input. While we strongly oppose this, if DEP goes ahead, presumptive approvals should be the rare exception, rather than the rule, and DEP should pilot this for one type of permit in a particular media and fully evaluate the results before expanding it to any other permitting system. Clearly, an actual application with update information should be required, and submissions should be under the pains and penalties of perjury. DEP should explicitly reserve its discretion to require that permittees go through a full permit renewal process, whether because of size, impacts or community concern. [#19, p. 10]

• We strongly support efforts to significantly expand or require e-filing of applications, given that this can reduce burdens on DEP and applicants alike while promoting

easier public access through DEP's website. We also support fee-based incentives for projects that are expected to substantially out-perform basic compliance with environmental protection standards and requirements. We believe that such performance-based fee incentives might work, for example, in the wetlands context. [#20, p. 10]

• In connection with the proposal to reduce the extent of asbestos abatement management and oversight, it is important to keep in mind that violations are notorious in asbestos abatement and disposal and directly threaten the health of workers employed by these companies. It is also particularly important to protect against disproportionate impacts to environmental justice communities. It is not clear how DEP will determine the "highest priority asbestos matters." Notably, many of the criminal cases brought by the Environmental Strike Force involve asbestos violations. [#21, pp. 10-11]

Additional Reforms Not Included in DEP's Package of Proposals:

• We strongly encourage DEP to promulgate regulations to clarify the process for air permitting appeals. DEP has long had such rules in the wetlands, waterways and solid waste contexts, but there is a lack of similar regulatory guidance/structure in the air permitting area.

• While not now being proposed, but because there was discussion on the subject during the stakeholder meetings, we would like to express our strong opposition to DEP assuming primacy for the NPDES program from U.S. EPA . It would be tremendously costly both at start up and long-term, and would require legislative changes – running counter to two of the basic tenets MassDEP established at the outset of its regulatory reform initiative. Co-sharing responsibility with U.S. EPA generally has resulted in strong environmental protection and Section 401 authority is a powerful tool that the state already has on hand to protect the citizens of Massachusetts and our water resources.

Thank you for this opportunity to submit comments regarding the Draft Action Plan for MassDEP Regulatory Reform.

Sincerely,

Susan M. Reid
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Conservation Law Foundation
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Margaret Van Deusen
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Charles River Watershed Association
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December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108
Emailed to: MassDEP.Commissioner@state.ma.us

Re: MassDEP Draft Action Plan for Regulatory Reform
Comments of Covanta Energy Corporation

To Whom it May Concern:

On behalf of the Covanta Energy Corporation ("Covanta"), I offer the following comments on the MassDEP's Draft Action Plan for Regulatory Reform ("Plan"). Covanta owns and/or operates several waste management facilities in Massachusetts. These include four energy-from-waste (EfW) facilities (in Haverhill, Rochester, Agawam and Pittsfield), four landfills and four MSW transfer stations.

Covanta support the initiatives presented in Plan and has comments on only one of them specifically. Additional suggestions are then provided as possible means to further streamline some MassDEP regulatory activities.

II. C. 2. Solid Waste: Certified 3rd Party Inspectors for Active Landfill Inspections

MassDEP proposes to expand on the existing condition in most solid waste landfill permits for a private annual compliance inspection by creating a list of certified solid waste inspectors and annually assigning these inspectors a specified number random inspections of each of the 24 active landfills (at the permit holder's expense).

Comment: Active landfills in Massachusetts are already required to have third party solid waste inspections conducted on a semi-annual basis. These current inspections already:

- Allow MassDEP to focus its staff on the highest priority facilities;
- Require the third-party inspection results to be forwarded to MassDEP for auditing and enforcement follow-up;
- Ensure that facilities undergo review and inspection more frequently than MassDEP's resources currently allow; and
- Allow MassDEP to target its own inspection resources to those facilities with the greatest need for agency attention.

Adding an additional third party inspection program would create a new program for MassDEP to manage and increase the cost of doing business in Massachusetts. However, it would not ensure greater accountability of the third party solid waste inspection program or even greater compliance.

Covanta proposes that the Department explore strengthening the current third party solid waste inspection program by using their M.G.L.c. 21E licensed site professional model. As proposed, the Department should explore establishing more specific measures to certify third-party inspectors such as eligibility requirements and competence criteria, and explore establishing specific auditing procedures to screen and oversee the work performed by these third parties.

Waste Ban Compliance Plans: 310 CMR 19.017

Solid waste management facilities are required to implement a waste ban compliance plan ("WBCP") to comply with the waste ban regulations at 310 CMR 19.017. Facilities must currently submit site-specific WBCPs to MassDEP for approval as a modification to the facility's solid waste permit and any modification, however small, must likewise be processed as a full permit modification. Covanta believes that these WBCPs could be implemented more efficiently for both the MassDEP and affected companies as a permit-by-rule.

The waste ban regulations are straightforward and requirements are generally consistent for different types and sizes of waste management facilities. In addition, MassDEP has developed a comprehensive "Guidance for Solid Waste Handling and Disposal Facilities on Compliance With MassDEP's Waste Bans", last updated in March 2011 ("Guidance"). The Guidance describes in detail the inspection procedures, inspection frequency, notification requirements, signage, training and reporting requirements. It even provides specific forms to be used. Since all elements of the Guidance are required to be in a WBCP, the Guidance is essentially a permit-by-rule that could be used as-is with relatively minor changes.

This change would streamline repetitive solid waste permit modifications for the MassDEP. Covanta and MassDEP's experience with WBCP approvals in 2011 illustrates the potential benefit. Due to the addition of clean gypsum wallboard as a waste ban item under 310 CMR 19.017 in 2011, all waste management facilities had to submit new WBCPs as solid waste permit modifications during the first half of the year. Covanta alone submitted ten permit modifications for its various facilities. All of them followed the Guidance and differed only in site-specific details such as the locations and tools to be used for inspections. Such details could be added to the Guidance as a menu of options for use as a permit-by-rule. MassDEP had an apparent problem with processing all of the permit modifications and requested (and was given) additional time to review them. One MassDEP regional permit engineer stated to Covanta that they needed more time to coordinate with other regions and make the approvals consistent. Covanta Facilities in the Southeast Region have not yet received revised Waste Ban Compliance Plan approvals from MassDEP even after two requested deadline extensions

were granted. This illustrates the burden that the current permit approval process places on the Department's resources. Making approvals consistent across the Commonwealth could be done more efficiently by writing a permit once and implementing it as a permit-by-rule that applied to all facilities.

Pollution Control Project: 310 CMR 7.54(1) and 310 CMR 7.00 Appendix A(2):

Covanta believes that MassDEP could increase its efficiency and reduce staff time spent in reviewing air permit projects by consistently applying the existing permitting exemptions for a "pollution control project", as defined in the regulations identified above. It should be a goal of MassDEP to encourage such projects and to streamline their approval not only to increase MassDEP's efficiency, but also to create environmental benefits. If a project will result in an obvious emission decrease, time and money should not be spent in a full permit modification exercise that will only confirm the obvious.

As a specific example, Covanta has recently approached MassDEP with a proposal to change its auxiliary fuel at the SEMASS Resource Recovery Facility in Rochester from fuel oil to natural gas. The change would require replacement of the boilers' auxiliary fuel burners from oil-fired only to dual-fuel (gas and oil). A simple evaluation of the emission rates from gas vs. oil with the burners showed that actual emissions from auxiliary fuel combustion would decrease substantially with the change. There are currently regulatory provisions that MassDEP could use to streamline approval of this project. However, MassDEP has required submittal of a non-comprehensive plan approval application, non-attainment new source review (NANSR) evaluation of the net emissions increases, fuel use and emission records for five (5) years after the project is completed, an emission control plan (ECP) modification and refined air dispersion modeling of the facility to demonstrate compliance with Massachusetts and National Ambient Air Quality Standards (NAAQS). In addition, a solid waste facility permit modification application was also required to address the extension of a natural gas supply line to the boiler house (discussed below). Prior to and included with the applications was a detailed regulatory review of the project prepared at MassDEP request by Covanta's outside counsel. All of these submittals required not only significant expenditure of time and money by Covanta, but presumably the same by MassDEP personnel. The end product of the permitting will be installation of the new burners and a reduction in facility emissions that will be no different than originally envisioned by Covanta. But the unnecessary time taken to get there is delaying the project's benefits by about a year and diverting MassDEP resources.

Covanta's SEMASS facility is admittedly a high-profile facility, but this proposed change was not. It will provide an undeniable reduction in emissions with no impact on other regulated activities at the facility. Massachusetts regulations provide for "common sense" approval of such projects and those provisions should be consistently applied even when the project is done at a relatively complex facility.

The definition of a pollution control project at 310 CMR 7.00 Appendix A applies to non-attainment new source review (NANSR) requirements and is, in part:

"...any activity or project at either an existing electric utility steam generating unit or at an emissions unit(s) to comply with 310 CMR 7.08(2), 7.18, 7.19, 7.24, or 7.27 for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(a) The installation of conventional or innovative pollution control technology...or

(b) an activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal re-burning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions..."

Pollution control project are specifically excluded from the NANSR definition of "major modification", and hence should be exempt from the need to even evaluate NANSR implications. In Covanta's case, a past actual/future actual analysis was still required to demonstrate that net emissions increases were below significance levels, and a new permit condition with new reporting requirements will be included in the final approval.

The definition of a pollution control project at 310 CMR 7.54(1) is similar, and applies to an exemption from air permit modifications at large combustion emission units for:

"...any activity or project undertaken on an LCEU for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(a) The installation of conventional or innovative pollution control technology

...

(b) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project, including, but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions."

Again, the regulations already provide an exemption from permitting for strictly beneficial projects. Massachusetts instead required complete permit modifications, as well as refined dispersion modeling for the facility even though emissions will decrease, not increase. MassDEP can save significant time and money taking advantage of the "pollution control project" exemption when possible.

Solid Waste Facility Permits: Non-waste related modifications.

Covanta suggests that a process be developed to reduce MassDEP's efforts to approve modifications at a solid waste facility which do not relate to solid waste. A solid waste permit modification exemption, similar to the changes recently implemented as a result of the air permit streamlining study, should be added for facility changes that have no impact on solid waste receipts, storage, processing or disposal. Projects such as administrative building changes and installation of new or expanded support utilities should not require a solid waste permit modification. Sections 310 CMR 19.038(1)(d) and 310 CMR 19.039(2)(c), which address modifications other than expansions, can and

sometimes are currently interpreted to require a full permit modification submittal for any change at a solid waste facility, even if the change does not impact any provisions of the facility's solid waste permit. 310 CMR 19.039(6) does provide for an "alternative review process for certain modifications", however that process still includes submittal of a permit modification application (BWP SW45) and fee, review by MassDEP, and issuance of an approval. In addition, the types of modifications subject to 19.039(6) are open to interpretation and in Covanta's experience the process is rarely used.

It is understood that MassDEP would want some record of non-waste related changes of this nature. The record should be a variation of the alternative review process but without the need for a formal application. A small regulatory addition could be made to 310 CMR 19.039 to allow an applicant to submit a short description of the planned project at least 30 days before construction is begun and to provide MassDEP with final drawings after the project is completed, if requested.

A specific example of the types of projects that would be subject to this type of streamlined approval is Covanta's change to dual-fuel auxiliary burners discussed earlier in this letter. The change to gas from oil as auxiliary fuel will not affect the facility's solid waste permit in any way. SEMASS' solid waste ATO (9/22/08 renewal) does not address auxiliary fuel use. In fact, it states that "...[t]he review of this solid waste ATO permit renewal only pertains to the solid waste handling aspect of the Facility..." and that:

> "... the provisions of 310 CMR 19.000 (Solid Waste Regulations"...shall be applicable to the facility's solid waste handling "process"...whereas the actual combustion of the solid waste...shall be applicable to and under the jurisdiction of the provisions of 310 CMR 7.00 "Air Pollution Control Regulations"."

The change in auxiliary fuel will require installation of an underground natural gas supply line into the boiler house, which will not affect the solid waste handling process. However, MassDEP has required a full solid waste permit modification application for installation of this line. A clear provision in the regulation that would allow a basic notification to MassDEP for this type of project instead of a permit modification would save MassDEP time and allow resources to be spent on issues that affect waste management.

<u>Greater Reliance on the *Fast Track* Permitting Process for Multi-Media Permitting</u>.

Covanta has observed that projects that require permitting across multi-media regulations typically run into significant regulatory thresholds. These are projects that require multiple permits, such as MEPA, air, solid waste, recycling (DON), and water/wastewater. A prime example of this is the Covanta SEMAS Fats, Oils, and Greases (FOG) project which continues in active permitting nearly four (4) years after submittal of the first application. The FOG project required all of the permits noted above. Unfortunately, the primary waste material, inbound FOG, can classify in a multitude of regulatory categories: as a wastewater, a source-separated recyclable material, a solid waste, or even, a solid waste in wastewater. All of these categories

reflect widely divergent statutory bases, and regulatory definitions, and permitting pathways, as well as different regulatory personnel.

MassDEP's current "Fast Track" permitting program allows these permits to be scoped out thoroughly in advance with permit review timelines, and separately negotiated permit fees, permitting pathways, and other critical project details. Covanta successfully used this approach for timely permitting of the Renewable Fuels demonstration project currently operating at Covanta SEMASS. Defining predictable permitting pathways and permitting timelines is critical to encouraging private investment in recycling and solid waste handling facilities in the Commonwealth.

Encouraging Easier Permitting, Construction & Operations of Recycling Facilities at Existing Solid Waste Management Facilities.

Covanta encourages any efforts by MassDEP to remove barriers to permitting, constructing, and operating recycling operations and/or facilities at existing solid waste management and disposal locations. Covanta has had recent experience where collection of recyclables at existing transfer stations was proposed, but the solid waste regulations posed barriers to doing this. Recyclable materials had to be accepted under solid waste permit limits. These limits may minimize acceptance of recyclables in certain situations. In addition, the site assignment approval process often discourages acceptance of recyclables by requiring major site assignment modifications and a burdensome regulatory process. Since siting new facilities is extremely difficult and costly, it makes sense that the Commonwealth should seek to maximize the possible operations at its existing facilities and infrastructure to promote greater recycling and waste diversion.

Thank you for this opportunity to comment. If you have any questions, please contact me at 860-889-4900 x136 or at dgrasso@covantaenergy.com

Sincerely,

Derek Grasso
Regional Environmental Manager

cc: D. Peters
W. Campbell
G. Drew
S. Henderson

RE: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

FROM: Becket Conservation Commission

A. Wetlands, Waterways and Coastal Resources

5. Wetlands: Targeted Review by DEP

This proposed change presents a hardship on many Western Massachusetts towns. Smaller towns do not have the resources to hire an agent; they must depend on the comments presented by DEP reviewers to aid them in issuing the best permit to protect the wetlands in their area. If the DEP file number is issued with no DEP review it means that the sole responsibility for interpretation and understanding of the WPA is that of the local Commissions. These Commissions are composed to volunteer citizens who are generally not educated in the wetland regulations.

Kathleen A. Vsetecka, Agent

Becket Commission Individual Member Comments:

- This change would be forcing us to reconsider having a Conservation Commission as the volunteers on the Commission do not have the knowledge base or skill to administer the WPA correctly/effectively. This could open up the town to legal problems.

- If this is enacted, the people will have free reign to do what they want.

- The proposed regulation is the beginning of the end for small town conservation Commissions, and is creating an opening for a flood-gate of future violations.

- This starts the process of destruction of all the wetlands we have been so diligently trying to protect.

- Unless the Commission has misunderstood the section of the document, the DEP will be systematically undermining the local Conservation Commission.

The Becket Conservation Commission members feel that the proposed regulation is the beginning of the end for small town Conservation Commissions, and that it is creating an opening for a flood-gate of future violations.

We appeal you in all sincerity to leave the regulations as they are now written.

TOWN OF BOURNE
CONSERVATION COMMISSION

24 Perry Avenue
Buzzards Bay, MA 02532

August 4, 2011

Mr. Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Re: Emergency Certifications

Dear Mr. Kimmell,

The Bourne Conservation Commission (BCC) has recently become aware of an issue with the Wetlands Protection Act Regulations regarding the issuance of Emergency Certifications. We are writing this letter to propose a possible change in the Regulations that may assist conservation commissions statewide when dealing with emergencies.

The recent changes in the Open Meeting Law (MGL Chapter 30A, §§18-25) prompted the BCC to seek a legal opinion from our Town Counsel in regards to the issuance of Emergency Certifications. The BCC sought to determine if the procedure for dealing with a request for an Emergency Certification would need to be revised to assure compliance with the changes in the Open Meeting Law. After reviewing this opinion, we realized that while the Open Meeting Law does make provisions for an "emergency", the Wetlands Protection Act Regulations at 310 CMR 10.06 could serve to delay appropriate action.

This observation was noted when our Town Counsel pointed out that only the "Conservation Commission is authorized to issue Emergency Certifications". The problem arises when trying to establish a quorum of the commission in a timely manner in order to issue an Emergency Certification. Many commission members have full time jobs or other obligations that may not allow them to meet on short notice outside of a regularly scheduled meeting. In our opinion, this procedure may delay action that is necessary to abate a situation that could cause direct harm to public safety and/or the environment.

Instead, we propose to add or revise the language in 310 CMR 10.06 to mirror the procedure for issuing an Enforcement Order. The new language would read as follows (or similar):

"An Emergency Certification issued by a conservation commission shall be signed by a majority of the commission. In a situation regarding immediate action, an Emergency Certification may be signed by a single member or agent of the commission, if said Certification is ratified by a majority of the members at the next scheduled meeting of the commission."

This change would allow the commission to respond to emergencies in a timely manner without the burden of establishing a quorum prior to taking action. It would also allow work that is necessary to abate an emergency to be performed in full compliance with the Regulations, which we assume is not always the case under the current procedure.

We thank you for your time and attention to this matter and hope that our recommendations can be utilized to improve the procedure for Emergency Certifications under the Wetlands Protection Act.

Sincerely,

Town of Bourne Conservation Commission

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Richard K. Sullivan, Jr.
SECRETARY

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Fax: (617) 626-1181
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NOTICE

EOEEA FISCAL YEAR 2013 BUDGET HEARING

The Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA) will hold **2 hearings** to allow interested parties to provide their comments as part of our Fiscal Year 2013 recommendation process.

BOSTON: **Thursday, December 1, 2011**
2:30 p.m. to 4:00 p.m.
100 Cambridge Street, Boston, 2nd floor
Conference Room C-D (please bring a picture I.D. for building security)

PITTSFIELD: **Thursday, December 15th, 2011**
5:30 p.m. to 7:00 p.m.
DCR's Regional Headquarters Building
740 South Street, Pittsfield, Main Conference Room

Written comment is encouraged prior to the hearing. Interested parties may also submit written comments at the hearing or through the close of business on December 22. Please address them to:

Richard K. Sullivan, Secretary
Massachusetts Executive Office of Energy and Environmental Affairs,
100 Cambridge Street, Suite 900Boston, MA 02114
ATTENTION: FY 13 Budget

Fitchburg
Greenway
Committee

December 5, 2011

Kakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd floor
Boston, MA 02108

Re: Comment on DEP Draft Action Plan for Regulatory Reform

Dear Commissioner Kimmell,

On behalf of the Fitchburg Greenway Committee, thank you for the opportunity to comment the Department of Environmental Protections October 24th draft action plan for regulatory reform. The Fitchburg Greenway Committee brings together local residents, business leaders, nonprofit organizations, and community leaders to advocate for, improve and promote the abundant natural resources in the city to enhance the livability of the city for residents and support a thriving economy. The Committee has worked on several projects to enhance greenways, blueways, parklands and open space preservation. Given the city's long history as an industrial hub in central Massachusetts, the majority of the projects the Committee has partnered on have included issues of historical contamination and cleanup.

One thing the Committee realizes is that the proposed reform actions governing brownfields has the potential for producing positive outcomes for the Commonwealth's cities by removing undue complications to redevelopment. However, we are also expressing concern that any proposed reforms will not undermine the necessary environmental protection standards.

Our comments are focused primarily on Reform Action Plan #18 - Site Cleanup: Eliminate Tier 1 Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS).

> Eliminating the tiered system associated with the cleanup of contaminated sites has the potential to expedite the process of remediation of these sites to the benefit of the responsible party, the community and the environment. Careful consideration will however be required to ensure an effective new procedure is established to maintain and to most importantly, enhance the protection of public and environmental health. It is important not to erode the ability of the public to be kept informed of and participate in the cleanup process.
>
> One advantage to the tiered system is the labeling of a site as a top, middle or low tiered site which provides all interested and concerned parties with enough information, at a glance, the potential public health threat of a contaminated site in their community. Maintaining this aspect of any system is crucial to local residents concerned about a 21e site in their community.

Additionally, we advocate for measures that would accelerate the cleanup of contaminated sites and encourage a more complete remediation of contaminants. The tiered classification system has proven to be awkward and unduly complicated for responsible parties but the elimination of the tiered system should not result in a process without milestones and a timeline to accomplish remediation. We hope a system can be established which would be capable of both reducing costs for the responsible parties while reaching a cleaned site more quickly.

The proposed improvements to requests associated with redevelopment of properties with Activity and Use Limitations appears to offer additional efficiencies. Providing more easily obtained information, accessible forms and an electronic filing process makes sense so long as protection to public and environmental health and public process is not compromised.

The Fitchburg Greenway Committee appreciates MA DEP's dedication to protecting the health and welfare of the state despite growing resource limitations. If you have additional questions, or would like clarification of a matter raised in these comments, please do not hesitate to contact me directly. Again, thank you for the opportunity to provide these comments.

Sincerely,

Janet Morrison, Esq.
Co-chair, FITCHBURG GREENWAY COMMITTEE

Executive Director
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FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS

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Executive Director • Linda Dunlavy

Mr. Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

December 5, 2011

Re: Comments on the DEP Commissioner's Draft Action Plan for Regulatory Reform dated 10/24/11

Dear Mr. Kimmell:

The Franklin Regional Planning Board (FRPB) is the policy advisory board to the Franklin Regional Council of Governments on regional and local planning issues for Franklin County. We have reviewed the draft Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (DEP) dated October 24, 2011. We have concerns about how the proposed regulatory reform will impact communities and natural resources in Franklin County. Many of the proposed reforms will reduce the technical assistance or oversight that the DEP currently provides. This is particularly worrisome for towns that do not have a Conservation or Health Agent and rely on volunteer Conservation Commission or Board of Health members. While there is a statement in the Action Plan that the proposed reforms will not weaken or undermine environmental protection standards we are concerned that some of the recommended changes will do exactly that. In addition, there is very limited discussion of how the DEP will shift the resources saved to higher priority activities. We recognize that State budget cuts have impacted DEP's staffing levels but hope that funding can be shifted or restored for the important work that DEP undertakes to protect the environment in the Commonwealth. We offer the following comments which are organized according to the headings in the Draft Action Plan document. Text that is in *italics* are excerpts from the Commissioner's Action Plan.

Wetlands

- Wetlands: Targeted Review by DEP: The Draft Action Plan proposes to scale back DEP's role in reviewing Notices of Intent (NOIs) and its oversight on local actions in order to concentrate resources on cases where there are appeals to DEP (Superseding OOCs). *DEP intervention or participation in the local proceeding will be unusual and reserved for cases where there are particularly sensitive resources at issue. Note that DEP will continue to provide technical and regulatory assistance to the local conservation commissions and others via the Wetlands Circuit Rider program and other activities.* Franklin County towns and probably many others in the Western Region rely heavily on the DEP Circuit Rider for technical and administrative assistance. For example, between January and November 2011, the Circuit Rider reviewed and provided detailed comments on 366 NOIs in the Western Region http://public.dep.state.ma.us/wetland/wetland.aspx. Although the number of NOIs filed for projects in the Western Region was about ¼ of those filed in the other regions, the level of technical assistance needed by our local Conservation Commissions was higher and the comments provided by the Circuit Rider reflect that need. Most of our towns do not have Conservation Agents to provide these services to the "all volunteer" Conservation Commissions. An across the board reduction in DEP's role in reviewing NOIs

and it oversight on local actions could be detrimental to the sensitive resources in Franklin County. It seems counterproductive to scale back DEP technical assistance and oversight in towns that have significant wetland resources but lack professional Conservation Agent staff. An alternative approach might be to selectively scale back DEP's role (for example in more urban areas and/or for towns that have professional staff) and redirect the technical and administrative resources to areas of the state like Franklin County that could greatly benefit from additional assistance.

- Wetlands: Buffer Zone General Permit: The Action Plan proposes to establish a general permit or other similar regulatory provision for certain activities that are proposed for the outer 50 feet of the buffer zone to inland wetlands. Buffer zones serve an important purpose but they are not considered a resource area under the wetlands regulations. Work in a buffer zone is only subject to review if the proposed work might impact a resource area. A significant number of NOIs listed on the DEP web site for the Western Region appear to be for projects located in the 100 foot buffer zone. Routine encroachment in the buffer zone has the potential to degrade valuable wetland resources, which provide flood storage, water quality and habitat benefits. A general permit for certain activities in the outer 50 feet of the buffer zone might be beneficial to the resource area if adequate performance standards are included. We would like to receive the proposed list of activities that would be subject to the general permit and the performance standards and have the opportunity to review and comment on those.

- Wetlands: Limited Project Status for Renewable Energy Projects: *MassDEP will propose changes to create clear, categorical standards for renewable energy projects by expanding the categories of "limited projects" in the Wetlands Protection Act regulations. This change will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and streamlining project proponent processes.* Limited projects are not projects with limited environmental or resource impacts. Limited projects are categories of activities within the existing wetlands regulations that can proceed at the discretion of the issuing authority (local Conservation Commission) without fully meeting the resource area performance standards.

