

Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

September 20, 2016

Ms. Susan J. Byrne, President  
W.L. Byrne, Inc.  
210 Wood Street  
Middleboro, MA 02346

RE: MIDDLEBORO – WMA  
W.L. Byrne, Inc.  
DRAFT Permit No. 9P4-4-25-182.04  
BRPWM03 WMA Permit  
Transmittal No. W086876

Dear Ms. Byrne:

Please find the attached documents:

- Findings of Fact in Support of the Draft Permit Decision.
- Draft Water Management Act Permit for W.L. Byrne, Inc. withdrawals in the Taunton River Basin.

Consistent with the revised Water Management Act Regulations promulgated on November 7, 2014, MassDEP will now publish notice in the Environmental Monitor that a DRAFT Permit is available for review and comment for 30 days from the September 21, 2016 publication in the Environmental Monitor. Notice of the comment period will also be sent to all registrants, permittees and those having non-consumptive use statements within the Taunton River Basin. MassDEP expects to issue the final permit within 30 days of the close of the comment period.

The signature on this cover letter indicates formal issuance of the attached document. If you have any questions and would like to meet to discuss the draft permit, please contact Jim McLaughlin at (508) 946-2805.

Sincerely,

Jonathan E. Hobill  
Regional Engineer  
Bureau of Water Resources

jm/encl.

cc: Duane LeVangie, DEP, Boston  
ec: Susan Byrne  
William Madden, P.E., GAF Engineering, Inc.  
Linda Rinta, Farm Planner  
Brooke Monroe, Middleboro Conservation Agent  
Y:\DWP Archive\SERO\Middleboro-9P442518204-WMA-2016-09-20

This information is available in alternate format. Call the MassDEP Diversity Office at 617-556-1139. TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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**Communication For Non-English Speaking Parties - 310 CMR 1.03(5)(a)**

Contact Michelle Waters-Ekanem, Diversity Director/Civil Rights: 617-292-5751 TTY#  
MassRelay Service 1-800-439-2370.

<http://www.mass.gov/eea/agencies/massdep/service/justice/>

(Version 3.30.15)



**1 English:**

This document is important and should be translated immediately. If you need this document translated, please contact MassDEP's Diversity Director at the telephone numbers listed below.



**2 Español (Spanish):**

Este documento es importante y debe ser traducido inmediatamente. Si necesita este documento traducido, por favor póngase en contacto con el Director de Diversidad MassDEP a los números de teléfono que aparecen más abajo.



**3 Português (Portuguese):**

Este documento é importante e deve ser traduzida imediatamente. Se você precisa deste documento traduzido, por favor, entre em contato com Diretor de Diversidade da MassDEP para os números de telefone listados abaixo.



**4(a) 中國（傳統） (Chinese (Traditional)):**

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與 MassDEP 的多樣性總監聯繫。



**4(b) 中国（简体中文） (Chinese (Simplified)):**

本文件非常重要，应立即翻译。如果您需要翻译这份文件，请用下面列出的电话号码与 MassDEP 的多样性总监联系。



**5 Ayisyen (franse kreyòl) (Haitian) (French Creole):**

Dokiman sa-a se yon bagay enpòtan epi yo ta dwe tradui imedyatman. Si ou bezwen dokiman sa a tradui, tanpri kontakte Divèsite Direktè MassDEP a nan nimewo telefòn ki nan lis pi ba a.



**6 Việt (Vietnamese):**

Tài liệu này là rất quan trọng và cần được dịch ngay lập tức. Nếu bạn cần dịch tài liệu này, xin vui lòng liên hệ với Giám đốc MassDEP đa dạng tại các số điện thoại được liệt kê dưới đây.



**7 ប្រទេសកម្ពុជា (Kmer (Cambodian)):**

ឯកសារនេះគឺមានសារៈសំខាន់និងគួរត្រូវបានបកប្រែភ្លាម។ ប្រសិនបើអ្នកត្រូវបានបកប្រែឯកសារនេះសូមទំនាក់ទំនងជាមួយក្រុមការងារ MassDEP នៅលេខទូរស័ព្ទដែលបានរាយនាងក្រោម។



**8 Kriolu Kabuverdianu (Cape Verdean):**

*Es documento é importante e deve ser traduzido imidiatamente. Se bo precisa des documento traduzido, por favor contacta Director de Diversidade na MassDEP's pa es numero indicode li d'boche.*



**9 Русский язык (Russian):**

Этот документ является важным и должно быть переведено сразу. Если вам нужен этот документ переведенный, пожалуйста, свяжитесь с директором разнообразия MassDEP по адресу телефонных номеров, указанных ниже.

## Communication For Non-English Speaking Parties - 310 CMR 1.03(5)(a)

Contact Michelle Waters-Ekanem, Diversity Director/Civil Rights: 617-292-5751 TTY#  
MassRelay Service 1-800-439-2370.

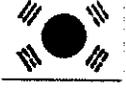
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### 10 العربية (Arabic):

هذه الوثيقة الهامة وينبغي أن تترجم على الفور. إذا كنت بحاجة إلى هذه الوثيقة المترجمة، يرجى الاتصال مدير التنوع في MassDEP على أرقام الهواتف المدرجة أدناه.



