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New Procedure For Wetland Permit Appeals

The new Wetlands Permit Appeal regulations were submitted to the Secretary of State on October 3, 2007 and officially published by the Secretary of State on October 19, 2007. The final regulations will be effective as of October 31, 2007, and are now available on MassDEP's web site.

The appeal of wetland permits will follow the procedures set out in the Wetlands Protection Act regulations at 310 CMR 10.05(j). This process will continue to include prescreening, pre-filed testimony and prior participation. It represents a practice change for applicants, MassDEP staff and others by establishing a presumptive six-month timeline for a decision and requiring that parties present their full case early in the process.

Wetland permit appeals will continue to be filed at MassDEP and a Presiding Officer in the Office of Appeals and Dispute Resolution will conduct the prescreening and hearings. The Presiding Officer will have the option to transfer cases to the Division of Administrative Law Appeals (DALA) on a case-by-case basis where he or she determines that the timely resolution of a matter will benefit from DALA's assistance.

A scheduling order will be issued as soon as an appeal is filed, scheduling a prescreening conference within 30 days and a hearing 90 days later. The goal of the prescreening will still be to determine if the matter is amendable to settlement, mediation or dismissal. Additionally, the Presiding Officer will identify the issues for hearing if a matter is not resolved as a result of the prescreening conference. To ensure access to relevant information regarding the wetlands permit, the new regulations require that the applicant provide information about the project, and allow a site visit, at an early stage in the process.

To assist in implementing the timelines in regulations, MassDEP has established regional prescreening and hearing days. Prescreenings and hearings will be held two times each month in each regional office and in Boston. These set prescreening and hearing dates should enable applicants, appellants ("petitioners"), and MassDEP staff to plan ahead and anticipate a likely prescreening and hearing schedule. It should also be more convenient for applicants and petitioners alike to have prescreenings and hearings occur in the regional offices.