  Adding renewable energy projects to the current list of limited projects in the regulations is unwise. We are still learning about the short-and long-term environmental and other impacts these projects have despite their environmental benefits. The current list of limited projects includes: agricultural projects, forestry uses, underground and overhead utilities, new roads or driveways, landfill closures, development of new public water supplies, etc. In general, the environmental impacts of these activities are better understood than those of renewable energy projects. Due to their scale and the associated impacts, commercial scale renewable energy projects should be subject to the full regulatory review process. Creating a more streamlined and predictable permitting pathway can probably be accomplished without sacrificing the necessary regulatory oversight. In addition, our local Conservation Commissions would likely rely heavily on the DEP Circuit Rider for technical assistance to review and permit commercial scale renewable energy projects.

- Wetlands: Chapter 91, 401 WQC & Others: Improved Regulatory Mechanisms for Approving New Energy Technologies -- Other New Technologies: DEP is proposing changes to one or more of the coastal permitting programs (Wetlands, c. 91, 401 WQC) to provide opportunities for approval of innovative projects, particularly for clean energy projects, on a "pilot" basis. *In MassDEP's experience, it can be difficult to review and approve proposals for new technologies or pilot projects. This is because these projects can have impacts that are different from those types of impacts contemplated when regulatory performance standards were drafted, or impacts that are unknown with a typical degree of certainty. Rather than prohibiting projects with uncertain impacts to go forward at all, MassDEP will concentrate on allowing limited pilot projects to proceed with appropriate monitoring and reporting safeguards to prevent damage to the environment.* The concern here is what model(s) DEP will use to implement this proposal. Are other states doing something similar and has it been successful? Perhaps the DEP could

research these models and update the regulations concurrently with streamlining permitting for "pilot projects."

- Expedited Permitting for Ecological Restoration Projects: The FRPB supports an expedited permitting process to facilitate dam removal that will restore the ecology of a river or stream. However this process should provide for the testing of sediments behind dams to ensure that any hazardous materials are remediated prior to dam removal.

- Wetland: Exemption for Regulated "Resources" Created by Stormwater Management Structures: The FRPB supports regulatory changes which will exempt man-made stormwater structures from being considered regulated "Resources." However, these areas should not be altered or destroyed in ways that are inconsistent with their stormwater management or resource protection functions.

Wastewater

- Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval: Given the high quality of our water resources, these projects should receive proper review and oversight by the DEP. Sewer extensions have the potential to significantly impact wetlands and other natural resources and typically lead to new development proposals. There should be a way to modify the oversight so it is more useful rather than eliminating it altogether.

- Wastewater Title 5: Eliminate Duplicative State Approvals: DEP currently permits Title 5 septic system variances and "shared system" approvals, which are also reviewed and permitted at the municipal level. The DEP proposes to eliminate State approval in order to reduce DEP review time and simplify the process for project proponents. However, most of our towns rely on septic systems and this proposed reform could present real problems for our volunteer Boards of Health, particularly when the economy recovers and more residential and commercial development occurs. For example, a volunteer Board of Health may not be qualified to analyze the impact of a variance for reducing the separation distance between the leach field and high groundwater which could result in negative impacts to drinking water. In addition, we are promoting conservation development for residential subdivisions and mixed used developments, which often require septic systems that are shared or have higher design flows. Private wells serve many of our residents and ensuring that wastewater is properly disposed of helps to ensure good drinking water quality. DEP's oversight of these larger systems is needed to help protect public water supplies. Again, an alternative approach might be to selectively scale back DEP's role in towns that have professional staff and redirect the technical and administrative resources to areas of the state like Franklin County that need technical assistance.

Solid Waste

- Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities: *DEP is proposing that these changes be coupled with specific measures to promote accountability such as creating new permit conditions, record keeping requirements, and certification statement requirements that will ensure that applicants are under appropriate obligations to monitor and report environmental conditions. DEP will also audit the submissions and impose appropriate violations for failure to meet all required obligations.* Depending on the record keeping requirements, Self Certification could further strain limited staff capacity at the municipal level. This proposed reform seems very similar to a recent legislative change requested by the DEP to shift the responsibility for permitting of small transfer station facilities that accept 50 tons of refuse per day (TPD) or less from the DEP to local Boards of Health. This change was repealed and responsibility returned to the Massachusetts Department of Environmental Protection because of numerous concerns raised by regional and municipal officials.

Although this reform related to solid waste may be a short-term cost cutting measure for the DEP, there will be greater costs in the long term if waste materials are not handled properly. Do the proposed "Permits-by-Rule" and "Self Certification" for transfer stations with 50 tons per day or less amount to the same approach that was repealed? We are concerned that rural towns in Western Massachusetts could be self-permitting with respect to small transfer station facilities that accept 50 tons of refuse per day or less since the Board of Health or Select Board typically operate these facilities.

Other Areas

- Many Programs: Self-Certification for Certain Permit Renewals: We would like to request the list of proposed permits that this self-certification would apply to and have the opportunity to comment. What kind of audit or DEP oversight is proposed?
- Many Programs: Revise Fees to Incentivize Better Results: This sounds like a good idea but we would like more information on the categories or permits or activities that this would apply to.

Time Savings Expected and Plan for Reinvestment - *Most of the individual reforms presented in this document result in relatively modest savings for MassDEP on an individual basis. However, when taken collectively as a package of measures, MassDEP believes that it will be able to shift significant personnel resources away from routine or duplicative activities to more pressing concerns.* An Action Plan should present both sides of the reform. The DEP should provide more detailed information about how changes will be made to address its assertion that: "*In particular, MassDEP will use resources saved to: ensure timely permitting as the economy recovers and permit applications increase; boost enforcement, technical assistance and outreach—particularly for municipalities; and better meet the agency's federal obligations to impose stricter air quality regulations and to monitor and assess surface waters in the Commonwealth.*" How will technical assistance and outreach resources be reallocated and what areas are targeted? The Action Plan does not address this side of the reform equation.

Thank you for your consideration of these comments. Please do not hesitate to contact us if you have questions (Kimberly MacPhee, Land Use & Natural Resources Program Manager, 413-774-1194 x103 or Peggy Sloan, Director of Planning & Development, 413-774-1194, x105).

Sincerely,

Jerry Lund

Jerry Lund, Chair
Franklin Regional Planning Board

cc.: Senator Stanley Rosenberg
Senator Stephen Brewer
Senator Benjamin Downing
Representative Stephen Kulik
Representative Denise Andrews
Representative Paul Mark
Representative Gailanne Cariddi
Secretary Richard Sullivan, EOEEA
FRCOG Executive Committee
Linda Dunlavy, Executive Director, FRCOG

Independent Oil Marketers Association of New England

December 5, 2011

Mr. Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
2nd Floor
One Winter Street
Boston, Massachusetts 02108

RE: IOMA Comments on MassDEP Proposed Regulatory Reform Action Plan

Dear Commissioner Kimmell:

The Independent Oil Marketers Association of New England (IOMA) appreciates the efforts by the Regulatory Reform Workgroup, and MassDEP staff in conducting a thorough and thoughtful review of the Department's regulations, organization and information technology capabilities and needs.

IOMA offers the following general and specific comments for your consideration:

1) IOMA believes that improvements in technology and applications are continuous, and they each impact not only our private lives but also our professional capabilities as well. Advancements have occurred with the reliability and precision of measurement devices, sensors, and techniques that are routinely used for detecting releases, monitoring discharges, evaluating waste streams, or sensing the "tightness" of an Underground Storage Tank system (UST). IOMA requests that during all of the Regulatory Reform efforts that all regulatory revisions include incentives to promote the use of these better technologies over those that are inaccurate, obsolete, or ineffective. The types of incentives the agency could consider are the use of fees, or the reduction in monitoring or inspection frequencies if better and more reliable technologies are utilized. This approach over the long run will stimulate innovation in the enviro-technology marketplace.

2) IOMA supports eliminating the Bureau of Waste Site Cleanup (BWSC) Disposal Site Tier Classification and Permit process. This process adds considerable expense to a cleanup without meaningful benefits. Over past decade the BWSC has divested itself from providing oversight at cleanups using this scoring and classification process. IOMA believes that the NRS scoring system, Tier classification and the need for a BWSC permit should be eliminated from the phased MCP cleanup program.

PO Box 1857
Falmouth, MA 02556

3) IOMA supports simplifying Activity and Use Limitation (AUL's) requirements and streamlining all related public notice requirements. AULs remain an important component of the Waste Site Cleanup program.

IOMA looks forward to working with MassDEP on these collaborative regulatory reform efforts.

If you have any questions or comments please telephone me at (508) 548-7627 or email me at romano@iomane.com.

Very truly yours,
Peter Romano
Peter Romano

CC: IOMA Board of Directors

From:	virginia irvine
To:	Commissioner, MassDEP (DEP)
Cc:	Senator Stephen Brewer; Smola, Todd - Rep. (HOU)
Subject:	Comment on Action Plan for Regulatory Reform at the MassDEP
Date:	Sunday, December 04, 2011 10:13:00 PM

Please find my attached comments regarding the proposed expansion of the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10). It is my professional opinion that the construction of an industrial wind turbine does not fall into the same category as the current five types of projects now covered by the “limited project” exemption of the wetlands regulations.

Virginia Irvine
Brimfield

1023 Dunhamtown-Brimfield Road
Brimfield MA 01010
December 5, 2011

Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston MA 02108

I am writing in regard to Commissioner Kimmell's Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP). Although there are many aspects of the Action Plan, these present comments concern only the proposed expansion of the categories of "limited projects" in the Wetlands Protection Act (WPA- MGL Chapter 131 § 40) and its regulations (310 CMR 10).

> "9. Wetlands: Limited Project Status for Renewable Energy Projects
>
> MassDEP will propose changes to create clear, categorical standards for renewable energy projects by expanding the categories of "limited projects" in the Wetlands Protection Act regulations. This change will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and streamlining project proponent processes. Renewable Energy Projects will be defined as projects that are eligible for Renewable Energy Credits (RECs). It is currently anticipated that the changes would involve, primarily, new limited project status for wind or solar projects and their utility or access requirements."

It is my professional opinion that the construction of a renewable energy project does not fall into the same category as the current five types of projects now covered by the "limited project" exemption of the wetlands regulations. These "limited projects" are 1. closure of solid waste landfills, 2. airport safety, 3. dam safety, 4. development of safe drinking water supplies from groundwater, and 5. cleanup of releases of oil and hazardous materials. The common factors in all five projects are their importance to the protection of public health, safety and/or the environment.

Let me compare the important factors of "protection of public health, safety and/or the environment" stated in the Massachusetts Wetlands Regulations to Commissioner Kimmell's statement about the importance of renewable energy projects. Kimmel declares that "[t]his change will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help <u>improve air quality, reduce greenhouse gas emissions and boost the green economy</u> (underlining is my emphasis).

Even if one believes the statement that an industrial wind turbine will "improve air quality,

reduce greenhouse gas emissions and boost the green economy," - facts that have not been scientifically substantiated - the construction of an industrial wind turbine is not in the same class as the current five projects which deserve "limited project" exemption of the wetlands regulations.

The development of safe drinking water supplies from groundwater is one of the current "limited projects." Water is already a very scarce commodity in parts of the world and United States. According to Peter Gleick, lead author of "The World's Water," more than 1 billion people still lack safe drinking water.[1] With climate change we can expect more shortages. Here in Massachusetts we have moderate rainfall, but that does not mean that we should waste our groundwater, nor should we assume that we will not be affected by a drought in the future. Massachusetts has suffered droughts before. Wetlands play a large role in assuring water of high quality and quantity. According to information from the EPA, one acre of wetland can store 1 to 1.5 million gallons of water. One can see that the establishment of a new safe drinking water supply is worthy of special consideration as a "limited project." But the installation of an industrial wind turbine project, which is in many cases actually deleterious to public health, safety and the environment, does not rise to that level.

An example of environment benefits from a streamlined permitting pathway is for the "limited project" category for the cleanup of releases of oil and hazardous materials. In a situation where 1,000 gallons of gasoline is released adjacent to a wetland, there is a definite need for "streamlining" the process to allow the cleanup to take place as quickly as possible. To mitigate the release and restore the wetland, the advantage of the regulation allowing "limited project" status is very clear.

Unfortunately for prospective industrial wind turbine developers, most of the sites with some wind in Massachusetts are located in areas of the state where tourism is the number one economic driver. On the Cape, eastern shorelines and the mountains in western parts of the state, stunning scenery is actually worth money, or much more, to the people living and working in these areas. The areas most suitable for wind developers are also the areas where the environment, and specifically wetland resource areas, are very fragile.

Kimmel says that putting renewable energy projects in the "limited project" category will "benefit the environment by creating a more streamlined and predictable permitting pathway." What is a "predictable permitting pathway?" The permitting pathway is laid out in the WPA regulations. If developers and their wetland consultants read and follow the regulatory path, the permitting pathway should be predictable to them. Or is "predictable pathway a "code word" for the prior knowledge that a permit will be issued no matter what.

Somehow the permit for constructing an industrial wind turbine just doesn't seem to need a streamlined pathway unless you have a goal of 2,000 megawatts by 2020 and you are now only at 40 megawatts. Clearly, the Massachusetts WPA and its regulations are a thorn in the side of every industrial wind developer who believes that time is money. At a September 2011 hearing on the wind energy siting reform act held in Hancock, Secretary of Energy and Environmental

[1] EOS Volume 92, Number 44, November 2011 p. 386-387.

Affairs Richard Sullivan stated that state government should “move at the speed of business.” He was endorsing the WESRA bill because it will “streamline” the industrial wind turbine siting process. Linda Smith, a business owner and member of a town finance committee, objected to Sullivan’s characterization. She said that “businesses sell a product and government represents people,” and she asked, “if Governor Patrick is not choosing to represent us, is he choosing to sell a product?” which I believe he is and in this case it is industrial wind energy. Smith noted that a product with the meager efficiency of wind turbines could not qualify for an Energy Star rating, but would destroy mountain tops and clear cut 40-foot roadways.

Industrial wind turbine projects that create many opportunities for the destruction of wetland resource areas in our Commonwealth should never be allowed to have a “limited project” status. Those who wish to protect wetlands should be very concerned and should monitor hearings, read permits, and monitor the projects to make sure they are living up to their permits.

Virgini
a Irvine, PG,
LSP

IPSWICH RIVER WATERSHED ASSOCIATION

December 5, 2011

Commissioner Kenneth Kimmell
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

On behalf of the Ipswich River Watershed Association (IRWA), I appreciate the opportunity to submit the following comments on the Commissioner's Draft Action Plan for Regulatory Reform (Draft Plan).

IRWA understands that under current budget and staffing levels, MassDEP must make decisions on how to most effectively apply its resources to best serve the public interest. We strongly support the Commissioner's asserted "guiding principles" that the proposed reforms not weaken or undermine environmental protection standards, not reduce public process, and maintain opportunities for public involvement and citizen appeals. We generally support the more detailed set of comments submitted by the Conservation Law Foundation (CLF). In addition to the comments presented by CLF, we would like to express support for the some of the proposed Wetlands, Waterways and Coastal Resources regulatory reforms outlined in the Draft Plan.

We strongly support the proposal (Action #1) to develop a common permit application for the Wetlands Protection Act, Chapter 91, and 401 Water Quality Certifications that reduces the submission and review of redundant information. We also support efforts to stream line the review process so long as the strongest elements of the standards from the three programs are maintained and the process ensures that review is carried out by individuals qualified to make the proper determinations.

IRWA is also strongly in favor of establishing an expedited permitting pathway for ecological restoration projects (Action #8). The permitting phase of many ecological restoration projects can be extremely long and expensive. While it is important that any project be thoroughly reviewed, long delays in the implementation of projects that will have net environmental benefits can serve to increase environmental damage and limit the capacity to complete additional projects. Expedited permitting for ecological restoration projects should serve to increase the rate of recovery of impaired ecosystems throughout the Commonwealth.

Please call (978)412-8200 with any questions or comments regarding this letter.

Thank you for the opportunity to comment on the Draft Plan.

Sincerely,

Brian Kelder

Brian Kelder

Restoration Program Manager

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December 1, 2011

BY ELECTRONIC MAIL: MassDEP.Commissioner@state.ma.us
Kenneth L. Kimmel, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

RE: Comments to Draft Action Plan for Regulatory Reform

Dear Commissioner Kimmel:

I am pleased to submit my comments to the Department's Draft Action Plan for Regulatory Reform. I applaud the Department's effort to review its regulations with an eye toward streamlining some of the regulatory processes, to focus resources on more critical areas, and target oversight of areas you describe as "highest priority matters."

In my practice, I generally represent applicants who earnestly desire to comply with DEP's regulatory framework and generally work hard at maintaining compliance. Accordingly, I believe increased flexibility and self-certification or performance-based permitting will be very welcome by these types of clients. In an era of tight resources, it makes sense to treat those entities whose intent is to follow the rules as distinct from those who constantly violate regulations and habitually fail to comply with requirements. Proposed penalties imposed on a more compliance inducing basis may be a helpful option to consider, as discussed below.

The proposed changes in the waterways and wetlands areas will be extremely helpful in enabling projects to move swiftly through the permitting process. Reducing permitting time and tasks (particularly where duplicative) are to be applauded. Further, use of the self-certification for items such as non-commercial small docks and piers will assist both smaller clients and the Department, by reducing resources for both and staff for the Department. With regard to the proposals for Chapter 91, specifically to develop a policy for non-water dependent uses, I think there could be a range of choices but some flexibility has to be included to handle unique situations.

Alternatively, I applaud the use of steamlining processes for compliant projects and focusing more on violators. While the Department's mandate is to protect

the environment, in these times we must all recognize that those who routinely are compliant and "do the right thing" should not be overly burdened and treated the same as habitual violators. The Department might, for example, consider allowing certain first time-violators to take advantage of an "automatic reduction" in penalty assessment in exchange for reducing settlement and negotiation time. I believe that U.S. EPA used this at one time in their air program.

However, where an assessed penalty is greatly out of proportion to the violation, I will continue to press for more negotiation time aimed at reducing these types of penalties on behalf of my clients. I am referring specifically to the duality of penalties placed on the improper handling and disposal of asbestos; which is currently placed on both the removal company and the hiring entity. Frankly, short of a provable conspiracy, these dual penalties are, in my view, significantly overreaching on the Department's part, and place a tremendous burden on homeowners and small businesses who hire entities in good faith. Further, there must be greater recognition by the Department that small businesses in this economic climate be given the opportunity to utilize the Department's small business policies, and that smaller operations do not have the same financial resources and ability to make the necessary investments that larger companies are able to do.

In the area of c. 21E and Waste Site Clean-up, certainty and predictability are required to enable property owners and developers to comprehend the standards and obligations clearly articulated in the regulations. The vapor intrusion issue has wreaked havoc with current and prior property owners who out of good faith, in most instances, complied with cleanup standards only to find that years later the rules have changed. As the economic engines of our economy, the Department cannot be totally unrealistic and unfair to businesses and land owners.

On the other side of the Waste Site Clean-up issue is the success of a highly sophisticated privatized program that now can proceed on a mainly professional basis. Consideration of replicating that on the solid waste and waste water treatment side is intriguing but requires the appropriate standards and watchdogs to ensure that the early stumbles of the Licensed Site Professional program are not repeated.

Thank you for this opportunity to submit my comments and I hope they will be helpful to the Department in proceeding to finalize the Regulatory Reform Plan.

Sincerely yours,

Susan A. Bernstein

TOWN OF ARLINGTON

MASSACHUSETTS

CONSERVATION COMMISSION

December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
MassDEP
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: Commissioner's October 24, 2011 Draft Actino Plan for Regulatory Reform at MassDEP

Dear MassDEP,

The Arlington Conservation Commission appreciates the opportunity to provide comments on Commissioner Kimmell's October 24, 2011 Draft Action Plan for Regulatory Reform at MassDEP (the "Draft").

Utilizing the same headings as in the Draft, the Commission has the following comments:

A. Wetlands, Waterways and Coastal Resources

1. Coastal/Dredging Programs: Permit Consolidation

The Commission is not opposed to a consolidated permit application to serve three of MassDEP's regulatory programs as long as all the existing information provided in the current Notice of Intent form is maintained.

5. Wetlands: Targeted Review by DEP

The Commission strongly supports immediate issuance of file numbers since on more than several occasions the Commission has not been able to close the hearing on a project due to lack of a DEP file number. The Commission would continue to welcome any timely comments on Notices of Intent that MassDEP could provide, as such comments have been helpful in the past.

Under the second bullet on the top of page 5 of the Draft, it states, "DEP intervention or participation in the local proceedings . . .". The Commission is unclear to what "intervention" the draft refers.

The Commission has relied upon the Circuit Rider as well as others at the Northeast Regional Office for technical and regulatory assistance, so asks that such service not be reduced.

6. Wetlands: Buffer Zone General Permits

As Arlington has a local wetlands protection bylaw that treats the Buffer Zone as its own resource area, it is not convinced the proposed General Permit will save the Commission or any applicant any time.

If this General Permit concept is adopted, the Commission asks that some sort of notice be required to be filed with the Commission so that the Commission is aware of such work. This will enable the Commission to answer abutter inquiries as well as monitor the work if needed. The Commission also would want any such General Permit to be clear that the Commission, along with MassDEP, has the authority to enforce the conditions under the General Permit.

The Commission urges inclusion of other criteria that just a 50-foot distance from Resource Areas for work to fall under the General Permit. Other important criteria include, but are not limited to: amount and type of vegetation within 50-feet; amount and type of vegetation to be removed within 50- to 100-feet; the amount of existing and proposed impervious surface within the entire Buffer Zone; the steepness of slope or slopes within the Buffer Zone; type and extent of erosion and sedimentation controls proposed during and after construction

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

If the Wetlands Regulations open up exemptions to stormwater management structures constructed prior to 1996, then more definition should be provided to help Commissions distinguish manmade stormwater management structures from naturally occurring wetlands. For example, it is unclear whether any wetland that is directly fed by a storm drain pipe would qualify as manmade. Also, the proposal is not clear as to what information is necessary to prove that the existing stormwater system meets DEP's performance standards. Does it need to meet all DEP design guidelines? Is water quality testing required?

Thank you for your consideration of these comments.

Sincerely,

Nathaniel Stevens
Chair

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December 5, 2011

Mr. Kenneth L. Kimmel, Commissioner
MA Department of Environmental Protection
c/o Jakarta Childers, Commissioner's Office
One Winter Street, Second Floor
Boston, MA 02108

Via: Email to: massdep.commissioner@state.ma.us

Reference: Draft Regulatory Reform Action Plan

Dear Commissioner Kimmel:

We are writing to provide comments on the Commissioner's Draft Action Plan for Regulatory Reform at MassDEP. We applaud the DEP's commitment to identifying areas that will help to streamline the environmental permitting processes in Massachusetts while continuing to provide appropriate oversight where necessary to protect the environmental interests of the Commonwealth and reduce unnecessary barriers to business. We are acutely aware of the budgetary constraints faced by the DEP and are firmly supportive of the Governor's commitment to expediting, and in many cases simplifying the permitting processes to help Massachusetts rebound from this recessionary period. With regard to the specifics identified in the Draft Action Plan, we offer the following:

1. Home Rule Authority in the Commonwealth allows for the 351 cities and towns to create separate and burdensome local permitting processes and environmental regulations, which in many cases are significantly more restrictive than those of the DEP. Although we understand the limited ability of the Department to change this condition, we encourage the DEP to continue with outreach programs to cities and towns to educate municipal staff in enforcing current regulations and discouraging further burdensome local processes that create additional unnecessary permitting barriers without yielding additional environmental protection.

2. The DEP's commitment to reduce regulatory redundancies in the areas of the Wetlands Protection Act, Chapter 91 and Water Quality Certifications will go a long way to streamline the permitting process. The current overlap in these three regulatory programs provides no measureable additional environmental protection, though does create significant burdens to applicants in terms of costs and time to advance these projects to a point where construction can commence. The filing of a Notice of Intent provides sufficient information for Department and municipal review, and the combination of these processes to a common permit application will be of significant benefit. We encourage the Department to aggressively advance this proposal.

3. The individual negotiations currently required for Chapter 91 License terms create unknowns for applicants that can make financing projects extremely difficult. We encourage the Department to establish clear terms at the outset to eliminate the individual negotiations that can delay, and in many instances stop viable projects.

4. We suggest that the DEP consider extending the timeframes for permit validation under various programs to eliminate frequent and unproductive permit renewals. The Permit Extension Act passed by the Legislature during the recession helped to temporarily extend permits. A permanent solution with longer permit terms would help to significantly reduce workloads for re-review where no change has occurred. Many permits such as Order of Conditions, Groundwater Discharge Permits, Determination of Applicability, etc. could be lengthened for a number of years without detrimentally impacting environmental protection. This would allow applicants to have a longer timeline to construct projects following the issuance of permits, which would reduce costs to applicants, thereby furthering the goal of promoting competiveness in the Commonwealth of Massachusetts and would also avoid unnecessary reprocessing of permits to extend the timeframes. Under Section 71 of Chapter 240 of the Act of 2010, the Department should consider longer timeframes for which permits would be valid.

5. The proposal to create a general license for non-commercial small scale docks under Chapter 91 is very important for the Department to implement immediately to save on scarce staff time. The regulatory burdens currently imposed on small projects are cost prohibitive, and the general license would help to significantly streamline this process.

6. Similar to the proposal to streamline the Chapter 91 process under a general permit noted above in Item 5, the DEP's consideration for a general permit on certain activities under the Wetlands Protection Act within the outer 50-foot buffer zone to inland wetlands is a major step in reducing unnecessary permitting. However, the DEP must make sure that implementation of this regulatory process does not include unreasonable restrictions and burdens that will discourage applicants from pursuing this route. Section 6 of the Department's Draft Action Plan identifies that these regulatory provisions would be considered "for certain activities". We suggest that the Department acknowledge that most activities in the outer 50-foot buffer zone would be valid for this general permitting process. Also, Section 6 properly notes that *"....it has the potential to significantly benefit the environment by providing incentives for applicants to concentrate activities greater than 50' from the resource area."* We strongly encourage the Department to keep with this intent of creating incentives rather than creating burdensome disincentives that would discourage applicants from applying under this general permit. For example, applicants proposing to work only in the outer 50-feet should not be restricted under future filings should their plans change, at which point a new Notice of Intent could be filed for review.

7. The Department's review for regulatory exemption of resource areas created by stormwater management structures prior to 1996 is a positive step to limit unnecessary, burdensome and costly reviews. The statement within Section 7 of the Draft Action Plan notes that current regulatory changes exempt stormwater management structures constructed after 1996. It is unclear that this post 1996 regulatory reform was fully enacted, and we suggest that the DEP provide a blanket exemption from the regulations for stormwater management structures regardless of the date at which they were constructed.

8. Section 9 of the Draft Action Plan seeks to create "limited project" status for renewable energy projects. This will encourage/incentivize projects that improve the environment through greenhouse gas reductions. We similarly encourage the Department to consider creating "limited project" status for activities identified under Section 8 of the Draft Action Plan as these can similarly benefit the environment. For example, ecological restoration projects such as stream day lighting, culvert replacement and inlet widening can have significant benefits and should be encouraged under a limited project regulatory review rather than simply an expedited permitting process.

9. Section 10 of the Draft Action Plan identifies creating an improved regulatory mechanism for new energy technologies. This program seeks to allow clean energy pilot projects to proceed with appropriate monitoring and reporting safeguards. We encourage the Department to create reasonable monitoring standards such that applicants will not be discouraged from applying under this pilot program due to potential significant unknown costs. The Department must keep in mind that the purpose of this regulatory mechanism is to encourage new technologies and not create burdensome monitoring/reporting requirements that will have the opposite effect of discouraging new clean energy projects.

10. The Department's proposal to eliminate sewer extension connection approvals on the state level is laudable. Under current processes, the local public sewer authorities provide ample oversight to ensure the protection of public health and avoidance of environmental threats. Often times these minor procedural sewer connection/extension permits create the only state permit, which places minor projects under MEPA review.

11. Section 12 of the Draft Action Plan will eliminate unnecessary duplicate work by DEP while still providing appropriate protection to the environment. Allowing third party review of innovative/alternative Title 5 technologies will encourage use of these systems, which will significantly benefit the environment due to reduced requirements for red tape in obtaining environmental benefits. The DEP's process to develop an auditing protocol should include a reasonable and limited timeframe such that potential users will not be discouraged from utilizing this program. The DEP should also consider accepting current technologies that are approved for use by other states, without requirements for recertification within the Commonwealth.

12. We support the proposal under Section 13 of the Draft Action Plan to eliminate DEP oversight for Title 5 variances and other redundancies of permitting at the municipal level. Title 5 systems are appropriate for review by local Boards of Health, and the DEP secondary review process is burdensome. Intervention by the DEP should be limited to those cases where assistance is requested by the local authorities or where appeals occur. An appeal to the state for the DEP approval of a Title 5 system also must not be grounds for categorical inclusion under MEPA regulations.

13. The proposed third party professional assessment of groundwater discharge facilities addressed in Section 14 of the Draft Action Plan will further reduce the burden on the DEP while providing appropriate environmental protection through compliance reporting. However, wastewater system operators must be assured that DEP will not retroactively and unnecessarily conduct burdensome audits of facilities where the qualified professional has certified compliance.

14. Section 19 of the Draft Action Plan proposes permit renewals by self-certification. This program will yield significant time savings for the DEP and will allow applicants to more readily renew permits. We encourage the DEP to include as many categories of permits as practicable within this self-certification program. Appropriate candidates for this reform include permits under the Wetlands Protection Act, Title 5, Groundwater Discharge and Water Quality Certification. The DEP should also consider "grandfathering" certain permits without requirement for renewals or extensions.

15. The general stated program under Section 20 of the Draft Action Plan is a positive step by the DEP to incentivize certain activities that have minimal potential for environmental impact. The Draft Action Plan specifically notes that the Department will consider "*....increasing fees on the categories or permits of activities with the highest potential for environmental impacts...*" This is in fact a disincentive, and the Department should consider actually incentivizing certain activities through reduction of fees and permit requirements where projects, such as those within the outer 50-feet of the wetland buffer zone, will be eliminated.

16. The DEP acknowledges that there may be a need for more substantial reform to address long-term sustainability issues. Specifically, under Section III on Page 11, the Department states that it will work with the MACC to explore broad base changes to wetland permitting. In instances such as this, we encourage the DEP to solicit input and advice from not only organizations such as the MACC, but also provide a seat at the table to businesses and other entities in the regulated community. Seeking input from only one side of the table will ensure failure.

17. An additional regulatory reform that the Department should strongly consider is the implementation of a wetland banking program within the Commonwealth. Once the banking program is approved, the environmental permitting process for necessary projects which impact wetland areas will be significantly reduced as the individual project review of compensatory wetland areas will not be necessary. The Department will be able to focus their energies more appropriately on assessing the minimization of wetland impacts while providing a mechanism for land owners to pursue environmentally viable projects where wetland impacts may be necessary.

We thank the Massachusetts Department of Environmental Protection for consideration of these comments and look forward to the outcome of a more streamlined and efficient environmental regulatory process in the Commonwealth.

Very truly yours,

BEALS AND THOMAS, INC.

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December 5th, 2011

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
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Re: Commissioner's Draft Action Plan for Regulatory Reform at Mass DEP

Dear Commissioner:

The Newton Conservation Commission and I are grateful for the opportunity to comment on the draft proposal for regulatory reform (above) proposed by DEP to strategically cope with the state budget cuts to MA DEP. We are in agreement with most of the 'guiding principles' established by the Commissioner to guide the process of regulatory reform.

We agree entirely with the sentiment that "Proposed reforms will not weaken or undermine environmental protection standards," IF it means that DEP believes reforms SHOULD NOT weaken or undermine environmental standards. However the following statements, "None of the proposed reforms will alter our obligations under our federal funding agreements with the United States Environmental Protection Agency (U.S. EPA) and therefore proposed reforms are largely concentrated on "state-only" programs such as wetlands, waterways, wastewater, and solid waste" suggests that DEP does intend to relax its commitment to enforcing the MA protection of state water bodies and wetlands now protected under the WPA, as well as other state environmental protections.

We believe that a continued commitment to enforcing the MA WPA, with its protections for wetlands and flood zones, is crucial not only for the long-term health and productivity of our water bodies and wetlands, but also to the economy and infrastructure of the Commonwealth. Continued compliance with the MA WPA will be key to the ability of communities in Massachusetts to mitigate and adapt to the likely effects of climate change. This includes the ability of communities to address what is an inevitable increase in the frequency and severity of storm events. As noted in the 2007 report by the Union of Concerned Scientists:

> "Heavy, damaging rainfall events have increased measurably across the Northeast in recent decades. Intense spring rains struck the region in both 2006 and 2007, for example, causing widespread flooding. The frequency and severity of heavy rainfall events is expected to rise further under either emissions scenario." ("Confronting Climate Change in the U.S. Northeast: Massachusetts," Union of Concerned Scientists, 2007)

Conservation commissions have intimate knowledge of how the combination of on-going development and climate change are likely to affect their communities. For example, focusing intense education and mitigation efforts at a local level to preserve wetland areas and protect and increase flood storage capacity will be key to the ability of communities in the Commonwealth to adapt to and mitigate the effects of climate change.

We are further concerned at the direction of proposed changes as indicated by the principle,

> "Several of the selected reforms seek to reduce direct staff oversight of activities that are routine and that do not pose the most significant environmental protection concerns…."(e.g., moving from an individual to a general permit process) will be coupled with robust oversight and enforcement measures."

We have found that the individual permit process is a vital tool in preventing violations of wetlands regulations and, more generally, in educating and gaining the cooperation of those who live near wetlands or are otherwise in a position where their activities are most likely to have an impact on wetlands. We believe that enforcement takes immensely more time and energy than prevention, and produces a less positive outcome.

1. <u>Coastal/Dredging Programs</u>

While this principle may reduce time spent by state agency personnel on particular projects, it has the potential to increase the burden on local commissions. This commission has needed to address dredging projects. Such projects often occur in more than one municipality – that is, dredging in a water body in the jurisdiction of two municipalities, or the disposal of dredged spoils in a municipality different from the one in which it was dredged. The higher level review provided by separate state agencies has enabled each to bring to the process their specialized expertise. Consolidation and reliance on the OOC/SOOC as the primary permit authority may require conservation commissions to rely more on consultants to help them understand and design conditions for the projects involved, transferring this cost to local communities.

2. <u>Ch 91 Licensing: Revise Restrictions on Timeframes</u>

Preliminarily, this seems like a reasonable way to save time and effort. We would like to see a detailed policy statement as guidance for permitting projects.

3. <u>Ch 91 Licensing: Establish a Policy for License Terms</u>

We would generally be in favor of this as an efficiency measure, and as the type of license that could potentially benefit from greater public participation at an early stage.

4. Ch 91 Licensing: General License for Small Docks & Piers

The licensing of small docks and piers has been a concern for some commissions, because of the dual review, and because, even though these structures are always in jurisdictional areas, permits are seldom denied. These structures may be a good way for DEP to create efficiency of effort, but we hope the license period would be short to enable fairly frequent review of shore conditions, and include a specific provision that non-compliance with the terms of the OOC would void the license. This might also be a good category for raising fees as a way of slowing proliferation of such structures.

5. Wetlands: Targeted Review by DEP

While we understand the reasoning for targeted review, we believe it will result in some loss of protection for local wetlands and water bodies. Also, DEP's evaluation of what is "routine" may be different from that of the commission. Would a commission have the option to ask DEP specifically to comment on a particular filing?

Regarding proposed greater SOOC review efforts, we are not sure what that means. We believe DEP does a good job of reviewing appeals for Superseding Orders, and have no reason to think it needs to spend more time reviewing them. However, we would tend to support DEP's internal evaluation of where it needs to focus its efforts.

6. Wetlands: Buffer Zone General Permit

We believe the buffer zone general permit was unpopular when first proposed because applicants did not want to limit their work to the outer 50 feet of buffer zones and because few sites met the conditions for the permit. The commission would take strong exception to keeping the format that allowed no conditions by the commission. As we understood it, if the applicant self-certified the erosion and sediment control measures, the commission was not permitted to add any conditions. Yet, our most effective general (special) condition is that erosion and sediment control measures must be inspected and approved by the commission or its agent prior to the start of any work. This condition probably eliminates 90% or more of potential problems with work sites in buffer zones, and ensures that applicants do not create impacts to adjacent wetland resource areas. In the long run this improves protection of wetlands and floodzones and reduces enforcement costs.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

In more urban areas, especially, so many of our streams have been ditched, channelized, straightened, piped, widened for storm water storage, and otherwise altered in ways that greatly blurs the line between "storm water management structures" and altered jurisdictional streams or ponds. We have several streams and ponds that have been altered (often prior to the WPA) to manage storm water flows, but which the commission has treated as jurisdictional for many years with no challenge. Nevertheless, we would likely acquiesce to the provision of

exemptions for specified structures "(e.g. man-made stormwater retention basins)", provided that maintenance of such structures should still meet current storm water regulations.

8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening; Stream Daylighting, etc.

We are not sure what this means. The commission already permits more than 90% of its applications at the first hearing. Does this mean that DEP would conduct a faster review, or a less stringent review? Even if we are all sure a project will be an improvement for the resource area's future ability to protect the interests under the Act, carelessness in the process can cause lasting damage. We withhold further comments until we see more details of what is being proposed.

9. Wetlands: Limited project Status for Renewable Energy Projects

We view limited project status as a category for very extreme cases, including some which might otherwise involve a "taking." It is very rare that an applicant cannot modify the project in a way that allows it to meet the regulations. It is our view is that limited project status should not be extended automatically to a project based on the fact that it is for the laudable goal of promoting renewable energy (or any other laudable goal). A project with potential for substantial impacts on resources should not be exempted from compliance with regulatory standards for any reason.

10. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

We would be in favor of this change, provided that new connections and sewer extensions in resource areas require a filing with the conservation commission (except for the exemption(s) under Riverfront (10.58(6)(a), (c), and (h)), provided they do not also fall in another WPA jurisdictional resource area.

C. Solid Waste, and **D. Waste Site Clean-up**

The Newton conservation commission has little or no role in issues related to proposed changes # 12, #13, #14, issues under **C. Solid Waste**, and **D. Waste Site Clean-up**, and chooses not to comment at this time.

E. Other Areas

We do not believe that self-certification is an effective strategy for maintaining compliance, particularly if it is the applicant making the determination of whether "regulatory standards have not substantively changed in the interim period." And, even if the regulatory standards have not changed, technology is changing so rapidly that preferred or acceptable BMPs may have changed, so that review by the permitting agency is advisable.

20. **Many Programs: Revise Fees to Incentivize Better Results**

No comment at this time.

Need for Additional Reform

MA DEP has been doing a very good job, in general, with the limited resources it has. We hope that additional reform can be guided as much by internal priorities as by the need to respond to budget cuts.

For the Newton Conservation Commission,

Anne Phelps
Sr. Environmental Planner

Cc Conservation Commission

November 29, 2011

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108 Via Email: MassDEP.Commissioner@state.ma.us

Subject: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

The Massachusetts Association of Conservation Commissions (MACC) appreciates the opportunity to participate in the Massachusetts Department of Environmental Protection's (MassDEP's) Regulatory Reform Initiative and to comment on the Commissioner's Draft Action Plan for Regulatory Reform (Draft Plan).

MACC understands that due to major budget cuts, MassDEP has experienced a significant reduction in capacity and must make decisions on how to most effectively deploy its current resources. In this context MACC supports MassDEP's efforts to seek regulatory and procedural efficiencies and prioritize its activities and initiatives. Further, we concur with the guiding principles listed in the Draft Plan particularly that proposed reforms should not *weaken or undermine environmental protection standards*, *reduce public process* nor *transfer responsibilities to municipalities*.

Although MACC retains an interest in a majority of the reform proposals offered by MassDEP, at this time our commentary is focused on issues that most likely impact our constituency to the greatest degree. MACC's comments are designed to advise MassDEP on the general considerations that we believe should be addressed in future analysis; our positions may change, as new details are unveiled.

Below MACC explains the preliminary reasoning behind our support for some proposals (2, 3, 5, 7, and 8), partial support for others (1, 4, 10), alternative suggestions on one (6), and possible qualified support over another (9). MACC also offers additional suggestions for regulatory reform.

Comments on Proposals Included in Section A: Wetlands, Waterways and Coastal Resources

1. Coastal/Dredging Programs: Permit Consolidation: Partial Support

MACC recognizes that the current permitting process for Coastal/Dredging projects contains some redundancies and there is potential for improved efficiency. Despite these redundancies, regulation at both the municipal and state level ensures that should regulatory standards be compromised at one level (for whatever reason) appropriate standards can be upheld at the other level. We recommend that MassDEP focus on integrating the two permitting programs administered by MassDEP.

A single permit application is acceptable, so long as the strongest elements of the standards from each program (Chapter 91 and 401 Water Quality Certification) remain in effect under the new procedure. MassDEP proposes a 401 permit-by-rule if the applicant receives an Order of Conditions or Superseding Order of Conditions under the Wetlands Protection Act (WPA) and a Ch. 91 permit if required. It is unclear how MassDEP would ensure that those other permits would fully address the Water Quality Standards. This requires careful analysis as the details of this proposal are developed. An option would be to retain all three permits where applicable, but to combine the application and review process for 401 and Ch. 91 to streamline review.

2. Chapter 91 Licensing: Revised Restrictions on Timeframes: Support

We support the revision of timeframes for issuance of Ch. 91 licenses relative to the Massachusetts Environmental Policy Act (MEPA) process provided that the revision does not result in reduced opportunities for Conservation Commissions to provide comments during either the Ch. 91 licensing or MEPA review processes.

3. Chapter 91 Licensing: Establish a Policy for License Terms: Support

MACC supports the development of a written policy for establishing license terms under Ch. 91 for non-water dependent uses, assuming that this will be a public process with an opportunity for MACC and others to review drafts of the policy and provide comments. We support this general approach as it has the potential to provide both more efficient review and consistent decision-making. Final MACC support for the policy itself will depend on the details.

4. Chapter 91 Licensing: General License for Small Docks and Piers: Partial Support

MACC recognizes that MassDEP is now obligated to create a general license for non-commercial small-scale docks, piers and similar structures. How well this general license contributes to environmental protection will depend on a) how “small-scale” is defined, and b) what conditions are required to qualify for the general license. MACC recommends that MassDEP include conditions that will protect sensitive wetland and aquatic areas and ensure the number of docks, piers and similar structures does not exceed the carrying capacity for water bodies.

5. Wetlands: Targeted Review by MassDEP: Support

MACC recognizes that with fewer staff available to review Notices of Intent (NOI), MassDEP will have to be strategic about when it chooses to spend time on NOIs submitted to Conservation Commissions. We suspect that a certain amount of triage is already occurring, and we support MassDEP's efforts to focus its involvement or intervention on projects with significant impacts to wetland resources.

MACC supports the Draft Plan proposal to issue MassDEP file numbers without delay, however regional staff should retain the authority to scan applications and flag or comment on any that are grossly deficient or that raise particular concerns due to the nature or extent of impacts. A statement should accompany the automatic issuance of file numbers that the NOI has not been reviewed for completeness or its compliance with applicable performance standards. This new procedure must not interfere with the ability of a Conservation Commission or MassDEP to subsequently identify missing or inaccurate information in the application and require submission of supplemental information. MassDEP should also retain the ability to undertake a preliminary review of some projects and to offer assistance to Conservation Commissions for identification of priority issues that warrant particular scrutiny.

Our impression is that the Western Regional Office, via the Circuit Rider, provides comments on virtually all NOIs via the file number letters. Commissions in the western part of the state largely do not have professional staff, and appreciate these comments. It does not appear that this level of effort is occurring in other regions. We are encouraged that MassDEP's proposal includes the following: "Note that MassDEP will continue to provide technical and regulatory assistance to the local conservation commission and others via the Wetlands Circuit Rider program and other activities." We request that the Western Regional Office continue to provide comments on, at a minimum, selected NOIs soon after the file number is issued and that other regions follow.

We are concerned that reductions in MassDEP oversight will result in too heavy reliance on citizen appeals and will eliminate support functions for Commissions, especially when they are subject to local pressure from town leaders or private groups that band together for particular improvements (e.g. rip-rapping river banks, sea walls, lake draw downs, dredging projects, etc.). It is important that MassDEP continue to provide some independent review of NOIs and Commission decisions, albeit using a strategic approach.

We would like to see MassDEP Regional Offices focus on projects with the highest potential for adverse impacts to resource areas, especially in towns that lack capacity to conduct technical reviews (e.g. staff, technical expertise, funding). We recommend that MassDEP develop and adopt guidelines for determining what projects will be reviewed and tracked by MassDEP staff. Issues to be considered should include the extent of proposed impacts to resource areas, the technical complexity of the situation and the capacity of the Conservation Commission to invest the necessary level of resources and/or expertise in its analysis and oversight of a project. MassDEP should also provide independent oversight review for municipally sponsored projects

and should consistently ensure that projects undertaken by state agencies such as the Department of Transportation and Department of Conservation and Recreation *comply fully* with the WPA and other state environmental laws.

6. Wetlands: Buffer Zone General Permit: Alternative Approach Proposed

Under MassDEP's previous effort, Simplified Review was no easier to use than a Request for a Determination of Applicability. For Conservation Commissions and conservation organizations Simplified Review represented a loss of jurisdiction with potential for adverse impact to resource areas.

We recommend that MassDEP take a fresh look at this topic, keeping in mind the strong scientific basis for buffer zones. Development of standards for buffer zone work would better meet MassDEP's goal of reducing time spent on buffer zone projects without reducing environmental protection. Conversely, a general permit allowing extensive work in the buffer zone without review by MassDEP or Conservation Commissions would reduce wetlands protection and is not consistent with the principles MassDEP has set forth for these reforms.

Scientific research continues to yield strong evidence that many activities, including most forms of development within buffer zones, results in the degradation of wetlands. Standards restricting work in the buffer zone are needed to maintain the biological and ecological integrity of wetlands and water bodies. That said it is true that many of the projects reviewed by Conservation Commissions and MassDEP, particularly those for additional minor work on previously developed properties, are unlikely to result in significant adverse impacts to resource areas. Modest amendments to the minor project provisions, if properly conditioned, along with improved clarity for review of all projects in buffer zones, could create regulatory efficiencies with a moderate risk of environmental impact.

As described in the MassDEP proposal the buffer zone general permit would almost certainly result in adverse impacts to resource areas because a general permit would eliminate review for certain buffer zone projects. Instead, MassDEP should couple any automatic approvals for work in the outer buffer zone with performance standards that prevent all buffer zone projects from altering adjacent wetlands and provide for especially strong restrictions on projects in the inner 50 feet of the buffer zone.

One option for more effective regulation of buffer zone activity would be to create a new Presumption of Significant Adverse Impact for activities (other than specifically defined "minor activities"). These provisions could be stronger in the Inner Buffer Zone and would encourage projects to avoid and/or minimize work in this area. Activities that take place within the inner 50 feet of the Buffer Zone would be presumed to result in significant adverse impacts and the burden of proof would be on an applicant to demonstrate that the project will not:

- Result in erosion and sedimentation into adjacent wetlands and water bodies;
- Reduce shading to adjacent wetlands and water bodies;

- Reduce input of leaf litter and woody debris to adjacent wetlands and water bodies;
- Reduce the capacity of the buffer zone to detain, filter and infiltrate runoff;
- Reduce the capacity of adjacent wetlands and water bodies to support wildlife (through the provision of essential upland habitat characteristics required by wildlife utilizing the adjacent wetlands or water bodies); or
- Create barriers to movement of wildlife through the buffer zone or from one wetland to another.

MACC recommends that the following conditions be a part of any expanded buffer zone Minor Activity exemptions or other automatic approvals.

a. Such approvals should not apply to:
    - Steep slopes;
    - Water Protection Zones A, I and II;
    - Buffer zones in or adjacent to Priority or Estimated Habitat, or Habitat of Potential Regional or Statewide Importance; or
    - Any project that involved activity (including the discharge of stormwater) in the inner 50-foot area of the buffer zone or within any resource area.

b. There should be a limit to the percentage of the buffer zone that can be converted to impervious surfaces.

c. Projects that trigger the stormwater standards should continue to require individual permit review. This is necessary to ensure the accuracy and adequacy of stormwater analysis and management provisions, as well as to provide a permanent record of stormwater management structures not be regulated in the future as resource areas.

As an alternative to a buffer zone general permit, MACC urges MassDEP to consider expanding the exemption for certain Minor Activities when they occur more than 50 feet from wetlands and water bodies (*de facto* exemptions such as now exist in the regulations for unpaved private trails and limited vista pruning with specific, objective conditions stated in the regulations). We believe that focusing buffer exemptions on truly minor activities significantly reduces the risk of environmental harm and is preferable to a general permit for a much broader list of activities in the outer 50 feet of the buffer zone. This alternative would meet MassDEP's objectives for this item, i.e., reducing staff time spent on appeals of buffer zone projects while benefiting the environment by "providing incentives for applicants to concentrate their activity greater than 50' from the resource area."

7. <u>Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures: Support</u>

MACC believes that the WPA regulations should not impose restrictions on artificial conveyances constructed in uplands for purposes of stormwater management that prevent them from being maintained to serve their stormwater management functions. Nor do we

believe that applicants should be free to alter or destroy such areas in ways that are inconsistent with their stormwater management and resource protection function. MACC is not opposed to extending the provisions of 310 CMR 10.02(3) to structures constructed prior to 1996 provided that the same conditions would apply.

8. Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening, Stream Daylighting, etc.: Strong Support

MACC strongly supports ecological restoration and is in favor of expedited permitting for *bona fide* ecological restoration projects. We look forward to providing further input and reviewing the details of a proposed expedited permitting process.

9. Wetlands: Limited Project Status for Renewable Energy Projects: Oppose/Possible Qualified Support

While MACC supports renewable energy development, especially when it displaces nonrenewable sources of energy, MACC opposes the development of non-water dependent projects in specific resource areas, including, but not limited to, salt marshes and bordering vegetated wetlands. MACC needs sufficient detail before we can comment further on this proposal. For example, MassDEP does not provide evidence in its Draft Plan showing that removing regulatory impediments to renewable energy projects will not create new impacts to critical natural resources. Moreover, MassDEP does not explain why a new limited project status for renewable energy development will reduce MassDEP time spent on such projects. Finally, the Draft Plan does not prove the need for such reform. Instead, MassDEP proposes a new limited project status for wind and solar energy projects that qualify for Renewable Energy Credits, including utility and access requirements, however there are already limited project provisions for projects requiring access roads across wetlands to gain access to upland sites for development, and for utilities including electric distribution or transmission lines.

In short, this proposal seems driven by considerations of promoting alternative energy sources rather than by actual examples of difficulties or inabilities siting, constructing, maintaining or operating energy installations. MACC acknowledges the possibility of qualified support for this proposal if these deficiencies are rectified.

10. Wetlands, Chapter 91, 401: Improved Regulatory Mechanism for Approving New Energy Technologies – Other New Technologies: Partial Support

Imagining what new energy technologies may arise in the coming years is difficult. Similarly it is difficult to anticipate the costs and benefits of projects such as energy generation from tides or ocean currents. As such we are generally supportive of policies that may allow a limited number and scope of such projects to proceed on an experimental basis until such time as their benefits and impacts are better known, provided that those projects are carefully reviewed and permitted.

Other Suggestions for Regulatory Reform

1. Create a new exemption for routine activity in order to maintain land in its current use (define routine activity and current use).

2. Codify the exemption for maintenance and repair (but not expansion) of lawfully existing structures (codify the *Bourne vs. Austin* court decision and define maintenance, repair, lawfully existing and structures).

3. Examine the MassDEP management structure and make changes to maintain a reasonable balance between management and field staff, and

4. Increase reliance on information technology data gathering and analysis.

Conclusion

MACC supports MassDEP's general principles and proposals in the Commissioner's Draft Action Plan for Regulatory Reform. However, MACC is concerned about the degree to which MassDEP's oversight roles can be further reduced without compromising core environmental protections. We are also concerned that specific proposals will reduce or eliminate public process and will create inconsistencies and new regulatory hurdles for Conservation Commissions, especially in communities with no professional staff and few technical or legal resources.

MACC remains committed to continuing to help MassDEP find creative ways to perform its duties and we will continue to fight - as we do each year - for an increase in MassDEP's annual operating budget and retention of agency revenue. We look forward to working in partnership with MassDEP as the current process goes forward.

Please call with questions or comments at 617-489-3930.

Thank you again for this opportunity to comment.

Sincerely,

Patrick Garner
President

Linda Orel
Executive Director

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Christopher Knuth Director

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Dear Ms. or Mr. Childers:

I have been working in the Environmental Engineering Field as a consultant and as a regulator since 1981. From 1994 to 1997 I was the Staff Geologist for the Fort Devens Task Force at MADEP CERO. During this period of time, the MCP was re-written.

Generally I am pleased to see that the MADEP is considering ways to stream line some of the regulatory pathways without losing any of the established environmental protection thresholds. It has long been my opinion that the requirements for Title V permitting, the Wetlands Protection Act, and the remediation of heating oil at homes, are too cumbersome and costly to the property owners.

310 CMR 15.00 Title 5, The State Sanitary Code

To streamline these regulations I have the following suggestions:

Reduce the regulatory requirements for replacement and new construction septic systems based on site specific data and a realistic view of potential impacts. This will still provide a realistic level of required protection and it will reduce the amount of oversight needed.

I realize that these regulations were written to cover all geologic conditions from Hyannis Port to Peru but more site specific data should be used to determine offsets and locations for soil absorption systems (SAS). This will allow environmental protection to be achieved without undue burden on the applicant and prolonged oversight.

Perhaps a ranking system to determine offsets would be the best way to achieve Environmental Protection without having to meet unnecessary requirements?

Why would a site of glacial till soils be required to offset resource areas the same distance as one located in an out wash area with high transmissivity values?
Again, groundwater offsets should be considered based on these types of factors.

Why do SAS, septic tanks and pump chambers have to be located 200' from a "Tributary" and 400' from a water source? Do they all really create a level or risk that requires these distances to be held?

Why not keep all SAS and tanks 1,000' from resource areas just to be safe? What is the basis for the current regulatory vertical and horizontal requirements?

Please re-think what can be considered a "tributary" to a drinking water supply. It is being abused by some agencies and Boards.

Local Up Grade Approvals: 310 CMR 15:405 (LUA)

Instead of this program, for existing homes,change the Code so that a conventional SAS can be installed 3' above groundwater instead of the required 4' unless there is a sensitive receptor such as a down gradient overburden well (dug well) within 100'. If Innovative Technology is proposed with a MADEP approved system, and then allow the Board of Health (BOH) to permit a 2' vertical separation from groundwater through a LUA if they feel it is warranted.

When the Presby Enviro-System was approved by MADEP in 2006, one could obtain a LUA from the Board of Health for a 2' reduction in the groundwater offset. No variance was required from the MADEP. Since this approval was based on a thorough review of the technology presented, one would consider this to be an environmentally protective product. Due to what one can only speculate on, this was rescinded reportedly after MADEP was lobbied by other manufacturers whose bottom lines were greatly impacted. I was told that this was done to "level the playing field". No science here, just economics and politics which understandably does happen. Ignoring the science is difficult for me to accept.

Currently many states only require a 2 or 3 foot vertical offset between groundwater and the bottom of an SAS. I have read technical releases, thesis, and excerpts from Environmental Engineering Text Books that also support this practice.

If the SAS is built properly and the seasonal maximum groundwater elevations are properly established, there is no need to offset a Resource Area more than 50' (unless it is in an area that is pro-glacial sands and gravels or near an intake of a drinking water supply). Groundwater gradients should be a consideration when mandating offsets.

Reduce the required offsets between an SAS to a well to 50' if it is a drilled well, and to an up-gradient overburden well. Offsets to what are considered to be "Tributary to a Drinking Water Supply "should likewise be reduced. Some of the ditches, swales, and seasonal water courses are so remote from the actual water source (and often times there is a huge wetlands system between them), it is just absurd to require 100 and 200' offsets. If a catch basin is 20 vertical feet above the elevation of a proposed SAS and it discharges to ORW, one would need a LUA or Variance to place an SAS within 200' of this drainage structure. With no physical possibility of an impact one is still required to go through a series of lengthy paper paths to obtaining a permit. For new construction this might make the lot un-developable.

If decisions based on science are used, there is no need to have layers of review (BOH, MADEP) and holding meetings to facilitate permitting. To date, I have not been involved in any septic system replacement where the original cesspool or leaching system has been identified as a point source for contamination. (although I realize that the MADEP has heard many of these cases). Almost always these systems (pre-2005) are found to be in the groundwater during the wetter months but no actual quantifiable impacts were noted. I would think that the construction of a leaching area that is at least 2 feet higher than the groundwater maximum would be a huge improvement by providing 2' of aerated soils to help attenuate pathogens at these sites. If the property is not put up for sale, the owners can use the cesspool that is seasonally flushed by hydraulic gradients until they pass away.

Chapter 131 ss 40 The Wetlands Protection Act

Generally, I suggest that the smaller projects be allowed to be reviewed by a "determination of applicability" level of review. Adding on to a home, replacing a septic system, installation or changing a driveway, cleaning out drainage ways etc. should not require a "Notice of Intent" (NOI) level of review. This adds to the cost, time and regulatory work for such small projects that often time improve the level of environmental protection at the site. Even if work is to be done within 50' of the resource area, depending on the project an NOI may not be warranted.

310 CMR 40 The Massachusetts Contingency Plan (MCP)

Once again I am suggesting relief for homeowners. In this arena it would be for those that experience catastrophic costs associated with the clean up of home heating oil that was released beneath their cellar floors. Unfortunately the MCP requires a Licensed Site Professional to treat these cases the same as all other releases. I would hope a more straight forward venue with some realistic interpretations of the risks presented can be developed. The least expensive case here in the city will probably end up costing in excess of $50,000 for advancing borings, sampling groundwater and soil, excavation of approximately 10 cubic yards of petroleum impacted soils and all of the associated consulting.

Thank you for considering any of of these suggestions. Even if my ideas are not taken into consideration, at least this has been therapeutic exercise for me. At times it has been difficult to watch people be put under financial burdens and stress that may not be necessary but are required by State Regulation.

Christopher J. Knuth R.S.
Health Director

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December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Via Email: MassDEP.Commissioner@state.ma.us

Re: Commissioner's Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

Thank you again for the opportunity to participate in your Regulatory Reform Working Group this past summer. Mass Audubon offers the following further comments on the *Commissioner's Action Plan for Regulatory Reform at MassDEP* *(Draft October 24, 2011)*. We appreciate your leadership in undertaking an open and transparent process to address the significant challenges the Department of Environmental Protection (DEP) faces in addressing the gap between its available funding and its vital responsibilities for protecting the health and environment of the Commonwealth. As you well know, DEP has undertaken several previous rounds of reorganization and regulatory streamlining over the past decade, as its budget has diminished and staff have been reduced from 1200 FTEs in 2002 to 840 today. Mass Audubon has participated in many of the advisory groups associated with these changes. As stated during the Working Group meetings, we remain concerned about DEP's ability to fulfill its core environmental protection functions under these trying financial circumstances. As such, we will continue to lobby to maintain and increase DEP's budget and retained revenue.

We appreciate the open participatory process that you have established for this regulatory reform initiative. As we have from the beginning of the Working Group deliberations, we continue to endorse the guiding principles of DEP's plan, including the commitments to not weaken environmental standards and to maintain public participation in environmental review and permitting.

DEP is also evaluating its management and administrative structure for potential reorganization and is continuing to develop electronic systems for efficiencies. We continue to support these steps also.

Comments on the Proposals:

Our review is focused primarily but not exclusively on the wetlands and waterways related items where we have some expertise and history of involvement.

In general, we support most of the proposals at the conceptual level and are committed to helping DEP further develop them in a manner consistent with the stated goals and principles. We have some concerns regarding some proposals where there is uncertainty as to how the action will uphold the guiding principles. Those issues can be further addressed during the next phase of the process. Mass Audubon further offers to assist DEP in drafting final proposals that do meet the *Action Plan*'s goals.

Streamlining Wetlands Restoration

Mass Audubon strongly supports ***#8 Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening; Stream Daylighting, etc.*** We encourage DEP to look beyond just Wetlands Protection Act permitting in streamlining proactive aquatic habitat restoration projects, and to work with other agencies including the Department of Fish and Game (DFG) and Coastal Zone Management (CZM) to streamline permitting for all types of wetland restoration projects.

Mass Audubon was a member of the Executive Office of Environmental Affairs' Aquatic Habitat Restoration Task Force in 2007 that documented the extensive need to expand and accelerate restoration of both coastal and inland wetland resources. Massachusetts has lost nearly a third of its wetlands since colonial times. Its rivers and streams are fragmented by 3,000 dams and tens of thousands of inadequately sized culverts that prevent fish and other aquatic life from completing their life cycles. Extensive areas of salt marsh have been lost and degraded due to blockage of tidal flows. The additional stresses on aquatic resources imposed by climate change make restoration even more important to protect and enhance the tremendous natural and economic values of these resources.

Streamlining of wetland regulations for restoration also advances the *Adaptation Strategies* of the Executive Office of Energy and Environmental Affairs' *Climate Change Adaptation Report September 2011*, and would be consistent with DFG adaptation strategies to *help protect, restore and manage fish and wildlife, with the understanding that some level of climate change will occur and that it will have profound effects on Massachusetts habitats*.

Based on our experience undertaking a variety of wetland restoration projects, and in supporting projects led by others, we find that the existing regulatory system is unnecessarily complex and restrictive. This adds significantly to the costs of restoration, and impairs the rate and scope at which restoration can proceed. The current structure is burdensome not only on agency staff time, but also on the time and energy of private nonprofits and other entities working to undertake restoration projects. Projects often require multiple permits from DEP and other agencies, often addressing similar issues. The permitting requirements are sometimes unclear, as the regulatory systems were promulgated to minimize impacts of new development, not provide a path to restoration. There are many opportunities to improve and coordinate permitting for

restoration projects, and we look forward to working with DEP and other agencies on this initiative.

Other Comments on # 1-10 Wetlands, Waterways, and Coastal Resources:

1. Permit Consolidation: DEP proposes consolidation of permit applications and reviews for projects requiring a combination of Wetlands Protection Act (WPA) permit, Chapter 91 license, and/or 401 Water Quality Certifications. We support development of a consolidated application and review process for projects requiring multiple permits. We have concerns regarding the proposal to issue 401 Water Quality Certifications by rule based on permits issued under the WPA or Ch. 91, as those programs do not adequately cover all aspects of compliance with the state Water Quality Standards and associated requirements of the federal Clean Water Act.

2. Ch. 91 and MEPA: The proposal to allow Ch. 91 permit applications to begin concurrently with MEPA review is acceptable provided opportunities for public comment on the determination of public benefits and associated conditions for the project are not diminished.

3. Ch. 91 License Policy on Non-water Dependent Uses: We support the development of guidelines to standardize Ch. 91 license terms for non-water dependent projects provided there is ample public input on that policy and the result is maintenance or strengthening of the public benefits associated with these licenses.

4. Small Docks and Piers: DEP is required under recently adopted legislation to develop a general Ch. 91 license for small docks and piers. It is important that the provisions of this new license establish appropriate definitions and limitations on what constitutes "small," along with adequate provisions to protect the public values inherent in Great Ponds and public tidelands, including the ecological carrying capacity of these areas in relation to multiple docks and piers.

5. Wetlands Targeted Review: We support DEP's proposal to immediately issue WPA file numbers and to limit the department's involvement in wetlands applications to those that are prioritized based on impact or resource sensitivity. The specifics of this proposal need to ensure that conservation commissions and DEP retain the right to require additional information or take other actions on inadequate applications, and for DEP to provide advice and support to conservation commissions.

6. Wetlands Buffer Zone: DEP is proposing to revisit the previously unsuccessful effort to streamline permitting for work in the outer 50 feet of the wetland buffer zone in exchange for incentives for protection of the inner 50 feet. The Determination of Applicability process already provides a quick and often simple procedure for permitting projects with minimal impacts. There is also ample scientific evidence that maintenance of a naturally vegetated buffer zone is important to maintain the functionality of the adjacent wetland.

   Therefore it is not so much a need for an easier path to developing the outer buffer zone, but rather standards or guidelines for work in the buffer zone that will provide

consistency, reduce disputes and delays, and protect wetland resources. Such guidelines could include stronger standards for work in the inner buffer zone, and incentives for keeping work limited and restricted as much as possible to the outer buffer zone. Other options to be considered are administrative approval of certain categories of buffer zone projects by full time local conservation agents, and potential refinements of the Minor Project exemptions. Projects requiring stormwater management pursuant to the stormwater standards will need to continue to be reviewed through the existing permit processes, as individual review of the associated calculations and designs is necessary. We are open to taking a fresh look at the topic of buffer zone standards and procedures, and exploring creative ways to address this topic consistent with science and practical considerations.

7. Wetlands Exemption for Pre-1996 Stormwater Structures: We generally support the idea of treating constructed stormwater facilities as areas regulated only for maintenance of the stormwater functions for which they were created, not as wetland resource areas. It is important that documentation of the fact that the structure was constructed in uplands is required, as some older stormwater facilities and drainage systems were constructed or otherwise created in wetlands which should remain jurisdictional.

8. Expedited Permitting for Restoration Projects: Mass Audubon strongly supports this proposal; see comment above. We look forward to participating actively in the development of details of this proposal.

9. Wetlands Limited Project for Renewable Energy Projects: Mass Audubon is concerned about climate change and supports the responsible development of renewable energy facilities. We want to work with DEP to define barriers to such development that could be overcome without significantly reducing environmental protection. However, the scope of this drafted proposal appears overly broad and may not be consistent with the *Plan*'s guiding principle of not reducing environmental protection. The rationale for constructing solar facilities or wind turbines in wetlands is unclear. There are already limited project provisions in the WPA regulations that can be used for necessary access and transmission line construction through wetlands to serve renewable energy projects. It may be appropriate to focus any wetlands permit streamlining for renewable facilities on water dependent projects such as offshore wind turbines and hydrokinetic facilities that meet Low Impact Hydropower Institute standards. We look forward to better understanding DEP's intentions for this proposal, and to seeing details developed that are fully consistent with the guiding principles.

10. Wetlands, Ch. 91, 401, (& Other?) Improved Regulatory Mechanisms for New Energy or Other Technologies: We are open to a program that would facilitate pilot projects of limited number and scope in order to advance promising technologies, provided sufficient limits and controls are in place to avoid significant adverse environmental impacts.

Comments on Items 11-21

11. Elimination of DEP sewer connection permits: There are a number of concerns with this proposal, including adequacy of local review and approval processes to substitute for

DEP review and the failure of DEP to follow through on the industrial toxic reporting provisions proposed in 2006 following previous reductions in DEP oversight.

MEPA: We also note that elimination of individual permits, e.g. for sewer extensions, may result in some projects no longer being subject to MEPA review. This needs to be carefully evaluated in relation to DEP's stated intention of not reducing opportunities for public involvement.

Several of the proposals move toward automatic approvals and/or self-certification. It is important that the details of any such initiatives include sufficient safeguards and auditing to uphold environmental protection.

Conclusion

Mass Audubon supports DEP's efforts to improve regulatory efficiencies while not reducing environmental protection or public participation. We support the proposal to streamline permitting of wetland restoration projects. We offer qualified support for many of the other provisions, while identifying areas of concern. We hope that these comments will be helpful to DEP in moving this *Plan* from the general draft stage to details that are practical and will meet the intended goals. Mass Audubon also supports an efficiency review of DEP's management and administrative structure, and DEP's efforts to upgrade computer systems to improve electronic filing, monitoring, and public transparency.

Thank you again for the opportunity to participate in this process.

Sincerely,

John J. Clarke
Director of Public Policy and Government Relations

Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor
Richard A. Davey, Secretary & CEO
Frank DePaola, Administrator

massDOT
Massachusetts Department of Transportation
Highway Division

December 5, 2011

Commissioner Kenneth L. Kimmell
Department of Environmental Protection
One Winter Street
Boston, MA 02108

Re: MassDEP's Draft Action Plan for Regulatory Reform

Dear Commissioner Kimmel,

The Massachusetts Department of Transportation, Highway Division (MassDOT), hereby submits the attached comments on the Commissioner's Draft Action Plan for Regulatory Reform at MassDEP dated October 24, 2011. MassDOT's recommended approach is two-fold: 1) to minimize the need for DEP to issue variances, and 2) to reduce permitting process for regularly-scheduled, or emergency, projects that are essential to maintain a safe and efficient highway system. The proposed changes would encourage the implementation of beneficial projects, and would reduce process, paperwork, and staff time for both MassDEP and MassDOT, while creating no more potential for additional environmental impacts. All of the project types cited herein serve the public interest, are necessary, and typically are confined to within existing publicly-owned rights-of-way.

Thank you for the opportunity to comment on MassDEP's progressive regulatory initiative. We see these changes as critically important to MassDEP and MassDOT as a means to support environmentally-beneficial projects, save staff time, and promote the more cost-effective use of tax dollars. If you have any questions or would like to meet to discuss these recommendations further, please contact Kevin Walsh, Director of Environmental Services, at (617)973-7484.

Sincerely,

Thomas F. Broderick

Thomas F. Broderick, P.E.
Acting Chief Engineer

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December 5, 2011

Comments on Section A: "Wetlands, Waterways and Coastal Resources" of MassDEP's Draft Action Plan for Regulatory Reform

I. Decreasing the need for variances

Variances from the Wetlands Protection Act (WPA) regulations (310 CMR 10.00) not only trigger an automatic Environmental Impact Report (pursuant to the Massachusetts Environmental Policy Act) but, due to complex and detailed information requirements, also necessitate a time-intensive review by MassDEP. Since the projects described below occur regularly, and have historically satisfied the "public interest" criterion for a variance, these public service projects should be allowed as "limited projects" (described in 310 CMR 10.53(3)). As has been consistently demonstrated over the years, these projects have resolved critical traffic flow and/or capacity problems, and have markedly improved the safety conditions along our highways, while having limited impacts to the environment.

A. Limited Projects (310 CMR 10.53(3))

The list of "limited projects" should be expanded to include the projects described below, which provide net benefits to society and the environment.

1) ***Bike and multi-use path projects (not just in Riverfront Areas 10.53 (6)).*** Since bikepaths can run for extensive distances, they can exceed the 5,000 s.f. threshold for impacts to wetlands. As a consequence, all too often a proponent will choose to avoid the permitting costs and process, and not pursue a bikepath project. Bike and multi-use paths benefit the environment by providing alternative modes of transportation, and consequently help improve air quality and reduce greenhouse gas emissions. Additionally, bike paths have far-reaching societal benefits in terms of improving public health by providing recreational facilities and promoting people's contact with nature.

2) ***Roadside drainage ditches.*** 310 CMR 10.53(3)(f) should be expanded to allow for a broader range of improvements to drainage ditches. Drainage ditches, whose primary function is to convey stormwater, should not be treated the same as natural Bordering Vegetated Wetlands (BVW).
    - Alteration to man-made drainage ditches along highway (or multi-use path) "toes of slope" should be allowed for the purpose of maintaining or enhancing the stormwater management system, regardless whether the ditch can be classified as a BVW. Potential regulatory language is as follows: "Notwithstanding the provisions of 310 CMR 10.05(6)(k), bordering vegetated wetlands that function to

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convey highway drainage can be used for stormwater treatment provided that the overall functions of the wetland are enhanced."

- Alteration to drainage ditches should <u>not</u> be included in the 5,000 square foot alteration threshold for BVW (cited in 310 CMR 10.55(4)(b)), and mitigation should only be required when the functions and values of the existing drainage ditch will not be replaced with the proposed drainage ditch or alternative stormwater structure.

3) ***Programmatic ditch permit.*** Roadside drainage ditches are an essential part of a roadway's pavement design. They serve the same purpose as a closed drainage system of CBs and pipes in that they divert and remove stormwater from the surface and subsurface of the pavement structure. Maintenance of roadside ditches is essential to pavement longevity, and lack of maintenance leads to premature and costly pavement failure. Therefore, MassDOT would like to work with MassDEP to develop a programmatic permit, along with performance standards to protect the environment, for cleaning drainage ditches This sort of permit streamlining would be consistent with item #7 ("exemptions for regulatory 'resources' created by stormwater management structures") of MassDEP's Draft Action Plan for Regulatory Reform.

4) ***Add-a-Lane projects.*** 310 CMR 10.53(3)(f) (and Standard 7 of the DEP Stormwater Standards) should be expanded to include add-a-lane projects. These are long-distance projects within designated corridors that serve the public interest (safety, capacity). These projects can readily exceed the 5,000 s.f. BVW performance standard (10.55(4)(b)), and currently are treated with the same rigor as a project proposed on an undeveloped parcel, which has greater opportunity to be designed to avoid wetland impacts and meet all of DEP's Stormwater Standards. Indeed, by expanding into an existing space-constrained corridor, with no opportunity for prior site planning, add-a-lane projects should be afforded <u>more</u> flexibility, not less. In fact, a rigorous application of the criterion to meet standards to the maximum extent practicable will provide sufficient impetus to achieve environmentally sensitive and appropriate design for these projects.

B. Riverfront Area (310 CMR 10.58)

Size and shape of highway "lots." The fact that almost all highway projects run for long distances and oftentimes run parallel or perpendicular to rivers, increases the likelihood that highway projects within the Riverfront Area (RFA) will exceed two specific performance standards of the Riverfront regulations:

- Impacts must be no more than 5,000 s.f. or 10% of the Riverfront Area on the lot, whichever is greater; and
- At a minimum, a 100 foot wide area of undisturbed vegetation must be provided within the riverfront area.

Therefore, since the size and shape of highway layouts (lots) are by definition long and narrow, highway projects should be subject to the same leniency as commercial lots. Under 310 CMR 10.58(4)(d)(4), where the size and shape of a commercial lot within

the RFA prevents new development construction from meeting the RFA performance standards, the construction is exempt from meeting the RFA performance standards, provided the construction meets certain criteria (310 CMR 10.58(4)(d)(4)a-c).

C. Stormwater regulations and water supplies

Stormwater standard #3 requires no loss of annual recharge to groundwater. However, the requirement to infiltrate the full volume of "new development" within a Zone II of a public water supply may have undesirable consequences, and the recharge of highway runoff should be at the discretion of the affected water supplier.

II. Reducing permitting process

Virtually all MassDOT projects are essential to maintain safe and efficient driving conditions within the State's highway system, while many generate improvements to the environment as well. For these reasons it is in MassDEP's and MassDOT's mutual interests to streamline the permitting processes and eliminate any unnecessary costs or delays to these projects.

A. Stormwater Retrofits

MassDOT recently has initiated the Impaired Waters Program where Best Management Practices (BMPs) are installed to improve water quality. Currently, if these proposed BMPs are within the 100-foot buffer zone or 200-foot Riverfront Area, then they will be subject to the full permit review process under the WPA regulations. To reduce this permitting workload, MassDOT would like to work with MassDEP to develop a programmatic permit for stormwater BMPs with the requisite performance standards to ensure appropriate environmental protections (e.g., erosion and sediment control). Streamlining regulatory process and eliminating disincentives for environmentally-beneficial work is consistent with the intent of item #8 ("expedited permitting for ecological restoration projects") of MassDEP's Draft Action Plan for Regulatory Reform.

B. Unreasonable and/or frivolous appeals

Projects that enhance public safety and/or transportation efficiency should not be impeded by unreasonable and/or inappropriate permit appeals. We therefore suggest that MassDEP strengthen its process of determining whether an appeal under the WPA regulations has merit, especially for highway safety projects.

C. Time extension for emergency work (310 CMR 10.06)

Extend the time interval to complete emergency work from 30 days to 120 days. It is often not feasible to complete a highway repair project within the 30 day time limit. And once that time frame is up, it is necessary to apply for an extension on the Emergency Permit, which generates more work for DEP, including authorization from the DEP Commissioner.

December 5, 2011

MASSACHUSETTS MARINE TRADES ASSOCIATION
BOATMA.COM

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Re: Regulatory Reform Action Plan

Dear Commissioner Kimmel:

Thank you for the opportunity to comment on the Draft Action Plan for Regulatory Reform at MassDEP. The Massachusetts Marine Trades Association (MMTA) applauds the Department's efforts contained in this draft and to continue to meet legislative mandates with reduced resources.

The streamlining efforts outlined in the Draft Action Plan represent a positive change. MMTA remains particularly hopeful that the proposed strategies will indeed increase permitting efficiency to meet the speed of business and ultimately reduce permitting costs. These two issues – timeliness and unnecessary permitting expense – have beleaguered the agency for decades.

The recreational marine industry contributes positively and significantly to the economic strength and quality of life enjoyed in Massachusetts. The 'business of boating' provides jobs, economic opportunity, public access to our precious waterways, improves aesthetics of inland and coastal waters and supports environmental stewardship while promoting a family-friendly form of recreation and tourism. With 186,000 state and federally registered vessels and 1 million anglers in the Commonwealth and over 5 million residents living within 10 miles of the ocean, any negative impact on the stability of the marine trades (economic, regulatory or others) has the potential to negatively affect millions of citizens and visitors.

The Association and its 300 member firms also seek to stem the exodus of recreational boating businesses from the Commonwealth and the loss of waters-edge usage for recreational boating purposes. The Association acts as a source of information about recreational boating and boating businesses for the general public, via its website at www.BoatMA.com; for the Massachusetts Legislature, where the Association is a frequent participant in public hearings and in the 50-member Legislative Boating Caucus; and for executive branch agencies, the MA Federal delegation and authorities with regulatory and economic development responsibilities.

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Established in 1964, the Massachusetts Marine Trades Association (MMTA) is the statewide, non-profit, representative body for over 1,200 marine trades businesses in the Commonwealth. Our businesses employ over 27,000 men and women and generate an estimated $1.7 billion in annual economic activity for Massachusetts. The mission of the Association is to further the interests of the marine trades and the boating public through the promotion of boating, participation in legislation and professional improvement programs.

1. **MMTA hopes that efforts to increase the use and efficiency of eDEP for all programs within the Department will be actualized soon.** Many industries, the business of boating included, would benefit significantly from eas in filing permit applications, renewals and self-certifications. MMTA finds eDEP is a promising means of reducing the slow back and forth of paperwork and of encouraging consolidation of filings. Once eDEP is fully functional, we can hope that increased operating efficiencies will be reflected in reduced permitting fees. We do recognize, however, that no one at DEP seems to have administrative support any more anyway. So, the less copying and distribution time spent internally, the more time DEP staff will have left for science-based, professionally-based action. It is difficult for modern businesses to accept that the Commonwealth cannot modernize its own communications systems and yet expects small businesses to keep up with arcane regulatory or policy changes. Enhancing eDEP will be an excellent middle ground.

2. One overarching comment we make whenever we meet with senior DEP or EOEEA management is that **the periodic effort to revise silo'd regulations and statutes to combine public hearings and public comment periods for overlapping regulatory programs (state and local) should be expanded**, to reduce project review timelines without altering outcomes (and perhaps improving them as synergies among programs develop). The Chapter 91/MEPA combination discussed below is a partial improvement, but many other programs would benefit from consolidated hearings, even if an umbrella statutory change is needed to do so.

3. **Permit consolidation within the Dredging Program – DEP is contemplating a unified permitting application process for dredging activities where Chapter 91, 401, and water quality certification overlaps. This is a great example of "great direction, please take it further!"** The effort is geared toward maintenance dredging projects and where any one of the necessary permits adequately protects resource interests. There will be no diminishing of project review requirements and resource protection standards will remain as they are. We also comment that it is essential to halt the strict definition of 'maintenance' dredging as requiring a prior permit from the Commonwealth, because so many areas have long been used and dredged, for hundreds of years even, yet did not possess permits for dredging. Also, improvement dredging should not be treated so negatively, especially in previously degraded areas or where the post-dredging result can be highly beneficial for water quality and creation of clean, useful habitat. The Department possesses a multitude of ways to stall and stop projects

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which make use of the waterways. We don't need more ways to say "no." What we need are more ways to say "yes" to respectable projects more quickly, without a dysfunctional prohibition preventing many small businesses from even trying.

4. **Chapter 91 Licensing** – It is being considered that Chapter 91 licensing can be concurrent with the MEPA process; this appears to be an overhaul of the Joint MEPA EIR Application provisions. Of course, one's license would not issue until the Secretary's Certificate is signed but the time line for a license to be issued will be greatly reduced. **We agree strongly that this approach will allow DEP staff to complete the administrative review process and move forward with public comment before the MEPA Certificate is finally issued.** It is also proposed that a license can be issued before the local Order of Conditions is recorded. This is terrific. MMTA lauds this effort. We would also be remise if we didn't remark how extraordinarily understaffed the Chapter 91 licensing program is, statewide. They do yeoman's work in an effort to remain consistent and timely and up to date on relevant issues, yet they simply do not have the necessary staff even now, before the economy picks up. Please don't cut them further, or assign generic staff without the specific skills to make sound Chapter 91 decisions.

5. **We would also be remise if we didn't restate what is said constantly but does not appear in the Reform Proposals**: The extraordinarily intricate detail of the Chapter 91 licensing regulations merits strategic streamlining to allow more minor actions and changes to occur without active DEP oversight or attention. The "Minor Modification" program can be expanded, as can reconstruction or redevelopment of pre-existing buildings for changes in use which meet certain published criteria. Use Programmatic General Permits or General Licenses or the like to do so (see below). The intersection of Municipal Harbor Planning and Designated Port Areas has also been clogged with failed good projects – big and small -- for decades, while especially in Boston huge waterfront projects seem to be the only ones which can afford to put the shoulder to the wheel for the decade it takes to get through it all. Municipal Planning Departments have no more money than DEP (or CZM) to afford this type of holdover from the heydays when planning was both respected and funded. It is time for a major overhaul to find a way to allow smaller projects which cannot strictly comply with the full Chapter 91 regulations to nevertheless proceed when worthy. The Designated Port Area regulations have also been counter productive for attracting marine industrial investment ever since they went from incentivizing federal grant applications to prohibiting non-marine industrial activities. This, too, merits muscular attention.

6. Chapter 91 License Terms – License terms for non-water dependent structures have traditionally been negotiated by the applicant and the Department. A proposed guidance policy would create a structured and transparent mechanism for establishing license terms for non-water dependent licenses. Again, a public review and comment process would apply to the guidance policy, so specific input on that will have to wait. For non-water dependent applicants, this is a significant change as important project elements rely on

license terms. In any case, we at MMTA often find ourselves the only voices in the room for traditional water dependent uses (not just strolling by the water, but actually using the water) and the continuing need to protect the public's right to navigate the waterways. **We support longer license terms, for sure, but also continued focus on water dependent uses actually USING the waterway**, not just having space set aside to look at it. Lots of partnerships among landside real estate mavens and in-water activation professionals are easily available to make such collaborations a great success for all.

6. **Small Non-Commercial Docks and Piers** – As a way to reallocate Department resources, small non-commercial projects may be eligible for "general" licenses. Smaller projects that are able to meet certain conditions and performance standards would be issued a general license. This process would, hopefully, be much quicker for eligible projects than the existing application process. **But why confine this approach to only non-commercial docks and piers?** Why go back to the days of yore when covering one's costs or even making a profit seemed to taint how the environmental impact is addressed? There seems not to have been inclusion of a generic Chapter 91 license or a Programmatic General License at this time. Why not, for appropriate circumstances?

7. Wetlands Protection Act/Wetlands Review – The Department will strategically review Notices of Intent filed with one's local conservation commission, focusing on those projects in sensitive resource areas. The Department will also now issue a DEP file number as soon as the Notice of Intent is filed so one no longer has to wait before the conservation commission begins its review. Most of DEP's resources in wetlands review will be focused on those Orders of Conditions appealed to the Department and shift away from reviewing smaller residential alterations and activities in the buffer zone. **MMTA certainly agrees that less focus on the buffer zone for any project is a welcome change**. It was a highly discouraging experiment to have seen years of internal and external "working group" dialogue go into Abbreviated Notices of Intent only to have no one use the process because it was still so onerous. We support elevating Commonwealth attention to the big picture, as proposed, and letting localities make the first effort to decide on a Notice of Intent. They won't always be perfect, but the appeal process is there when needed.

8. And in reference to the Wetlands appeal process, many of our members have experienced the agony of Adjudicatory Proceedings which cost as much as court trials, when a vastly more abbreviated, science-focused process would meet the statutory requirements and, in many cases, all parties' needs. **Keep up the initial dispute resolution, but then get rid of all the formal procedural motions and get immediately to a half-day Adjudicatory Proceeding.**

9. Finally, **MMTA agrees that more programs should be self-certification based**. Focus enforcement on overt, knowing lies for a few years, and self-certification will be taken very, very seriously indeed.

MMTA is always available to the Commissioner and his staff to provide feed back or answer questions when needed. Our best contact is MMTA Government Relations and Legal Counsel Jamy B. Madeja. She can be reached at 617-227-8410 or by email at jmadeja@buchananassociates.com.

Sincerely

Jamy B. Madeja, Esq. for
Jack Kent, III, MMTA President

Cc. MMTA LAT

MASSACHUSETTS WATER RESOURCES AUTHORITY
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Commissioner Kenneth L. Kimmell
Department of Environmental Protection
One Winter Street
Boston, MA 02108

December 5, 2011

Attention: Jakarta Childers, Commissioner's Office

Subject: DEP's Draft Action Plan for Regulatory Reform

Dear Commissioner Kimmell:

Thank you for the opportunity to comment on DEP's Draft Action Plan for Regulatory Reform. We are pleased that the you and the DEP are examining how the DEP does its business and looking for opportunities to continue to protect the environment while reducing the cost and burden of the DEP regulations and review processes. Many of the specific suggestions made in the Draft Action Plan are excellent steps along this path. We applaud the DEP for working to reform its existing regulations, policies and practices to allow the agency to reduce staff time spent on those activities while maintaining its high standards for environmental protection.

MWRA has reviewed DEP's Draft Action Plan for Regulatory Reform and offers the following specific comments and questions:

A. Wetlands, Waterways and Coastal Resources

1. <u>Coastal /Dredging Programs: Permit Consolidation</u>

It would be efficient to develop a single combined application for these three programs administered by DEP. This puts the onus on the applicant to have a well thought out and detailed project at the onset of the environmental process and not wait until the end of the process to refine details and suggest mitigation. Permit consolidation would potentially address many items that have either lengthened the permitting process for MWRA in the past or that have increased the consultant effort and cost to prepare permit applications (e.g., different sets of drawings at different scales, different layouts of text all saying the same thing, etc.).

The Draft Action Plan is vague in the precise scope of this consolidation effort, and MWRA believes that there is also merit in reviewing more than just Coastal/ Dredging Programs. Inland dredging and work in Great Ponds should also be examined for opportunities to streamline permitting.

2. Chapter 91 Licensing: Revise Restrictions on Timeframes

MWRA agrees that allowing the Chapter 91 licensing process to run concurrently with Massachusetts Environmental Policy Act (MEPA) review, and also allowing a Chapter 91 License to be issued before a final Wetlands Order of Conditions is obtained is an important timesaving reform.

3. Chapter 91 Licensing: Establish a Policy for License Terms

MWRA is supportive of DEP developing guidelines for the terms to be included in Ch. 91 licenses. While such guidelines will reduce the effort needed to develop a license for typical projects, DEP must explicitly provide the flexibility to deal with the particulars of complex or unusual projects.

4. Chapter 91 Licensing: General License for Small Docks & Piers

The Draft Action Plan suggests that DEP will "…create a general license for non-commercial small size docks, piers, and similar structures." It would be beneficial as DEP reviews its regulations, that it considers adding to the category of "similar structures" pipes, intakes, outfalls, and related appurtenances which by the nature of their function and purpose must be located at the water's edge.

5. Wetlands: Targeted Review by DEP

The recommended changes such as immediate issuance of file numbers and a focus on Superseding Orders of Conditions (SOOCs) will streamline review of projects, and MWRA supports this effort.

MWRA also suggests that DEP consider that the issuance of Certificates of Compliance (COC) be streamlined too. We suggest that DEP set a reasonable time frame for DEP to issue a COC. We are aware of examples where a COC has been delayed over a year.

We are pleased that DEP indicates that it will continue to provide technical assistance to communities through such means as the Wetlands Circuit Rider program.

6. Wetlands: Buffer Zone General Permit

MWRA believes that there may be an opportunity to expand the exemption for limited minor activities to include utility conduits, water and sewer lines, and appurtenances which by geography, topography and function are often required to be located within the buffer zone.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

MWRA supports DEP's effort to clarify the policy for man-made wetland resources created by stormwater management structures. As with all areas being considered, MWRA would want to be sure that DEP will retain the ability to critically review the performance and

impacts of structures within water supply watershed areas and take enforcement action as necessary.

8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening; Stream Daylighting, etc.

MWRA supports DEP's efforts to facilitate permitting for environmentally beneficial projects. As with all areas being considered, MWRA would want to be sure that DEP will retain the ability to critically review the performance and impacts of structures within water supply watershed areas and take enforcement action as necessary.

9. Wetlands: Limited Project Status for Renewable Energy Projects

MWRA supports DEP's efforts to facilitate permitting for environmentally beneficial projects. As with all areas being considered, MWRA would want to be sure that DEP will retain the ability to critically review the performance and impacts of structures within water supply watershed areas.

10. Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies -- Other New Technologies

MWRA supports DEP's efforts to facilitate permitting for environmentally beneficial projects and using pilot projects where there is uncertainty about benefits or impacts. As with all areas being considered, MWRA would want to be sure that DEP will retain the ability to critically review the performance and impacts of structures within water supply watershed areas.

B. Wastewater

11. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

MWRA respectfully disagrees with DEP's proposed changes to its sewer extension and connection approval process. Elimination of this permit and its associated requirement for offsetting Infiltration/Inflow (I/I) removal is contrary to ongoing DEP efforts to reduce Sanitary Sewer Overflows (SSOs) and excessive I/I. If DEP will no longer issue sewer connection and extension permits, by what vehicle will the Commonwealth be able to reduce SSOs due to new flows from large development projects? How will the DEP policy requiring 4:1 offset of any new flows to MWRA member community systems (Policy No. BRP 09-01) be administered and enforced? This cannot fall to the communities themselves, for two intertwined reasons: 1) the local economic benefits of the development projects may override any concern about the impact to downstream sewer systems, and 2) the local community sewer system may be able to adequately handle the new flows in spite of potential adverse impacts to downstream communities, and a reduction in the level of service provided to other communities.

The Draft Action Plan points out that the number of projects currently affected by the sewer extension and connection permit is small. While this may be true, the projects that are affected have the potential for serious impact to downstream sewer systems, overflows, and surface water quality. Without enforced offsets, these projects will also compromise the environmental benefits of very large public expenditures intended to control sewer overflows. This program is an important use of DEP resources to delivery measurable enhancements to environmental protection.

The Draft Action Plan indicates that "The DEP approval typically does not apply different criteria nor add significantly different conditions than the local permit." MWRA respectfully disagrees with that statement. A vital function of DEP's permit review/permit conditions is to look at and mitigate downstream impacts (flows through downstream communities and regional collection systems) of new sewer flows (particularly very large new flows) that the local permit will ignore. We believe that this is indeed a "vital function" and suggest that the time freed up by other changes be redirected to this area to ensure adequate review of the limited number, but important projects that it covers.

The Draft Action Plan also states that "DEP will maintain its ability to require individual permits in situations that present public health or environmental threats, such as systems that experience excessive sanitary overflows, capacity issues, or discharges that potentially could cause problems at a treatment facility." It is not clear to MWRA how DEP will maintain its ability to require individual permits or to identify critical situations deserving of agency action if the permit program is eliminated.

Given MWRA's significant concern about this issue, we would be happy to meet with you or your staff to further discuss opportunities to streamline the review without eliminating this vital function.

12. Wastewater Title 5: Innovative/Alternative Program – 3rd Party Review

This approach appears to be an effective way to eliminate duplicative work without sacrificing appropriate safeguards.

13. Wastewater Title 5: Eliminate Duplicative State Approvals

This approach appears to be an effective way to eliminate duplicative work without sacrificing appropriate safeguards. As with all areas being considered, MWRA would want to be sure that DEP will retain the ability to critically review the performance and impacts of structures within water supply watershed areas. We are concerned that DEP will not be able to identify critical projects deserving of DEP review if routine approvals are eliminated.

14. Wastewater: Targeted Groundwater Discharger Inspections

While shifting the targeting of inspections towards those facilities with identified compliance issue or complaints seems appropriate, MWRA is concerned that this could result in reduced attention to facilities in critical environmental areas. It is not clear to MWRA how absent a

routine inspection program, DEP will reliably be able to identify those facilities where increased attention will result in improved conditions.

C. Solid Waste

15. Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities

This approach seems to be a reasonable way to reduce the burden on both DEP and the regulated community without sacrificing protection.

16. Solid Waste: Certified 3rd Party Inspectors for Active Landfill Inspections

The use of certified 3rd party inspectors to do random inspections is an innovative way to shift DEP resources away from more routine inspection activities.

D. Waste Site Cleanup

17. Site Cleanup: Simplify Activity & Use Limitations (AULs)

MWRA agrees that simplified forms and streamlined public notice procedures would save time and money with no loss of environmental protection.

18. Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)

MWRA has not had occasion to deal with Tier I permits, so we cannot offer a specific comment. The current Tier II classification and the numerical ranking system seem to work reasonably well, although we support any changes to the current approach that eliminate duplication.

E. Other areas

19. Many Programs: Self-Certification for Certain Permit Renewals

MWRA is supportive of this concept.

In addition, somewhat contrary to the Draft Action Plan commentary, we do suggest that while it may be appropriate to ignore Water Management Act permit renewals in this current process while the Sustainable Water Management Initiative is ongoing, we believe that it would be appropriate to consider a self-certification process for Water Management Act Registration renewals.

20. Many Programs: Revise Fees to Incentivize Better Results

While in theory using the fee structure to attempt to encourage applicants to make improved siting and design decisions seems reasonable, MWRA is concerned that for many of its projects, increased fees will not result in any improved site selection or environmental outcome but simply result in higher costs to our rate payers, as our siting options are often constrained by existing infrastructure and our projects are often mandated. Any fee revision proposal should be structured to only recover for the Commonwealth the direct costs of issuing the permit, and incentive structures should only be used where they will reliably result in improved environmental outcomes.

MWRA is also concerned that raising fees on certified laboratories may cause some to drop certain certifications. This will serve to reduce competition for laboratory services, and may result in a diminution of the quality of lab work. The certified laboratories serve as DEP's watchdogs on environmental activities.

21. Asbestos Abatement Requirements

MWRA supports providing greater flexibility in the conduct of asbestos abatement activities. The use of self-implementing plans for asbestos abatement would help to decrease construction delays and reduce costs when encountering asbestos. MWRA's experience is that it cannot always be identified in advance if asbestos will be present, especially in underground construction.

Additional Ideas for Reform

1. Opportunities with eDEP

MWRA notes that the document did not discuss eDEP. It seems that more usage of eDEP would allow DEP to shift staff to other tasks than entering and reviewing information from paper forms, as well as offer opportunities for more timely action when the data indicates a potential problem. However, DEP needs to ensure that it has adequate IT support to effectively implement both its existing and any new eDEP initiatives. To date, it has seemed that the eDEP program is barely getting by on the existing IT support, which often means that a substantial burden is shifted to our laboratory staff.

2. Construction General Permits and Wetlands Regulations

An additional area where MWRA sees significant overlap in effort is between the EPA NPDES Construction General Permits (CGP) and the State MA Wetlands Protection Act and Stormwater Management Standards. We understand that EPA is coming out soon with changes to its NPDES CGP regulations. At that time a comprehensive review of the two

programs may help reduce applicant paperwork burden as well as the level of staff time for DEP oversight.

3. Opportunities within the Drinking Water Program

The Draft Action Plan does not offer any areas for streamlining within the drinking water program. While the vast majority of the drinking program activities are specifically mandated by federal drinking water rules, there are some areas which DEP ought to re-examine. DEP has added additional training requirements in the past several years which are not required by EPA and which will require some DEP staff effort to track. If these were framed as best practices rather than mandates, DEP staff effort could focus on working with systems to improve performance rather than tracking compliance. Even more resource intensively, DEP has chosen to develop and issue drinking water standards or advisories for several contaminants prior to EPA completing their own extensive regulatory research efforts. This seems duplicative and also means that Massachusetts suppliers must comply without the benefit of the synergy that occurs when systems nationwide are working on the same issue.

4. Regulation of Dental Industry

MWRA and DEP have long worked together to reduce duplication in industrial wastewater permitting. MWRA and DEP have enjoyed approximately 15 successful years during which MWRA has been the primary regulator of industrial wastewater permits in the MWRA sewer service areas. We are concerned that with a new EPA initiative, there could be a potential for duplicative permitting for dentists. EPA has announced plans to establish a national categorical standard for dentists, which will require that all approved pretreatment programs begin regulating dentists consistent with the effluent limitations established in the standard. MWRA recommends that once EPA has published these standards, and POTWs with approved pretreatment programs are required to incorporate them into their programs, DEP should expect and require the approved local programs to handle regulation of the dental facilities. DEP can divert its resources to dental facilities operating in areas without approved programs and direct dischargers. This will reduce the regulatory burden on the dental facilities because they will not be required to report to two entities, and relieve DEP of the burden of managing its program in areas with approved pretreatment programs. At a minimum, the program should be delegated to MWRA in its sewer service areas consistent with the existing delegation.

5. Duplicative Reviews for MWRA System Expansion

Consistent with the on-going discussions MWRA has had with DEP and other EOEEA agencies, MWRA encourages DEP to use this resource allocation review process to streamline its parts of the system expansion review process, and work with other agencies to better coordinate the process. MEPA, Water Resource Commission, Department of Conservation and Recreation, and DEP all play overlapping parts in determining if legal and regulatory requirements are being met. There are clearly areas of duplicative reviews which

require additional applicant and agency review time, and add to the overall length of the review process. At a minimum, DEP should be able to improve the process for determining if there are feasible local sources within an applicant community.

Once again, MWRA thanks you for the opportunity to comment on this important effort. We would be happy to work with your staff on any of these issues, both to elaborate on our concerns and to move the issue forward and reduce the burden of ensuring adequate environmental protection.

Sincerely,

// Signed //

Michael J. Hornbrook
Chief Operating Officer

mwwa
massachusetts water works association
www.masswaterworks.org

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December 5, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: Commissioner's Draft Action Plan for Regulatory Reform
VIA ELECTRONIC MAIL

Dear Commissioner Kimmell:

Massachusetts Water Works Association (MWWA) would like to commend you and your staff for taking a robust look at regulatory reform at MassDEP. As an organization representing municipal water utilities, many of whom are facing similar fiscal challenges, we understand the resource constraints you have encountered and the difficulty in trying to do more with less. We applaud your willingness to take a look at your programs for opportunities to streamline their administration. As many of the specific reforms proposed do not apply directly to water supply, we would like to highlight some areas where perhaps reform could be looked at closer.

Organizational structure: While we recognize that you most likely already reviewed the organizational structure of the agency, there was no mention of it in the document. We believe the hierarchical structure of MassDEP should be evaluated to determine if efficiencies can occur, specifically in the area where redundancies may exist in the role and functions of regional offices and headquarters. One area for improvement seems to be in the interaction between managers of programs in Boston and the staff working on the programs in the regions. It does not appear logical that the Director of the Drinking Water Program in Boston does not have direct oversight of the Drinking Water Chiefs in the regions because they report to the Deputy Regional Director of the regional office. Rectifying this might also address inconsistencies that occur among regions which cause increased time and resources for water suppliers, their consultants and MassDEP. One example of such an inconsistency is that systems in Central Region have been required to sample for Manganese while systems in other regions have not.

water works pride

State Revolving Fund – Streamlined Implementation: MassDEP offers a number of grant programs for conservation and land acquisition and loan programs through the State Revolving Fund. The grant programs are an excellent way to provide additional funding to communities to help them comply with regulatory requirements; however, MWWA finds that some of the requirements for applying and reporting are quite burdensome which inhibits participation. It is especially difficult for small water systems that may not have the expertise to apply. We understand that many requirements in the SRF program are mandated by the Federal government; however, MWWA suggests that MassDEP review the administration of the grant programs to see if there is a way that they can be streamlined, thereby making them more attractive to water suppliers to participate.

Water Management Act: It is noted in the document that there are no recommendations related to the Water Management Act (WMA) permit renewals because it is being reviewed in another context. Because we have been involved in the Sustainable Water Management Initiative (SWMI) discussions, MWWA is aware that the proposals being contemplated stand to provide significant challenges for the WMA staff to administer and for water suppliers to comply. A central component of the SWMI initiative must be piloting so that the regulators and the regulated community will understand what compliance with the framework will entail. We are pleased that you have been supportive of this concept and look forward to working with you on development and implementation of the piloting. As the pilots bear results, we hope that the regulations will be flexible enough to integrate what has been learned.

At many Water Management Act Advisory Committee meetings, the members have discussed workload issues facing the Water Management Act staff. MWWA suggests that to address some of the staff resource challenges that will further result from SWMI implementation, Water Management Act permit reviews should be conducted every ten years rather than every five years. Extending the timeframe for review does not mean that public water suppliers will have no oversight by MassDEP during the ten years; compliance with certain standards (65 Residential Gallons per Capita Day and 10% Unaccounted for Water) is reviewed and tracked every year upon submittal of the Annual Statistical Report. A longer permit review time frame should help alleviate the backlog of permit reviews that exist.

Essential Needs Only: The Commonwealth's water suppliers are continually faced with increasing regulatory requirements on both the water quality and water quantity fronts; while some of these requirements are mandated by the federal government others are mandated by the state. New rules require additional staff time on the part of MassDEP to implement and enforce and on the part of the water suppliers to comply. MWWA would suggest that unless state mandates directly affect immediate public health issues, MassDEP should suspend releasing any new regulations, policies, rules or initiatives impacting public water suppliers until such time as the economy improves and more resources are available.

We would also like to highlight that many of MassDEP's Guidance documents are used in a regulatory manner without undergoing the same public scrutiny that regulations undergo. Compliance with guidance can take significant resources. Therefore, moving forward, MWWA proposes that any new rules, regulations, policy or guidance should include a thorough financial impact analysis for both the regulatory agency and the regulated community as well as a cost/benefit analysis. The endless cycle of new mandates with no consideration for administration, enforcement and compliance costs and no realistic assessment of the benefits must be curtailed so that we can focus our limited resources on efforts that will yield the best results.

Thank you for the opportunity to comment and we would be happy to discuss any of our comments in further detail if you wish. As MassDEP develops final recommendations, we hope you will continue to seek the input of the regulated community.

Sincerely,

Jennifer A. Pederson
Executive Director

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D30775

November 28, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: **Commissioner's Draft Action Plan for Regulatory Reform at Massachusetts Department of Environmental Protection (MassDEP)**

To Whom It May Concern:

Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, Western Massachusetts Electric Company (WMECo), hereby submits input and support on the proposed changes to how MassDEP conducts its programs as outlined in the Commissioner's Draft Action Plan for Regulatory Reform.

Specifically, NUSCO is providing input on the following sections:

- Section 2: Chapter 91 Licensing: Revise Restrictions on Timeframes;
- Section 9: Wetlands: Limited Project Status for Renewable Energy Projects;
- Section 20: Many Programs: Revise Fees to Incentivize Better Results; and
- Other considerations.

First, in Section 2: Licensing: Revise Restrictions on Timeframes, NUSCO supports the MassDEP's efforts to streamline the licensing process. Specifically, we support the proposal to allow the Chapter 91 (c. 91) licensing process to run concurrently with the Massachusetts Environmental Policy Act review, as well as to allow the c. 91 License to be issued before a final Wetlands Order of Conditions is obtained. By allowing the licensing process to run concurrently, the permitting time will be reduced benefitting MassDEP as well as the stakeholders.

Second, in Section 9: Wetlands: Limited Project Status for Renewable Energy Projects, NUSCO supports expanding the categories of 'limited projects' to include renewable energy projects. The expansion of this category of to include renewable energy projects not only benefits the environment, but provides a clear permitting path for permit applicants, and reduces the permit processing time for the MassDEP overall.

Third, in Section 20: Many Programs, Revise Fees to Incentivize Better Results, we request clarification on rising of permit fees based on the environmental impact. Specifically, what will be the threshold of assigning a financial value to environmental impact? In addition to requesting additional clarification on this approach, we request this approach is taken only on new permits, not existing permits.

In addition to the above listed input, we have several other considerations to include as well:

- Massachusetts Historical Commission only communicates on paper for by fax, and are generally very slow to respond to stakeholders. NUSCO respectively requests the Massachusetts Historical Commission move to include other means of communication such as phone, email, or other electronic means to not only provide a more timely response, but to reduce impact to the environment by reduction of paperwork;
- Current permit conditions on 401 Water Quality Certification (WQC) for New England East-West Solution (NEEWS) projects and Leverrette/Montague project require NUSCO to fund a third party monitor in addition to our own company project monitor. Not only is this financially burdensome to the company and duplicative, the benefits are not discernable. We request to remove the condition to have an additional third party monitor going forward.
- Currently, certain maintenance projects require a historic and/or tribal consultation be performed prior to commencement. NUSCO respectively requests an exemption from performing consultations on certain low-impact maintenance projects that are deemed minor.

NUSCO appreciates your time and consideration of these above listed concerns; and continues to support the Commissioner's goals for agency reforms to address the continuing budget and staffing constraints. If you should have any questions please contact Ms. Melissa J. Lorenz at 860.665.3972; or Ms. Amy Voisine-Shea at 860.665.2301.

Sincerely,
Northeast Utilities Service Company *as agent for Western Massachusetts Electric Company*

Srividya Madhusudhan
Director, Environmental Management

TOWN OF GROTON DPW

December 21, 2011

Jakarta Childers,
Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Re: Regulation Reform

Dear Sir

I applaud your efforts to stream line your processes as well as making it, in all respects, easier for us to do our jobs.

One item in particular I request that you look at that would help many in our field, would be to make an exemption or set guidelines that could be adopted, to make routine culvert replacement and cleaning, that is routine maintenance, and not a new discharge or installation, exempt from permitting regulations. For the most part these replacements are routine and are replacing failing existing infrastructure. The paperwork that has been involved for a preventive maintenance projects has gotten to the point that with the conditions that are usually imposed upon the project, they become cost prohibitive until the project becomes an emergency repair. Having the local conservation agent have the authority to determine if routine repair or replacement is exempt from the NOI process would be invaluable for almost all of the Towns in the State.

I know some believe this should be a huge process in the permitting world, but keep in mind that us as Municipal Managers are not looking for work in the road and are going to get in and out as fast as possible. Right now I could have two or three meetings over a month or two, as well as cost us substantial dollars in plans if someone feels they are necessary to do a project that would require me to be in the brook for only 2 or three hours and completely finished in a day. To have routine maintenance, that is performed by the municipality, exempt from some permitting makes nothing but sense.

I appreciate the opportunity for the input and I hope you keep this in mind and possibly help us do our jobs easier also.

If there is anything I could do for you in this, please contact me.

Sincerely

Robert T Delaney JR
DPW Director/Tree Warden

REDUCTION
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Franklin County Solid Waste Management District

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Public Comment on MassDEP Commissioner's
Draft Action Plan for Regulatory Reform

December 5, 2011

The Franklin County Solid Waste Management District ("District") represents twenty-two municipalities in Franklin County. The District provides technical assistance to residents, businesses, institutions, and town facilities relating to solid waste management. Some of the services we provide are transfer station inspections, regional procurement, and completion of state reports for member towns. The District represents its member towns on state and federal policy and regulatory issues.

I am submitting public comments regarding Commissioner Kimmell's Draft Action Plan for Regulatory Reform dated October 24, 2011.

My comments regarding the Solid Waste reforms are underlined as follows and include the language presented in Commissioner Kimmell's reform documentation:

1. Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities

Specific initiatives will include, but not be limited to:

<u>I am concerned that DEP presents these proposed changes and includes "but not be limited to" prior to a list of permit changes. If one does not know the realm of possible additional permit-related reforms then how can one provide comments? This language is of great concern and indicates that DEP may consider other options not presented in the Commissioner's proposal.</u>

• Permits-by-Rule for Certain Post Closure Use Activities: Passive recreation without structures; renewable energy reuse projects, and potentially others.

<u>Permits-by-Rule effectively remove any DEP review and oversight from the proposed solid waste activity. Post-closure use of a landfill should be closely monitored by DEP. There are many closed and capped unlined landfills and any post-closure use should be done with DEP involvement and oversight. Passive recreation seems relatively benign and in ideal situations it might be reasonable to issue a permit-by-rule for this activity. However, permit-by-rule allows a project proponent to interpret the rule's standards through their own lens. This is a great concern for the District. At a minimum, DEP staff should conduct a review of the application and confirm that the proponent's project meets the rule's standards.</u>

Renewable energy reuse projects is not benign and should not be allowed a permit-by-rule process. There are few renewable energy reuse projects that can be imagined that don't require significant structures, plans for sediment and erosion controls, as well as storm water and vegetation control plans. It is inconceivable that DEP would forfeit their role in reviewing and approving these types of post-closure projects.

The District could support permits-by-rule for passive recreation without structures but for no other post-closure activity. Residents and businesses around closed landfills deserve to know that all projects are receiving DEP review and have permit conditions that protect the integrity of the landfill systems.

• Permits-by-Rule for Small Transfer Stations: Eligible transfer stations could be less than/equal to 50 tons-per-day (tpd), or 100 tpd.

The District does not support Permits-by-Rule for Small Transfer Stations. There are a variety of issues that the current permit review and approval process address. Again, this type of DEP recommendation allows proponents of new facilities to self-interpret rules and possibly manipulate language to indicate compliance with rules.

The District also questions how DEP can fail to comply with Massachusetts General Law requirements for permitting transfer stations as found in MGL Chapter 111 Section 150A. This statute requires permitting oversight.

• Self-Certification Transfer Station Permit Renewals: Shift to self-certification with presumptive approval for permit renewals where no modifications were made and where the facility has a track-record of compliance, rather than individual review.

The District supports presumptive approvals for permit renewals with no modifications and where the facility is in compliance.

These changes will be coupled with specific measures to promote accountability such as creating new permit conditions, record keeping requirements, and certification statement requirements that will ensure that applicants are under appropriate obligations to monitor and report environmental conditions. MassDEP will also audit the submissions and impose appropriate violations for failure to meet all required obligations.

It appears that MassDEP will have to expend staff resources to create new systems and rules that will theoretically offer the same results as individual project review and permitting. It seems like a slippery slope to assume that once the new standards and auditing procedures are in place that DEP will not continue to eliminate staff oversight so that zero oversight of permit-by-rule projects is the norm in a few years.

It also seems that DEP will end up in a reflexive, responsive posture when problems arise from permit-by-rule projects instead of being pro-active in the beginning of the process. In worst case scenarios, DEP may "save a dime" up front and "expend a dollar" playing catch up with projects that fail and create environmental pollution or damage surrounding properties.

2. Certified 3rd Party Inspectors for Active Landfill Inspections

MassDEP proposes to expand on the existing condition in most solid waste landfill permits for a private annual compliance inspection by creating a list of certified solid waste inspectors and annually assigning these inspectors a specified number random inspections of each of the 24 active landfills (at the permit holder's expense). This will allow MassDEP to focus its staff on highest priority activities and will benefit environmental compliance. Third-party inspection results would be forwarded to MassDEP for auditing and enforcement follow-up, and would therefore allow MassDEP to target its own inspection resources to those facilities with the greatest need for agency attention. This proposal will also allow MassDEP to require facilities to undergo review and inspection more frequently than MassDEP's resources currently allow. MassDEP will establish specific measures to impose third-party inspector accountability through eligibility and competence criteria and reporting requirements. MassDEP will also establish specific auditing procedures to screen and oversee the work performed by third parties.

In general, the District supports this proposal. There are many professionals that would be qualified and competent to conduct landfill inspections. One issue becomes the additional cost that landfill operators will have to pay for the 3rd party inspections. It would be reasonable for DEP to suggest a fee schedule for certified inspectors so that there is a level playing field for all inspectors and facilities. The other issue the District recognizes is that DEP may slowly remove itself from the auditing of inspection reports and inspector accountability. This would not be an acceptable outcome of this proposal.

The District commends Commissioner Kimmell for beginning to look at cost-savings for MassDEP. However, the District is concerned that the Commissioner's proposed regulatory reforms lack specifics, lack a clear process for formalizing changes, might conflict with Massachusetts General Law, and rely on reducing direct oversight for projects that might end up costing the DEP more financial resources in the long run.

Submitted by Jan Ameen, Executive Director
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Environmental
League of
Massachusetts

Advocates For Responsible Environmental Policy Since 1898

December 5, 2011

Commissioner Kenneth Kimmel
MA Dept. of Environmental Protection
One Winter Street
Boston, MA 02108

Dear Commissioner Kimmel:

Thank you for the opportunity to comment on DEP's Draft Action Plan for Regulatory Reform. We are well aware of the need for DEP to target its resources to deal with the most serious environmental challenges and also to use its resources as efficiently as possible. We applaud the guiding principles established to guide the process including that any reforms should ensure that current environmental protection standards are not diminished, that there is no curtailing of public process and that the burden for environmental protection should not be shifted to municipalities that face the same shortage of resources as DEP with the added disadvantage of having less expertise and experience with these issues than DEP.

We will highlight a few of the proposed reforms where we either have the most reservations or feel you are headed in the right direction. As has been mentioned at the various meetings, we cannot give a final response until the actual language for the reforms are known.

Let me begin with a general comment on some of the proposals that call for general permits or permits-by-rule or the use of private qualified professionals to allow DEP to spend less time on permit reviews and more time on audits/inspections/enforcement. While we don't close the door on these approaches, particularly given DEP's constrained resources, we do have reservations about these shifts based on what we have experienced with the hazardous waste site clean-up program. While we might be persuaded that DEP does not need to audit 20% of the cleaned up sites but only a statistically significant sample, what is as troubling as the decrease in the number of audits is the cuts to the staff of the Licensed Site Professional Board that has responsibility for licensing and regulating LSPs and ensuring high standards of practice. These cuts do not give us confidence that a) we are getting the results we need to protect the environment and public health and b) similar programs won't suffer the same fate in the future. Given what we have seen happen for this particular program and how hard it has been to get attention paid to this issue during our budget work, it is difficult to be enthusiastic about programs that take a similar approach. We would need to have some confidence in DEP's ability to use existing funds or raise additional revenue to fund the audit/inspection/enforcement functions to be supportive of these approaches.

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Wetlands, Waterways and Coastal Resources

In terms of the proposed changes to the Wetlands regulations, of most concern is # 6: Buffer Zone General Permit. We agree with MACC that developing standards for buffer zone work would meet both DEP's goal of less staff time spent on permit review while at the same time improving environmental outcomes. We prefer this approach to a general permit which would eliminate review for certain projects in the buffer zone. MACC offers a number of suggestions including amendments to and more clarity of minor project provisions and using a "Presumption of Significant Adverse Impact" approach where the burden of proof would be on the applicant to demonstrate that the project will not impact the wetlands. We believe both these suggestions are worth DEP consideration.

4: Small Docks and Piers: What is important to us is developing an appropriate definition of "small" and some way to take into account and prevent ecological harm and/or barriers to public access from cumulative impacts from "small" docks and piers.

8: Expedited Permitting for Ecological Restoration Projects: We have seen expedited permitting become the accepted approach for certain development projects and strongly support this approach for projects that would restore ecological functions.

9: Limited Project Status for Renewable Energy Projects: As you know ELM is working hard to support a shift from fossil fuels to renewable energy. It is not clear from the proposal what the current barrier is and to what extent this approach will free up DEP staff time or whether this approach can guarantee that one environmental good that we support does not result in other unacceptable environmental impacts. We would need to see details of any proposal before we could fully support this approach.

Waste Site Cleanup

18: Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)

Our interest here is to be certain that the public can still easily understand which sites in the Commonwealth are the most seriously contaminated. When ELM developed its State of the Environment Report in 2006, one of our indicators was 21E sites and having the Tier 1 Classification made it fairly simple to report on progress in cleaning up these most contaminated sites. If there are other ways to more quickly characterize these sites as the top priorities, we are open to that but we don't want to lose our ability to easily monitor progress on this group.

Other

#20: Revise Fees to Incentivize Better Results

Having participated in several meetings at DEP with representatives of the regulated community, we fully support this approach, particularly since the business community is supportive as well.

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Given that fees have not increased in a number of years, we fully support the 17% cost of living adjustment that DEP has mentioned and if there are particular fees that should be increased more to achieve desired results, we support that as well. We offer to work with DEP to find a way that these revenues can be used explicitly to support DEP's functions. We also commend DEP for taking on the huge task of modernizing its IT capacity that will lead to efficiencies and more transparency in the future.

Thank you again for the opportunity to comment.

Sincerely,

Nancy Goodman
Vice President for Policy

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Boston Water and
Sewer Commission

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December 7, 2011

Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioners Office
Mass. Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Dear Ms. Childers:

The Boston Water and Sewer Commission (the Commission) has reviewed the *Commissioner's Draft Action Plan for Regulatory Reform at MassDEP (draft Action Plan)*. The Commission's comments concern the proposal to eliminate the current certification and permitting for all sanitary and industrial connections and extensions of the public sewer systems (Item B. Wastewater #11).

Currently, the requirement for a sewer connection and extension permit triggers the application of the 4:1 I/I reduction requirement for development projects within BWSC and other MWRA communities under DEP policy *BRP 09-01, Managing Infiltration and Inflow in MWRA Community Sewer Systems*. If no sewer connection/extension permit is required, DEP will no longer be in position to administer and enforce the 4:1 I/I reduction requirement. Who then, would be responsible for application of the I/I reduction policy? This responsibility should not be shifted to the individual MWRA municipalities for several reasons.

1. It would transfer new responsibilities to financially strained municipalities which is contrary to the guiding principals outlined in the Draft Action Plan.

2. Municipalities do not currently have the authority to require or enforce such a policy on their own. Support for adoption of such a policy on the local level seems unlikely, given the current economic situation.

Boston is part of the MWRA's regional sewer system. The MWRA sewer system is highly interconnected with sewage flows from municipalities in the outer reaches of the service area contributing to flows in municipalities in the lower reaches. In a municipality with adequate sewer capacity, local concerns, such as the economic benefit of a development, may overshadow any consideration of the potentially adverse impact

the increased flow may have on a downstream municipality. The sewer connection/ extension permit process provides DEP with the opportunity to evaluate flows regionally and require mitigation to offset downstream impacts that local permits might ignore.

The Commission's understanding of the policy is that if no connection permit is required, then the only trigger for I/I reduction would be the requirement for an Environmental Impact Report. Many development projects in Boston fall below EIR thresholds, yet they will contribute a significant amount of sewage flow to the collection system. The I/I reduction requirement would not apply to these projects if the connection permit is eliminated. As a result, current environmental protection standards will be weakened, which is contrary to the guiding principles established by the Commissioner.

Under Part D. General Conditions of DEP's sewer connection/extension permit municipalities may add their own requirements and conditions for permit approval. This affords an added layer of regulatory enforcement which might not otherwise be available. It is noted that this is where the Commission states that 4:1 reduction in I/I is required by the applicant.

We appreciate the opportunity to comment on the draft Action Plan. If you wish to discuss these comments further, please feel free to contact me.

Yours truly,

John P. Sullivan, P.E.
Chief Engineer

JPS/as

MASSACHUSETTS ORGANIZATION OF STATE ENGINEERS AND SCIENTISTS

JOSEPH DORANT, PRESIDENT
B.MARIE CUNNINGHAM, VICE PRESIDENT

ALLEN BONDESON, SECRETARY
VINCENT LONG, TREASURER

Commissioner Kenneth L. Kimmell
MA Department of Environmental Protection
One Winter Street
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by Email: MassDEP.Commissioner@state.ma.us

Date: December 5, 2011
Subject: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

The Massachusetts Organization of State Engineers & Scientists, (MOSES), herein submits comments relative to the "Commissioner's Draft Action Plan for Regulatory Reform at MassDEP." MOSES appreciates the opportunity to comment and would like to first extend our thanks to you and Secretary Sullivan for your efforts to support increasing DEP's budget and your advocacy for the passage of the Bottle Bill Extension (House Bill 890) which could provide additional funding for some of DEP's important programs. In addition, your highlighting the outstanding contributions of individual workers in the field has provided some boost in the morale of a very discouraged workforce.

MOSES understands more than most what major budget cuts have caused at MassDEP. Experiencing the personnel impacts of a significant reduction in staff caused by painful layoffs shakes those directly impacted and those left behind. The loss of many young and talented scientists and engineers as well as the retirement of long term workers with tremendous institutional knowledge has taken its toll. This has left, an aging albeit well-trained staff, with no practical means for the continuation of their expertise through the normal channels of sharing their vast experience and knowledge of the laws and regulations with new staff. Staffing has been dramatically reduced from 1,200 full time employees to 840 today. However, it should be noted that of these 840 only 600 are in engineering and scientific positions. This reduction in force is unprecedented in Massachusetts.

While our severe fiscal constraints may force us to re-evaluate how we conduct the business of government, we must not forget the essential role played by the hardworking employees who have dedicated their professional lives to advancing the mission of environmental protection. These dedicated workers hold Bachelors, Masters and PHDs in various scientific and technical titles. From wetland biologists, meteorologists, toxicologists, wastewater specialists, chemists, geologists, air quality and drinking water regulators, waste site cleanup and solid waste experts these professionals have for years served not only as protectors of the environment, but in many

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ways have provided free professional expertise to taxpaying citizens, cities and towns, and the business community.

Over the last sixteen years DEP and its employees have been subjected to streamlining, consolidations and reorganization plans; plans that have not always proven to be in the best interest of the regulatory mandate dictated by legislation or the core values and responsibilities inherent in protecting public health and the environment. In addition, the constant flux and change has made for a chaotic organizational model where staff and other outside stakeholders can neither rely on this agency for continuity of programs nor the cost of projects.

MOSES, along with a number of environmental groups, many in the business community, and municipal leaders who see the value in oversight and enforcement are poised once again to make the case, as we have so many times in the past.

These stakeholders value programs that provide a level playing field and consistency for the business community; they respect the extensive expert assistance in permitting and other areas necessary to a proper balance in environmental protection, and they appreciate our stewardship of the environment. Our collective purpose should not be to sit back and take more erosion of important programs, but to work together to restore what has been lost and to honor the promises made to future generations. We would hope that this Administration, more than others before it, would work with us toward these goals.

In our experience, the public looks dimly on elected officials that have eliminated or attempted to gut what they see as laws protective of them and their families. In addition, the public looks with particular scorn at any intrusion into scientific decision-making for political gain. The citizens in Massachusetts have come to rely on and respect direct government oversight when it comes to upholding and enforcing strict environmental standards. These are seen as quality of life issues that taxpayers are willing to pay for in order to protect such principles.

MOSES represented scientists and engineers are the eyes and ears of the public. They are regulators who have no profit or political motive only enthusiasm and care for our natural resources. We are well aware of the consequences inherent with the lack of proper oversight and strong enforcement of regulations. Our members see it every day. They understand, perhaps better than any other group, how deregulation, the loss of human capital and the defunding of important programs over the past several years, has adversely impacted our natural resources. MassDEP's role under Article 97 of the Massachusetts Constitution is the guarantor of the people's right to "clean air and water," as well as "the natural scenic, historic and aesthetic qualities of the environment."

The present Administration has a difficult task, particularly where decisions made relative to these programs, could result in irreversible impacts to our non-renewable resources. The end result will be particularly dire if these changes result in less not more oversight. We are now at a crossroad in environmental protection in this state. There is no doubt that we should fight to restore and protect our ability to meet our important mission. The legacy of the decision-making of today will be lasting, not only to our resources, but in the minds of the public. Ceding government oversight and authority to the private sector is clearly not the answer. The work is inherently a government function and the municipalities rely on the expertise provided to them by MassDEP employees.

MOSES vast experience on the previous changes will serve to form our remarks relative to the current changes under consideration. MOSES comments will concentrate on the following areas:

Permits-by-Rule, Self-Certifications and Third Party Inspections as the proposed changes rely heavily on these models which MOSES believes lack essential safeguards.

These proposals point to the current 21E Program as well as the Environmental Results Program (ERP) as models for these proposals. Programs such as these can only be successful with sufficient oversight and strong enforcement. When these programs were established, regulators wrote guidance documents on audit procedures and even wrote audit rates into statute and regulations to insure compliance rates. We have seen the audit component of these programs weaken or nonexistent and fear the same would happen with the proposed reforms.

While the outsourcing of the clean-up of waste sites under the 21E Program is seen as the panacea for many other programs MOSES does not agree that the outcome has been more beneficial to the environment than it would be with the previous program that had direct oversight by state scientists and engineers. There is now evidence that much contamination has been left behind and unsuspecting property owners have been left holding the bag. On a national level, the US Inspector General for EPA audits shows reports of abuses in the clean-up business.

One of the guiding principles for this proposal states, "Proposed reforms will not weaken or undermine environmental protection standards. Changes that reduce direct oversight will be coupled with robust compliance and enforcement mechanisms." However the following examples of shortcomings of existing programs demonstrate that previous such promises have resulted in the opposite;

- The Massachusetts Mercury Management Act is regulated under the ERP program. It was signed into law in July 2006 and is designed to keep mercury out of our trash and wastewater. Part of the law establishes specific recycling requirements for mercury switches in vehicles, and for lamps that contain mercury. The law requires a 90% capture rate on vehicle switches removed from junk vehicles. It has been estimated that the average capture rate from junk**ed** vehicles between 2008 through 2011 to be about 25 %.
- Massachusetts General Laws Chapter 21E and the Massachusetts Contingency Plan regulations 310 CMR 40.0 adopted in 1993 required the DEP to audit 20% of all the regulated hazardous waste sites that required an annual compliance fee. However, this standard was lowered recently when the law was changed in an obscure outside section of the State FY2012 Budget. The 20% requirement was replaced with **"audit a statistically significant number, as determined by the Department"**. Needless to say additional staffing, under the original bill to perform the audits never materialized. Since this proposal also relies on greater auditing by DEP with even less staff than ever in our history one cannot rely on a so-called robust auditing program.
- The MassDEP Environmental Results Program (ERP) has existed for over 10 years at DEP providing a unique way to regulate a large number of small businesses using self-certification, compliance assistance and performance measurement to determine compliance. The program has grown from regulating three sectors; dry cleaning, photo processing and printing to now include 14 different sector categories. Budget cuts have had a significant impact on the program. Staff indicates that little compliance assistance and performance measurement is being done in the program. Some have called it "compliance by computer".

COMMENTS ON GUIDING PRINCIPLES:
MOSES does support the Commissioner's asserted "guiding principles" in that the proposed reforms not weaken or undermine environmental protection standards, not reduce public process, and maintain opportunities for public involvement and citizen appeals. These principles are essential, but unlikely to be met unless the funding gap is addressed.

MOSES supports efforts to improve DEP's computer technology in order to significantly enhance the efficiency of DEP's operations and increase public access to information.

MOSES is however gravely concerned that the proposals will adversely impact environmental protection standards, through the outsourcing of work that should be defined as significantly and clearly governmental in nature.

COMMENT ON SPECIFIC PROGRAMS COVERED BY THIS PROPOSAL:

A. WETLANDS, WATERWAYS & COASTAL RESOURCES:
MOSES supports the proposal to expedite and streamline permitting for ecological restoration projects, such as dam removals, where environmental benefits are expected to significantly outweigh impacts. [Response to Proposal #8, p.6]

B. WASTEWATER: #11, #12, 13 & 14

Sanitary and Industrial Wastewater: Eliminates Sewer Extension & Connection Approvals; Title 5 Innovative & Alternative Program and Shared Systems. In the current model the Department partners with cities and towns to address problems that municipalities have difficulty addressing, not only for fiscal reasons, but often for political reasons, where favoritism and politics often gets in the way of good decision-making. Direct oversight by DEP is essential for keeping the balance we now enjoy in these areas. In addition, cities and towns would be impacted in the hiring of professional engineers, work DEP now performs. It is feared, decisions would not be made with the necessary engineering review with the potential of devastating damage to the environment.

MOSES opposes this proposal to eliminate direct approval or review by DEP. In addition, there is a real danger that wastewater treatment facilities constructed with millions of taxpayer dollars could be compromised without proper protections and in the case of Title 5 review the pollution of waterways and groundwater, particularly private wells.

TARGETED GROUNDWATER DISCHARGE INSPECTIONS: Section B. Item 14
Although it makes sense to target inspections based on DMR data, the use of third party assessments is troubling. What is the difference between an assessment and an inspection? Proper groundwater discharge inspections are critical in areas near an underground drinking water supply. DEP has the ability to look at the whole picture, where a consultant might not have access to important environmental data. This expertise and historical experience exist within

DEP. With all the groundwater quality issues, especially on the Cape, DEP must maintain control of this activity.

C. SOLID WASTE: Section C. #16

DEP should be increasing its inspections of landfills, transfer stations, and illegal dumpsites, not creating "certified landfill inspectors". Transfer stations and landfills are in NO WAY analogous to landowners regulated in the Massachusetts Contingency Plan by License Site Professionals (LSPs). Landowners are not an environmental industry: landfills and transfer stations ARE. The public expects that landfills and transfer stations are facilities that must be closely regulated by DEP. With only 24 landfills in the state, why would we need, or want to turn over their inspections to private consultants? These "certified solid waste inspectors" will be getting paid by the very landfills and transfer stations they are supposed to be regulating. This is way too small a universe of companies and there is potential for fraud and abuse between operators and consultants.

E .OTHER AREAS: SELF CERTIFICATION FOR CERTAIN PERMIT RENEWALS:

Almost all of the proposals include some 3rd party inspections, self-certifications, and a type of honor system model which MOSES opposes. Some have commented that self-certification and greater privatization of environmental programs should be considered as the answer to our problems. We disagree. Such programs are reminiscent of an earlier proposal to use an honor system where self- inspection and certification is the rule. Handing over authority to the private sector to make decisions for their paying clients will bring back the good old days of rampant violations, and politically expedient favoritism, akin to the "fox watching the chicken coop", the term used by the Massachusetts Inspector General in an audit of the Big Dig where contractors could hire their own inspectors to inspect their own work. We urge the Administration to keep a strong regulatory and enforcement model in place. It has worked over the years to put Massachusetts as one of the highest ranking states for protective regulatory standards.

ASBESTOS ABATEMENT REQUIREMENTS: SECTION 21

MOSES supports the much needed updating of this program and recognizes consolidation with other state asbestos programs will be less burdensome to homeowners. Many of the areas impacted and needing enforcement are in highly inhabited Environmental Justice areas. These changes will allow more time for important oversight and enforcement by DEP trained professionals.

ADDITIONAL REFORMS NOT INCLUDED IN DEP'S PACKAGE OF PROPOSALS:

MOSES believes that DEP now operates with a distinct reverse triangle model. Over several years since the early 1990's management level positions have increased markedly in comparison to staff. The ratio of managers to staff is totally out of proportion. Such workplace models carry a huge burden of large salaries at the top in addition to communication gaps that add to the several layers of authority. A framework that is cumbersome and unworkable that represents a bureaucracy within a bureaucracy. In addition, new programs have been added in Transportation and in Energy which are very important aspects of the work we do, but may actually overlap programs in other agencies. New programs and initiatives should not be at the expense of our core mission.

In conclusion, MOSES thanks you for this opportunity to submit commentary regarding these important issues. We look forward to working with the Department to ensure that DEP is able to meet the challenges of our fiscal situation while delivering the absolute best in environmental programs and services to the people of the Commonwealth. Should you have any questions or comments, please contact me at your convenience.

Sincerely yours,

Joseph Dorant, President

Cranberry Land USA

Carver Conservation Commission

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5 December 2011

Draft Regulatory Reform Action Plan
Commissioner Kenneth L. Kimmel
c/o Jakarta Childers, Commissioner's Office
Mass DEP
1 Winter Street, 2nd Floor
Boston MA 02108

Comments for DEP regulation reform

Dear Commissioner Kimmel:

Thank you for the opportunity to comment on the DEP's proposed regulatory reforms. On behalf of the Carver Conservation Commission, I would like to offer the following comments.

Page 1 of the draft document states, "proposed reforms will not weaken or undermine environmental protection standards. Changes that reduce direct oversight will be coupled with robust compliance and enforcement mechanisms."

Comment:
To ensure that environmental standards are not weakened or undermined, the DEP's review process—and especially the Superseding Order of Conditions (SOOC) review process, since that is where it is being proposed that the DEP will expend most of its review resources—needs to show more respect for the local Conservation Commission's determination or decision when issue the original Order of Conditions (OOCs) for a project. In my 12 years as the Carver Conservation Commission's Agent, with almost 260 permits approved and issued by the Commission, the Commission has only had three denials/OOCs and one Determination of Applicability (DOA) appealed to the DEP. Yet, in all four of those cases, the DEP has issued SOOCs/SDOA that contradicted the Commission's decisions in egregious ways so that the effect was a significant weakening of environmental protection.

Page 2 states that, "None of the proposed reforms will transfer new responsibilities to municipalities…"

Comment:
This is an excellent reform and very welcome. However, there are no suggestions by DEP on how they are going to do this.

Page 5, Item 6: Buffer zone general permit.

Comment:
DEP appears to be devaluing the buffer zone yet again when all best scientific evidence available clearly illustrates that the buffer zone is important to the quality of the wetland resource. If DEP is going to continue to reduce review of buffer zone in favor of actual alteration, then they need to strengthen the requirements for actual buffer zone protection. The general permit suggestion appears to shift the burden of proof from the applicant to the commission. It also doesn't appear to provide a mechanism for verifying information or oversight of the project as proposed. How will this reduce SOOC review for buffer cases? This sounds like DEP is proposing another exemption when there will not be public review, something DEP stated at the meeting wouldn't happen. This is likely to lead to more enforcement issues for municipalities. This also brings into question the validity of the information submitted, i.e., is data being manipulated to avoid regulatory requirements?

Page 5, Item 9: Limited Project status for renewable energy projects

Comment:
This is a very welcome reform. Would the reform apply to projects in the buffer zone only or in wetland resource area as well, such as proposed solar panels on cranberry bogs? If the impacts are minimal, it would also seem an appropriate use of a cranberry bog, or cultivated wetland, that would have the added benefit of keeping that land out of tax-negative single-family residential development when the downturn in the cranberry industry otherwise leaves these landowners with little choice but development of their uplands.

Page 9, Item 18: "Regulatory-mandated site clean-up process (known as the Massachusetts Contingency Plan [MCP])"

Comment:
The DEP needs to find some way to take more initiative in these contaminated site clean-ups instead of waiting for cities and towns to have the wherewithal, the time, or the money to attack head-on the clean-up of hazardous sites in their boundaries. Compliance should be mandated in word, not just on paper, and followed up with towns in a way that assists them, e.g., letting towns know the grants available to municipalities for site assessment and offering to help them through that process. The Town of Carver was the recent recipient of one such grant and the process and outcome have been terrific, with many thanks to the DEP. However, not all towns have full-time Agents or the wherewithal to follow through on such projects or the knowledge that such funding even exists and DEP might consider playing a bigger role in that.

Finally, on a different note: response time and assistance from DEP to towns' and cities' request for information should be speedy and more consistent across the spectrum of DEP staff. In our experience, responses from DEP to questions have ranged from "same-day," which is extremely

helpful, to “never,” which is not helpful at all. Improved direct municipal assistance would be valuable since discussions with DEP lead to varying results and are inconsistent from person to person and region to region. If DEP is to make the claim that they will assist the conservation commission, more effort should be placed on the consistency of the technical and regulatory assistance.

Yours truly,

Sarah G. Hewins, Ph. D., Agent
Carver Conservation Commission

file

Home Builders Association of Massachusetts
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TEL **617-773-3305** email: admin@hbama.com www.hbama.com

November 30, 2010

VIA E-MAIL AND U.S. MAIL
Draft Regulatory Reform Action Plan
c/o Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

RE: Draft Action Plan for Regulatory Reform at MassDEP
Comments of the Homebuilders Association of Massachusetts, Inc.

Dear Commissioner Kimmell:

On behalf of the Homebuilders Association of Massachusetts, Inc. (HBAM), we thank you for the opportunity to comment on the Commissioner's Draft Action Plan for Regulatory Reform at the Department. As you know, the HBAM has historically supported the Department's efforts to streamline the regulatory process while at the same time, recognizing the need to maintain certain environmental protection standards. We understand the reforms outlined in the Draft Plan are largely driven by a combination of budget impacts which are forcing the Department to operate differently than it has in the past, and the desire to eliminate certain redundancies among other factors. At the same time, we understand the Department is working on internally restructuring programs to ensure consistency of decision-making among all of the Department's Regional Offices.

In connection with HBAM's comments, we feel there are several important policy matters worth noting. First, the HBAM is highly supportive of the continued use and expansion of the use of general/programmatic permits (which have clear, objective, distinct and practical standards), in a way which will not only reduce staff review time but also improve efficiencies in the land use development/entitlement process. Efficiencies which we feel should be further pursued include the reduction and/or elimination of redundancies, improved timelines for permit application review and approval, as well as the expanded use of the self-certification process. Second, while HBAM does advocate for these types of reforms, it is wary of a reduced role and presence of the Department. One of our particular concerns is whether a reduction (or perceived reduction) in the Department's role results in increased local involvement resulting in inconsistent decision-making, followed by additional enforcement actions/appeals that are brought by a more energized citizen groups which are concerned

actions/appeals that are brought by a more energized citizen groups which are concerned with the loss of the Department's involvement and direct oversight through these new, streamlined permitting processes. To this end, the Department needs to guard against this perception. While the HBAM is pleased that the Department is advocating for these reforms, mostly forced upon it due to budget constraints, the Department needs to continue to be at the ready to step in at the appropriate time to not only ensure continued enforcement of its environmental priorities, but also to ensure consistency and fair treatment of applicants during both the approval and appeals process. Moreover, while the Department acknowledges that these reforms are not "earth shattering," nevertheless, these reforms take a small step in a positive direction.

Lastly, we feel, however, that these reforms do not nearly go far enough to make a significant impact on the Commonwealth's reputation as being a difficult state within which to do business when compared to our neighbors in abutting states. This is especially true of the homebuilding and remodeling industry which, unlike other sectors, has been especially hit hard not only by the economy, but also by the numerous regulatory initiatives adopted by the Commonwealth over the recent past. While we acknowledge that national and international economic factors have played a role in the downturn in the homebuilding industry, we strongly feel that until the Department and others acknowledge the dire situation which the homebuilding industry finds itself in due, in part, to a multitude of recent regulatory changes over the past number of years, the Commonwealth's economy (in which homebuilding industry plays a significant economic role) will continue to languish.

Accordingly, the HBAM's comments are provided in the order presented in the Draft Action Plan. We have also identified other areas which HBAM feels should be considered as a part of this reform effort.

A. Wetlands, Waterways and Coastal Resources

1. Coastal /Dredging Programs: Permit Consolidation

While not an issue having significant impacts to the HBAM membership, we support the Department's efforts to develop a common permit application which eliminates the reporting of redundant/overlapping information that will allow applicants to reduce the submission of redundant information. Procedurally, the Department may want to consider using the Department's wetlands NOI as a template format, and simply attach Chapter 91 and 401 forms (in an abridged format) as additional attachments to the consolidated filing.

2. Chapter 91 Licensing: Revise Restrictions on Timeframes

This procedural change may reduce the Department's overall review time; however, it does not appear likely to reduce staff review hours associated with permit reviews. Additionally, it is likely that design information included within the Chapter 91 license may be altered as part of a subsequent final wetlands Order of Conditions ("OOC"), and a clear procedure with minimal staff review and input needs to be established to modify

the Chapter 91 license based on the final plans in the OOC. If significant numbers of modifications to Chapter 91 licenses are required as a result of subsequently changed site plans, this process may not reduce Department staff review hours.

3. Chapter 91 Licensing: Establish a Policy for License Terms

The development of a written policy with regard to license terms under Chapter 91 for non-water-dependent uses may expedite negotiations for certain projects, but the experience of our membership indicates that license term negotiation does not involve a significant amount of the Department's review hours. Other projects with unique requirements may, in fact, still require significant negotiation. The concept that the increased public input would be allowed by this sort of process does not suggest that it would appreciably reduce Department staff review hours as a result of the likelihood of additional public comment and public appeals of permits. While we believe public input may be appropriate, the ability to appeal these license terms should not be permitted, as it certainly would be counterproductive to the Department's interests in reducing overall staff review time expenditures. In other words, greater public process does not necessarily equate to the Department's goal of reducing staff time review.

4. Chapter 91 Licensing: General License for Small Docks & Piers

We believe the General License for Small Docks and Piers will be effective in reducing the Department's staff review time on permit review. We would suggest that once a project has received a wetlands OOC, that the General Permit be in essence, a permit by right, and require only submittal of paperwork to the Waterways Group and a nominal fee. Perhaps the Army Corps of Engineers' Programmatic General Permit for Massachusetts (Category 1 and certain Category II activities) could serve as a model or framework for the licensing of Small Docks and Piers.

5. Wetlands: Targeted Review by DEP

--DEP File Numbers. The concept of an immediate issuance of file numbers is a significant issue not generally related to saving Department staff review time, but it will significantly improve the permitting efficiencies for applicants. Typically, Commissions will not close public hearings without Department file numbers being issued, and hearings generally begin, and in some cases are concluded, before Department comments are compiled and distributed to the Commissions and applicant, along with the file number notification form. Our only concern with this process relates to a practical problem of many Commissions that are reluctant to issue an approval until such time as they receive the Department's comments. Accordingly, the Department will need to be clear with regard to what projects they will review and comment on so that Commissions will be prepared for either receiving or not receiving comments as input to their decision-making process. If the Department can issue guidelines for detailed review, this would allow for expediting the public hearing process. If the Department reviews all projects, the Department will see no staff review time savings. An alternative approach to the issuance of Department comments, however, is for

Department staff to issue the file number and not distribute comments to the local Commission, but instead revisit the file once the Commission issues its OOC (and after final, revised plans are issued) to determine whether Department involvement is required as suggested in the Department's comments concerning limited review of Notices of Intent ("NOIs").

--Limited Review of NOIs. The Department currently does not involve itself significantly in NOIs in front of local Commissions. We have found that as a policy, the Department avoids this level of review fairly consistently. Staff will provide advice now and again on generic projects which we believe is appropriate and should continue. This proposal, however, suggests there will be a continuing participation through the Wetlands Circuit Rider Program to provide assistance, both technical and regulatory, to Commissions and others. As a result, it is difficult to foresee how this particular effort will reduce Department staff review time.

--SOOC Review Efforts. We concur that by prioritizing its efforts and concentrating staff on projects with significant resource area impacts, the Department's staff review time requirements will be reduced. The amount of reduction will depend on the ability to issue Superseding Orders of Conditions ("SOC") on low impact, smaller projects with a minimum of effort, but with a clear determination as to the compliance of the project with the regulations. A clear statement of the background for the decision can deter appeals of minor projects and further reduce Department staff time allocation requirements.

6. Wetlands: Buffer Zone General Permit

It is HBAM's understanding that virtually no projects were ever filed under the previously established Buffer Zone Project Permitting procedure. As stated, it was deemed unsuccessful because of categorical restrictions limiting the number of eligible projects and clearly, the conditions were untenable to the development community and the procedure was a failure. Even if the Department was successful in efforts to make this General Permit workable, the Department is mindful of the fact that with 199 Massachusetts communities having adopted a local wetland bylaw or ordinance, such change will have limited utility for applicants unless the Department can convince such communities to adopt similar provisions under such local bylaws or ordinances.

Notwithstanding the foregoing, any general permit or similar regulatory provision for approving projects within buffer zone areas should have a minimum of restrictions, particularly with regard to slope, distance to wetlands, etc. Recognizing that many buffer zone projects will also have to go through local wetland permitting will not significantly reduce the applicants' costs and timeframes for approval; however, the general permit concept under the Wetlands Protection Regulations may substantially reduce Department staff time. Because filings under local Commission bylaws will continue, permits will still require substantive filings that may result in modifications of site plans between the time of filing and the time of approval. The procedures for amending the general permit should be clear and simplified in order to not require significant Department review when modifications to site plans are received.

Further, it is unclear what the Department plans as "incentives" to applicants for concentrating activity more than 50 feet from wetlands. The HBAM is concerned about, and would not support, any Department proposal for either a required additional fee, or greater restrictions imposed on work within 50 feet of a wetland.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

HBAM is unaware of any previous regulatory change which exempted stormwater management structures that were constructed after 1996. Commission Kimmell has engaged in discussions with stakeholders to effect a change in the regulatory position on created stormwater management structures; however, the current regulations dated June 2009 specify that only stormwater management systems constructed on or after January 2, 2008 are exempted. Accordingly, HBAM strongly recommends that stormwater management structures created for purposes of stormwater control, either to improve water quality or water quantity and late discharges from projects should be exempted regardless of the timeframe in which they were constructed. Through the engineering process, the development community has incorporated, in many instances, detention basins, retention basins, and other stormwater management BMPs over the last 30 years or more. As these structures were typically engineered to the best technology available at that time, we believe that these systems developed for stormwater management should be exempted (or grandfathered) from being considered wetland resource areas. This change will allow these facilities to be brought up to current Stormwater Management standards in any re-design of the project, and more readily brought into a productive and effective stormwater management function.

The Department should develop a specific procedure for these areas so they can resuscitated and improved to a more functional level, without significant regulatory restriction. As with the regulations associated with the previous Stormwater Management Policy, we believe that re-development of existing facilities with historic stormwater management structures could include feasible upgrades in systems so they are in closer compliance with the current Department design standards and have increased functional capability. Where historic stormwater management structures are re-designed due to expanded impervious areas on a site, such historic basins could be re-designed to comply to the degree practical, with current design practices. This procedure will allow for the significant improvement in stormwater management on properties which were developed many years ago, and which can be effectively brought up to more current design standards by eliminating wetland jurisdiction over these areas. We should note that the Department currently does not consider these areas viable wetland areas for wetland replication, and if these historic stormwater basins are not considered functional as wetlands and suitable for replication areas, they certainly should not be jurisdictional under the Massachusetts Wetlands Protection Regulations ("MWPR"), and the Department should take this opportunity to enhance the stormwater management function on existing sites by eliminating the jurisdiction from created wetland areas within stormwater retention and detention basins. Perhaps efforts should

be focused on measures and criteria under which a stormwater facility would qualify for exemption or grandfathering.

8. Wetlands (& Others?): Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening; Stream Daylighting, etc.

The referenced projects appear to be rather limited in terms of number and potential impact on Department staff requirements; however, there may be a slight benefit to a long-term modification in the MWPR such that environmentally-friendly projects can obtain expedited review through the permitting process. In addition to the listed efforts, the Department may wish to consider under this category more innovative ways of reducing permit filings for activities such as beaver dam breaching efforts so that management tools for reducing environmental impacts from beaver dams can be accomplished without requiring substantive staff commitments.

9. Wetlands: Limited Project Status for Renewable Energy Projects

The HBAM supports the development of Limited Project status for renewable energy projects. Requirements enabling an applicant to utilize this process should be defined such that Performance Standards are relaxed to allow these projects to proceed with suitable and appropriate mitigation for project impacts. The Department may want to expand Limited Project status to all large scale energy projects that improve the environment by replacing older facilities or reduce consumer costs for power, thus improving the economic climate of the Commonwealth.

10. Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies – Other New Technologies

HBAM does not believe that this category of action would significantly reduce staff requirements since pilot projects generally are on a modest scale, and by virtue of their size, could have significant impacts in order to provide a reasonable basis for approving new technologies. In addition, many of these projects would be located on relatively large parcels of upland or associated directly with coastal and offshore resource areas. These projects are typically located in areas that require additional, more cautious review, and/or review of new or unique impact risks. It is considered unlikely that a significant reduction in staff review requirements would be provided by providing exemptions or Limited Project status to these programs. These programs also typically attract concerned citizens groups which can vigorously oppose projects and require substantial efforts on the part of the Department to reconcile. It is not expected that there will be any short-cuts associated with the review of new projects and pilot programs, as they would be subject presumably to appeal and tend to attract the interest of coastal zone-oriented interest groups.

B. Wastewater

11. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

HBAM endorses the proposed elimination of the current certification and permitting for all sanitary and industrial connections and extensions of the public sewer systems. Historically, this program has led to permitting delays which have decreased since permit thresholds have increased and the self-certification process implemented. While most POTW operators and/or local DPW Directors impose reasonable conditions in the permitting process, we feel it is important for the Department to reserve or retain rights of intervention (and to allow applicants to request Department action) when either unreasonable or uneconomic standards or conditions are imposed, which are inconsistent with sound wastewater management, or in the circumstance where a local authority either seeks to impose unreasonable fees (i.e., permit fees or I/I requirements), or seeks to attach conditions which are not directly related to the impacts of the discharge. While we acknowledge that appeals rarely occur, the applicant needs to have the ability to resort to a streamlined appeals or intervention process in such limited circumstances.

12. Wastewater Title 5: Innovative/Alternative Program – 3rd Party Review

HBAM endorses this proposal but we feel this issue is one which is an issue for vendors of the IA technology.

13. Wastewater Title 5: Eliminate Duplicative State Approvals

The HBAM endorses the elimination of the duplicative approval process. However, while most municipal boards of health are reasonable in their approval processes and related conditions, we feel there is a need for the Department's ability to intervene in the local permitting process.

14. Wastewater: Targeted Groundwater Discharger Inspections

The HBAM feels that the Department's approach appears to be a reasonable approach by focusing inspection resources on facilities based on actual compliance data. However, we are concerned about the additional layer of involvement in a plant's operation, adding cost to already high system operation budgets. The periodic compliance /structural assessment would go beyond the capacities of most Licensed Facility Operators and involve Professional Engineers and Treatment System Vendors. Issues of proprietary information may limit an engineer's ability to complete such an assessment. The HBAM feels the current framework of system operation, maintenance, monitoring, sampling and reporting completed by the Licensed Operators gives a clear picture of ongoing compliance and system health. Rather than "periodic" assessments,

the Department might consider defining system function thresholds triggering such an assessment. The assessment should then be a joint effort between the Operator, a Wastewater P.E. and treatment system manufacturer. Currently the Department requires a similar assessment by a P.E. every fifteen years. If the Department were to reduce the annual compliance fee ranging from $7,000 to $12, 000 given the reduction in Department inspections, the HBAM may be amenable to increasing the frequency of these P.E.-administered assessments to satisfy the intent of this regulatory reform.

C. Solid Waste

15. Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities

The HBAM has no comment on the Department's efforts concerning landfill and transfer station approvals and certifications.

16. Solid Waste: Certified 3rd Party Inspectors for Active Landfill Inspections

The HBAM has no comment on this proposal.

D. Waste Site Cleanup

17. Site Cleanup: Simplify Activity & Use Limitations (AULs)

The cumbersome requirements for deed restrictions have been an ongoing problem but this reform effort has limited applicability to the homebuilding industry since the types of residential developments and uses are typically eliminated under restrictions imposed under AULs. However, we support efforts to streamline the process as outlined by the Department.

18. Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)

The HBAM has no comment on the Department's efforts concerning streamlining Tier Classification.

Other areas

19. Many Programs: Self-Certification for Certain Permit Renewals

The HBAM endorses the presumptive approval approach as outlined by the Department, provided that fees typically imposed for permit or approval renewals would be reduced to reflect that staff time resources will not be devoted to this effort.

20. Many Programs: Revise Fees to Incentivize Better Results

The HBAM endorses the concept of incentivizing desired environmental outcomes, but reserves judgment on this particular initiative until the Department elaborates on the how it plans to implement such an approach. Our concern lies with how such incentives (and related fees) would impact the homebuilding industry. This initiative should not be applied in a manner which unduly penalizes a particular regulated sector simply because of the nature of the particular industry.

21. Asbestos Abatement Requirements

The HBAM endorses this proposed shift in Department resources in concept, but reserves judgment until such time as further details are identified. However, we endorse informational outreach to homeowners on proper asbestos abatement, management and overall control.

C. Additional Proposed Reform Efforts.

1. Large Systems. One area which the HBAM is particularly interested in exploring further is consideration given to increasing the design discharge regulated under Title 5 back to a level above 10,000 but below 15,000 gallons per day. As you know, there is a significant disparity in costs related to subsurface systems regulated under Title 5 of the State Environmental Code, and treatment facilities regulated under the Groundwater Discharge Permitting Program. Due to current limitations under Title 5, the density of residential developments are typically constrained. For that reason, residential projects may be limited to 44 residential units for a conventional condominium (or 64 units for an age-restricted condominium complex) in order to fall within the 10,000 gpd design constraints under Title 5. On the other hand, many residential projects subject to State Groundwater Discharge Permitting do not make economic sense unless the same are designed at a density of 100 or more units simply due to the requirements for such treatment facilities. As a result, there is an inability to make a mid-range (i.e., 50-100 unit) non-age-restricted project work economically due to the disparity in costs of regulation under these programs. While we understand that increasing the design discharge under Title 5 may not work under all circumstances due to differences in soils and other factors, we suggest this be explored not only because it makes sense to seek greater density in residential developments (which may in turn conserve open space and reduce the consumption of greenfields) but also because such efforts may ultimately reduce staff review time under the State Groundwater Discharge Permitting Program. Section 15.006 of 310 CMR currently provides for a Variance mechanism for systems between 10,000 and 15,000 gpd. The Department might consider transferring the issuing authority of these variances to the local Boards of Health. The Department trusts a large amount of issuing authority under Title 5 to the local communities. This expansion of authority could allow a community to weigh the need for varied types of housing while maintaining protection of the environment.

Once again, we thank the Department for the opportunity to comment on the draft Regulatory Reform Initiative, and we hope to be offered an opportunity to participate as a stakeholder on any of the reform workgroups which may be established in the future.

Please contact Ben Fierro at 617-350-4088 (bfierro@lynchfierro.com) should you have any questions or concerns.

Sincerely,

Michael McDowell
President

cc: Alicia McDevitt, Deputy Commissioner, MA Department of Environmental Protection
Benjamin Fierro, Esq., Lynch & Fierro LLP
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December 5, 2011

Commissioner Kenneth Kimmel
MA Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, Mass. 02108

Re: Draft Action Plan for Regulatory Reform

Commissioner Kimmel:

Thank you for this opportunity to comment on your Draft Action Plan for Regulatory Reform. My comments are based on my own knowledge and experience, including terms as Commissioner of your agency and as Water Division Director, EPA Region 8; decades of professional experience in environmental management in Massachusetts; and over a decade as a member and current Chair of the Ipswich Conservation Commission. These comments are my own and do not necessarily reflect the views of that Commission or of the Town of Ipswich.

It is unquestionable that a vigorous response is required to the unjustifiable and highly regrettable slashes to the budget of your agency. I commend you for undertaking this effort, although I disagree strongly with the direction you are proposing. I regard your plan as far more politically responsive than environmentally responsible. My basic recommendation is that you completely reconsider your fundamental approach for the reasons set forth below. Bear in mind that I do acknowledge a lack of knowledge of the distribution and balance of skills currently available to you in the Department as a result of ongoing budget reductions, and that such consideration may have had an effect on your choice of program areas to select for regulatory reform.

It is to be earnestly hoped and expected that as our economy ultimately and inevitably improves so will the total resources of DEP and the share of the Massachusetts budget allocated to its environmental programs. However, that "resurgence", assuming it happens, will significantly lag the resurgence in economic activity that will place increasing strains and threats to environmental resources and on DEP, for these reasons. It is the resurgence in economic activity that will increase state revenues, which will lag the resurgence by one or more years. There will be much competition for shares of those increased revenues, and DEP is unlikely to be a very strong competitor in the initial stages of that competition. Once it gains resources, the Department will have to seek talent in an increasingly competitive market.

What this says to me is that the focus of your regulatory reform must be to prevent as far as possible irreversible losses of environmental resources. Once land has been altered, it is altered for all practical purposes forever. When the environmental values of a plot of land are lost or degraded they are irretrievable. Of all the programs you administer, those related to protection of coastal and other wetlands and wetlands-related landforms (e.g., the Wetlands Protection Act and Chapter 91 programs), those related to large-scale changes in land and water use (e.g., sewerage programs), and those protecting the quality and quantity of groundwater, should not be weakened. The mounting threat of global warming/climate change/sea level rise will not be countered by well-meaning "green energy" programs of Massachusetts. (My assessment is there is not now and will not be, nationally or globally, the political will to make the necessary changes until it is too late.) We must be prepared over the coming decades to adapt-adapt to sea level rise, to increases in storm intensity and frequency, to changes in flora and fauna. This adaptation process must begin now. Assured protection of existing lands and landforms that can buffer or help us adapt to those aberrations must be of highest priority.

Your draft Program places considerable reliance on local programs and activities. These have been and probably will continue to be quite variable, from place to place and time to time, in their effectiveness, reliability, consistency and rigor. Municipal programs are as subject to economic and political pressures as are those of the state, and in most cases are heavily dependent on unpaid and sometimes poorly trained and oriented volunteers. The stabilizing influence, tending to dampen excesses in both directions, has been the oversight exercised by and education provided by DEP. **Diminishing this oversight as you propose is in my opinion most unwise**. The focus of regulatory reform should be to strengthen land protection programs at the state and local level.

In this context, I note with dismay the decision of EOEEA to further diminish the ACEC program, and find in that decision support for my argument that you should not take comparable steps.

Other environmental management programs where losses can be reversed or where adverse impacts over the short term are minimal or where threats to public health can be contained while awaiting later correction are where the reductions or regulatory reform should be focused.

Emission control programs should be reviewed for adaptation of the hazmat "LSP" approach. I'm a strong <u>dis</u>believer in "self-certification" programs, believing that self-interest will too often be the stimulus for deception and in the absence of really strong monitoring and enforcement, will prevail. I question whether at present you have the capacity to provide that strength.

Please do not infer from these succeeding specific comments any diminution of the strengths of the convictions expressed above.

<u>II. Action Plan for Regulatory Reform</u>

A. Wetlands, Waterways and Coastal Resources

2. <u>Chapter 91 Licensing: Revise Restrictions on Timeframes</u>
It should be made clear that the existence or issuance of a Chapter 91 license by DEP <u>only</u> constrains a Conservation Commission from issuing a <u>less</u> restrictive Order of Conditions, and that DEP should not override a Conservation Commission action based solely on the Chapter 91 license.

4. <u>Chapter 91 Licensing: General License for Small Docks & Piers</u>
The same comment applies.

5. <u>Wetlands: Targeted Review by DEP</u>
Timely issuance of file numbers would reduce delays at the local level and is supported. The remainder of this section equates to reduced oversight by DEP of local actions and is not supported, for reasons given above. If necessary, staff should be shifted from non-wetlands programs to support this oversight. Ideally, DEP comments should be received by local Commissions prior to the initial public hearing on a given NOI.
With respect to S00C's, local Commissions should be given full enforcement authority with respect to those Orders; and not be limited to referring observed violations to DEP for enforcement.

6. <u>Wetlands: Buffer Zone General Permit</u>
This was a bad idea when originally proposed and adopted. It should not be continued, much less expanded. Protection of wetlands through limitation on alteration of buffer zones is critical to long-term success. DEP's practices in that regard are generally inadequate. Local Commissions, whether or not they have adopted local regulations under local bylaws, should not be constrained from exercising best judgment regarding allowable activities in the buffer zone.
Otherwise, situations are likely to arise where an applicant takes advantage of 310 CMR 10.02(b), but the Commission has established a higher degree of protection under local bylaws and regulations. If such a Commission determines that additional protection of the resource is appropriate it will be forced

to issue different Orders of Conditions under the WPA and the local Bylaw. A Superior Court appeal will ensue, delaying the project, increasing costs, and in some instances the Court is likely to decide based on the DEP regulation. Protection will be lost.

7. Wetlands: Exemptions for Regulated "Resources" Created by Stormwater Management Structures

The exemption of stormwater "wetlands" concerns me because most of these structures do not function to today's standards. In addition many have not been maintained and some were even constructed in actual resource area. Not to mention who does all the review to prove the structures function to today's standards and how do commissions review that review?

9. Wetlands: Limited Project Status for Renewable Energy Projects

"Limited Project" status for solar farms in wetlands? I hope my interpretation of the proposal is completely off base. As suggested above, in my opinion Massachusetts efforts to counter global warming while well-intentioned and symbolic are essentially meaningless in the global picture. To foster degradation of critical land resources for such purposes is seriously short-sighted. Our focus must be on adaptation. Wetland resources are critical to that objective.

10. Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanisms for Approving New Energy Technologies -- Other New Technologies

I feel this proposal takes the wrong tack. When an "innovative" project gets installed, the damage is done. *("The moving finger writes, and having writ, moves on. Nor all your piety and wit can change half a line, Nor all your tears erase a word of it."*) So when monitoring and reporting show unacceptable damage, what is to be done? Remove the project, at the cost of additional damage and cost? Innovation should be reliably and responsibly shown, at the outset by the proponent, to have negligible potential for environmental harm, or should only be permitted initially at a locus where the damage, if any, would be inconsequential and the project reasonably could be modified or removed and the site restored.

B. B. Wastewater

11. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

Please reconsider the decision to eliminate such approvals for all sewer extensions. Long extensions facilitating changes in land use over large areas deserve and demand greater environmental scrutiny than will be provided at the local level (i.e., "none", in many cases). Elimination of MEPA review would be a major step backwards in sound environmental management.

C. Solid Waste

15. Solid Waste: Permits-by-Rule and Self Certification for Certain Landfill & Transfer Station Activities

As stated above, I am opposed to self-certification, and recommend an alternative "LSP" approach.

E. Other Areas

19. Many Programs: Self-Certification for Certain Permit Renewals

Same comment as under 15 above.

Respectfully submitted,
David Standley

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December 2, 2011

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
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Via Email: MassDEP.Commissioner@state.ma.us

Re: Draft Regulatory Reform Action Plan

Dear Commissioner Kimmell,

The Nature Conservancy (TNC) is a global non-profit conservation organization working to preserve the plants, animals and natural communities that represent the diversity of life on earth by protecting the lands and waters they need to survive. In collaboration with public and private conservation partners, TNC has protected over 20,000 acres of wildlife habitat in Massachusetts, and more than 117 million acres worldwide. We are pleased to have worked in partnership with the Commonwealth on many important conservation initiatives, including the aquatic restoration regulatory working group.

The Nature Conservancy commends DEP for their efforts to seek regulatory and procedural efficiencies and prioritize activities and initiatives to maximize environmental protection with reduced resources. Thank you for the opportunity for input. We offer the following comments on proposals related to Wetlands, Waterways and Coastal Resources:

Coastal/Dredging Programs: Permit Consolidation and Wetlands (& Others?), *and*
Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening, Stream Daylighting, etc.

TNC strongly supports consolidation of Wetlands Protection Act, Chapter 91 and 401 Water Quality Certification applications and expedited permitting for ecological restoration to accelerate the pace and scale at which the Commonwealth's rivers and wetlands are restored. In partnership with the Division of Ecological Restoration, Division of Marine Fisheries and others, we have made great progress in the past decade to restore the Commonwealth's rivers, diadromous fish, shellfish, eelgrass, and salt marshes. Collectively, we have established a strong base of technical expertise on a wide range of projects in diverse settings, from dam removal on cold water streams in the Berkshires to shellfish restoration on Cape Cod.

This experience provides a foundation for developing eligibility criteria and conditions for restoration permitting that will reduce time and costs for both DEP and applicants while enhancing the environment. Following are some examples of priority issues we hope will be addressed in draft regulations:

- Address restrictions on dredging and filling for restoration purposes in ACECs and ORWs

- Continue to refine Notice of Intent and Order of Conditions forms to better represent restoration project benefits and impacts
- Develop guidance clearly distinguishing pro-active, public-purpose ecological restoration projects from other activities and alterations
- Address disincentives to replacement of existing road-stream crossing structures with structures that meet current standards. If possible provide incentives for replacing infrastructure in a way that restores aquatic habitat and provides flood management benefits to communities
- Develop guidance for sediment management, including conditions for release of impounded sediment via natural erosion over time as well as upland reuse or reuse within the site.
- In addition to combining permit applications for Wetlands, Chapter 91 and Water Quality, consider streamlined review through establishing Standard Orders of Conditions and/or expanding Limited Project provisions
- Ensure coordination and consistency with other state and federal regulatory processes affecting restoration, such as DMF's Shellfish Planting Guidelines, MEPA review, and the Army Corps General Permit for Massachusetts

Chapter 91 Licensing: Revise Restrictions on Timeframes

We support revised restrictions on Chapter 91 Licensing relative to the MEPA process, as the current approach increases the time required to complete permitting without adding resource protection or opportunities for public review.

Wetlands: Targeted Review by DEP

With fewer staff available DEP must be strategic in deployment of its resources. We are encouraged that this proposal includes the following: "Note that DEP will continue to provide technical and regulatory assistance to the local conservation commission and others via the Wetlands Circuit Rider program and other activities."

Wetlands: Buffer Zone General Permit

Wetland buffer zones serve many important functions, including as habitats in their own right. We understand that many of the projects reviewed by Conservation Commissions and DEP are for activities in the buffer zone that are unlikely to result in adverse impacts to resource areas. A buffer zone general permit, if properly conditioned, has the potential to create regulatory efficiencies with limited risk of environmental impact. However, DEP should consider coupling any buffer zone general permit with performance standards that provide for stronger restrictions in the inner 50 feet of the buffer zone. We also suggest exclusions such as drinking water protection areas and important habitats.

Wetlands: Exemptions for Regulated "Resources" Created by Storm Water Management Structures.

We support exemption of storm water structures. The Wetlands Protection Act should not impose restrictions on created wetlands and artificial conveyances that prevent them from being maintained to serve their storm water management functions.

Wetlands: Limited Project Status for Renewable Energy Projects

As climate change is a major stressor on global biodiversity and renewable energy generation may represent an effective technology and strategy to help achieve significant net reductions of carbon dioxide emissions and minimize climate change, the Conservancy supports the use of renewable energy facilities when appropriately sited and operated.

At the same time, inappropriately sited and operated facilities will have adverse impacts on globally significant biodiversity (species and ecosystems) by fragmenting significant natural habitats, disrupting wildlife behavior and increasing mortality rates for sensitive species, including birds and bats.

Given that these regulatory reforms are proposed to provide limited project status for renewable energy projects, we ask DEP to consider the impacts to wetland habitats, such as consumption of water, changing temperature of water, and/or fragmentation of habitat.

More generally, given the potential impacts to biodiversity posed by inappropriately sited and operated facilities, the Conservancy urges DEP to develop and employ science-based standards, practices and guidelines that include:

- Assessing the impacts of siting potential energy facilities using spatial data to define ecologically sensitive areas;
- Conducting adequate pre-construction monitoring to assess the potential impacts to avian species and post-construction monitoring to assess actual impacts to avian species and inform adaptive management;
- Maintaining existing environmental protections in current laws and regulations to avoid, minimize or, if necessary, mitigate the adverse impacts; and,
- Developing protections that may not already be included in state laws or regulations, such as habitat fragmentation, for impacts on ecologically sensitive areas related to the siting of power facilities.

<u>Wetlands, Chapter 91, 401 (& Others?): Improved Regulatory Mechanism for Approving New Energy Technologies – Other New Technologies</u>

Given the serious threat of climate change and potential importance of new technologies such as energy generation from tides or ocean currents to address it, we are generally supportive of policies that may allow innovative projects to proceed on an experimental basis. As noted above, careful review and requirements for monitoring are critical.

Thank you for your consideration of these comments. Please contact me with any questions at 617-532-8360, or abowden@tnc.org.

Sincerely,

Alison A. Bowden

Alison A. Bowden
Freshwater Program Director

Office of the
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Karen Chapman, Chairman Linda Mack, Vice-Chairman
Peter Noon, Clerk Jennifer Pettit John Stonefield
Mary Small James Deroian

December 2, 2011

Draft Regulatory Reform Action Plan
c/o Jakarta Childers, Commissioner's Office
Massachusetts Dept. of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

Dear Commissioner Kimmel:

As a Conservation Commission in a small town in north central Massachusetts, we would like to share our perspective on the important role of MassDEP in assisting municipalities in implementing the Wetlands Protection Act. While impacts to wetlands are less here than in densely developed areas, wetlands are coming under ever increasing pressure as developable land is becoming scarce. As the economy picks up, whether "green" or otherwise, that pressure to fill wetlands will only increase. Consequently, local Conservation Commissions are on the "front line" in the effort to protect our wetlands for all of the values and functions listed in the Act. The water we drink is just as important as the air we breathe, and we all know that wetlands serve to purify and recharge our ground and surface waters. Wetlands protection may not seem as imperative as the need to "improve air quality, reduce greenhouse gas emissions and boost the green economy", but we will be right back where we were in the 1970s if regulatory protection is reduced. We can construct alternative energy sources and new businesses, but we have not found it easy to recreate functioning wetlands.

The DEP Central Region office has been highly responsive to this Commission's needs. Never has the Commission been unable to act because of DEP's untimely issuance of comments after reviewing a NOI. Rather, the Commission welcomes those comments, and finds the knowledge that DEP has reviewed a permit application to be extremely reassuring during their own review process. Waiting for DEP to issue a File Number only after reviewing the NOI serves as a much needed "check and balance". Development pressure on a small community, with an all-volunteer Commission that usually does not have any initial expertise, legal or engineering experience, needs a strong counterbalance if we are to protect our wetland resources. Small municipalities look to DEP for strong guidance and expertise, particularly when they cannot afford to obtain legal counsel. The Commonwealth delegated the authority of administering the Wetlands Protection Act to local Conservation Commissions. Those Commissions are in the forefront of their community in the effort to protect wetlands; therefore, the Commonwealth should provide DEP with the resources to provide these boards with the assurance of a technical review prior to issuing DEP File Numbers.

With that in mind, the Central Region has been struggling without a Circuit Rider for almost two years. The program was indispensable to this Commission for their technical expertise, whether it was getting a quick

answer, no-cost training for the Commission and presentations to the community on the WPA, stormwater and other regulatory programs. Reinstating the Central Region Circuit Rider would take a significant burden off the DEP staff reviewers to whom we turn for advice, and allow them more time to focus increased scrutiny on more significant wetland impacts. We fail to understand why the Central Region Circuit Rider was not replaced in January 2010, while the other regions have been fortunate to have their Circuit Riders continuously funded.

We question the rationale for reducing direct oversight with "robust compliance and enforcement mechanisms". While that may sound effective on paper, direct oversight prevents damage to our wetlands, while compliance and enforcement punishes for damage already done. All too often we hear homeowners and developers tell us that they considered "just doing it", "do it and claim you didn't know later", and "its easier to ask for forgiveness than permission". Only the knowledge that Conservation Commissions are present and watching with backup from DEP deters violators. Working with developers is a more positive experience for all, rather than enforcement proceedings. In conducting the business of their daily lives, Commissioners see developers, homeowners and others with whom they must sit across the table in a public hearing and make decisions that affect their livelihood in one way or another. It is not fair, nor is it wise, to reduce the level of professional, technical support to those in the field.

We also question whether a Buffer Zone General Permit would be beneficial. Would certified vernal pools within another resource area only be granted 50' as well? Townsend has a 50' No Build policy, and a 35' No Disturb buffer zone. Builders place their foundations up to the 50' line, leaving a 15' strip of lawn for a back yard. The Commission is considering increasing those distances in order to better protect the wetland function. DEP's establishment of a general permit for the outer 50' will not save time for Conservation Commissions; rather it would complicate matters as local communities try to determine where best to "draw the line" to protect their wetland resource areas under their Bylaw. Conceivably, DEP will have significantly less visibility and influence in the protection of the natural resources of Massachusetts as applicants get their general permit without any review process. The tough questions will have to be asked by local Commissions alone, without DEP's support. It is an undue burden to place on local Commissions.

We do concur that reforms to facilitate or streamline permitting for a wetland or environmental enhancement project are worthwhile. It makes no sense to deter someone who is willing to take on a project that would benefit the environment with what appears to be an overwhelming amount of paperwork.

Perhaps rather than taking on new responsibilities with 1/3 less staff than 2010, such as the Global Warming Solutions Act and the Massachusetts Mercury Management Act, the Administration should focus on supporting DEPs efforts to meet their existing responsibilities assigned by legislation. You cannot squeeze water from a stone, so perhaps the time has come to just say "No" unless staffing levels are returned to earlier levels.

Thank you for considering our comments.

Sincerely,

Townsend Conservation Commission

cc: Governor Deval Patrick
Senator Jennifer Flanagan
Representative Sheila Harrington

December 2, 2011

Commissioner Kenneth L. Kimmell
Draft Regulatory Reform Action Plan c/o
Jakarta Childers, Commissioner's Office
Massachusetts Department of Environmental Protection
1 Winter Street, 2nd Floor
Boston, MA 02108

SUBJECT: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell:

Verizon New England, Inc. (Verizon) very much appreciates the opportunity to provide our comments, observations, and suggestions concerning the October 24, 2011 *Commissioner's Draft Action Plan for Regulatory Reform at MassDEP*, and appreciates the significant amount of time and effort that the Massachusetts Department of Environmental Protection (MassDEP) has devoted to maintaining its high standards for environmental protection over the years.

This letter provides a general description of the underground conduit installation work that Verizon has been undertaking over the past several years throughout Massachusetts, our comments concerning selected targeted regulatory reform items related to Wetlands, Waterways and Coastal Resources, and additional targeted regulatory reform items that have not been included in the Wetlands, Waterways and Coastal Resources Section of the Action Plan.

General Description of Verizon's Underground Utility Work

Over the past several years, numerous Massachusetts cities and towns have entered into franchise agreements with Verizon to provide internet, video and digital phone service.

Once the appropriate permits are obtained, the proposed utility installation work is completed within existing utility easements and rights-of-way, within existing road shoulders and/or landscaped areas. A portion of the work is completed within the buffer zones to wetland resource areas, and a concerted effort is made to avoid work within actual resource areas. The conduit installed by Verizon consists of 1.25-inch diameter PVC pipe, and is installed in excavations of a maximum of 12 to 15 inches in width and 18 to 24 inches in depth. One to seven conduits are installed in each trench. The excavations are completed using a "Ditch Witch" or similar narrow/shallow trenching tool, and backfilled using material from the excavation after placement of the conduit. All excavation areas are backfilled within one day of installation of the conduit. Trench areas are tamped, loamed and seeded, or mulched to match existing landscaping. In areas where the work crosses paved surfaces (i.e., side streets and driveways) the work areas are restored with asphalt paving to match existing surface features.

Comments

Section A.6. Wetlands: Buffer Zone General Permit

Verizon is in support of a general permit or other similar regulatory provision for certain activities that are proposed for the outer 50 feet of the buffer zone to inland wetlands. We feel strongly that the activities included in this general permit and/or provision should include the installation of underground utilities that result in minimal disturbance to the buffer zone, such as the conduit installation work described above.

Additional Regulatory Reform Ideas

Wetlands: General Permit for Minimal Disturbance Underground Utilities

In addition to the general permit proposed in Section A.6., we also recommend establishing a general permit or other similar provision for underground utility installation activities that result in minimal disturbance to the buffer zone. The general permit and/or provision would be limited to proposed activities within the buffer zone only. This proposal will reduce MassDEP staff time spent on SOOC review for buffer zone cases that fall within this category, and will save a tremendous amount of time for project proponents and Conservation Commissions alike.

Wetlands: Exemption for Underground Utility Projects in Previously Disturbed Areas.

We recommend that underground utility installation activities proposed for the outer 50 feet of the buffer zone to inland wetlands within previously disturbed areas be considered an exempt activity. This proposal will reduce MassDEP staff time spent on SOOC review for buffer zone cases that fall within this category, and will save a tremendous amount of time for project proponents and Conservation Commissions alike.

Closing

Again, Verizon very much appreciates the opportunity to provide our comments, observations and suggestions in this letter concerning the Commissioner Kimmell's Action Plan for Regulatory Reform at the MassDEP. We look forward to continuing to work with the Commissioner so that the Action Plan in its final form allows the agency to reduce staff time spent on these activities while maintaining its high standards for environmental protection.

We hope that you will feel free to contact us should you have any questions or if you would like any additional information concerning the information that we have provided in this letter.

Very truly yours,

Robert Coulter
Engineering Section Manager
978-275-4145
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Verizon New England, Inc.

TOWN OF WAYLAND

MASSACHUSETTS
01778

CONSERVATION COMMISSION

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3669
FAX: (508) 358-3046

December 5, 2011

Commissioner Kenneth Kimmell
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108

Via Email: MassDEP.Commissioner@state.ma.us

Re: Commissioner's Draft Action Plan for Regulatory Reform at MassDEP

Dear Commissioner Kimmell;

The Wayland Conservation Commission has discussed the draft acti0on plan for regulatory reform at MassDEP. The Commission also reviewed the comments submitted by MACC, of which the Commission is a member, and wants to reinforce the following points of concern:

#4 Chap 91 General license for small docks

- The scale of what is a "small" dock must be clearly defined for us to support this.
- The program must ensure that the number of docks do not exceed carrying capacity for the water body
- The applicability should be limited to protect sensitive wetland/ aquatic areas

#5 Regional Staff

- The Department must have Regional Staff scan applications and flag grossly deficient ones or any applications with extensive impact.
- The local Commissions must have access to DEP Regional Staff for support and independent oversight for special projects. Local Commissions with volunteer membership are subject to pressure from well funded professionals intent on obtaining their goal regardless of the impact to the local wetland resources.

#6 Buffer Zone General Permit.

- **This was tried before and it was a failure**
- Simplified review represents a loss of jurisdiction with potential for adverse impact to wetland resources.
- There is strong scientific evidence for a need to have a greater, not lesser buffer zone.
- Extensive buffer zone work without review reduces wetland protection.
- If the Outer 50 feet has automatic approval for work, there must be new strict, strong restrictions on the Inner 50 feet.
- **We agree with MACC's option to create a new presumption of Significant Adverse Impact for activities in the Buffer Zone**.
- Activities within the Inner 50 feet should be presumed to result in significant adverse impact. The burden of proof should be on the applicant to demonstrate it would not.

- The General Permit should never apply to buffer zone areas with steep slopes, Aquifer protection Zone A, Zone 1 or Zone 2, Buffer zones in or adjacent to Priority or Estimated habitat, or within 100 feet of vernal pools.
- The management of storm water within the Outer 50 feet buffer must also meet the policy requirements for limiting the rate and quantity, and quality of discharged storm water.
- MassDEP should make an updated determination of the storm events to be used for hydraulic evaluations for consistency and accuracy relative to more recent historical statistical trends in weather data.
- There should be a limit to the percentage of buffer area converted to impervious under the General Permit to not more than 20 percent.

Respectfully submitted,

Wayland Conservation Commission

J. Andrew Irwin
Chairman