### 11 한국어 (Korean):

이 문서는 중요하고 즉시 번역해야 합니다. 당신이 번역이 문서가 필요하다면 아래의 전화 번호로 MassDEP의 다양성 감독에 문의하시기 바랍니다.



### 12 հայերեն (Armenian):

Այս փաստաթուղթը շատ կարևոր է եւ պետք է թարգմանել անմիջապես. Եթե Ձեզ անհրաժեշտ է այս փաստաթուղթը թարգմանվել դիմել MassDEP բազմազանությունը տնօրեն է հեռախոսահամարների թվարկված են ստորև.



### 13 فارسی (Farsi (Persian):

این سند مهم است و باید فوراً ترجمه شده است. اگر شما نیاز به این سند ترجمه شده، لطفاً با ما تماس تنوع مدیر MassDEP در شماره تلفن های ذکر شده در زیر.



### 14 Français (French):

Ce document est important et devrait être traduit immédiatement. Si vous avez besoin de ce document traduit, s'il vous plaît communiquer avec le directeur de la diversité MassDEP aux numéros de téléphone indiqués ci-dessous.



### 15 Deutsch (German):

Dieses Dokument ist wichtig und sollte sofort übersetzt werden. Wenn Sie dieses Dokument übersetzt benötigen, wenden Sie sich bitte Diversity Director MassDEP die in den unten aufgeführten Telefonnummern.



### 16 Ελληνική (Greek):

Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως. Αν χρειάζεστε αυτό το έγγραφο μεταφράζεται, παρακαλούμε επικοινωνήστε Diversity Director MassDEP κατά τους αριθμούς τηλεφώνου που αναγράφεται πιο κάτω.



### 17 Italiano (Italian):

Questo documento è importante e dovrebbe essere tradotto immediatamente. Se avete bisogno di questo documento tradotto, si prega di contattare la diversità Direttore di MassDEP ai numeri di telefono elencati di seguito.



### 18 Język Polski (Polish):

Dokument ten jest ważny i powinien być natychmiast przetłumaczone. Jeśli potrzebujesz tego dokumentu tłumaczone, prosimy o kontakt z Dyrektorem MassDEP w różnorodności na numery telefonów wymienionych poniżej.



### 19 हिन्दी (Hindi):

यह दस्तावेज महत्वपूर्ण है और तुरंत अनुवाद किया जाना चाहिए. आप अनुवाद इस दस्तावेज़ की जरूरत है, नीचे सूचीबद्ध फोन नंबरों पर MassDEP की विविधता निदेशक से संपर्क करें.



# Department of Environmental Protection

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## **Findings of Fact in Support of DRAFT Permit Decision Water Management Act Permit #9P4-4-25-182.04 W.L. Byrne, Inc., Middleboro**

The Massachusetts Department of Environmental Protection (the Department) makes the following *Findings of Fact* in support of the attached Draft Water Management Act (WMA) Permit #9P4-4-25-182.04, and includes herewith its reasons for issuing the Draft permit and for conditions of approval imposed, as required by M.G.L. c. 21G, § 11.

The issuance of this permit is in response to a water withdrawal application (transmittal number W086876) by W.L. Byrne, Inc. (the “applicant”) for the purpose of cranberry cultivation at an existing cranberry bog. The site is located off Chestnut Street in Middleboro. The site has existing registered and permitted cranberry bogs under WMA registration 4-25-182.29 and permit 9P4-4-25-182.04. The site is located on the basin divide between the Taunton River and the Buzzards Bay Basins. The applicant filed a WMA permit application on August 8, 2006, to build additional bogs and reservoirs on site. The applicant faced permitting issues through the Massachusetts Environmental Policy Act (MEPA) and the Massachusetts Natural Heritage and Endangered Species Program (NHESP), resulting in the Department placing the application on “hold”. The applicant worked with state agencies to advance the project, culminating in a revised joint application submitted to MEPA and the WMA program in February, 2016. The Secretary of Energy and Environmental Affairs issued a Certificate on the revised Environmental Notification Form on April 8, 2016, stating that no further review by MEPA was required. This finding allowed the Department to reactivate the permit application with the revised information.

The applicant holds WMA registration number 4-25-182.29 to cultivate 17.3 acres of cranberry bogs using two surface water withdrawals, and WMA permit number 9P4-4-25-182.04 to cultivate 58 acres of cranberry bogs using one of the existing surface water withdrawals. The proposed withdrawal is from the existing on-site reservoirs, plus three proposed reservoirs. Flood water for the cranberry cultivation will continue to be captured and recycled using a tailwater recovery system via the existing and proposed reservoirs and canals. Fifty-four (54) acres of additional bogs will be built at the main site known as the “Chestnut Bogs”. The applicant also owns a smaller grouping of registered bogs known as the “B&B Bogs”. The B&B Bogs include 8.9 acres of bogs not covered by a WMA registration or permit. The 8.9 acres of existing bogs are included in this permit. Shorts Brook runs along the westerly side of the

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Chestnut Bogs, then flows between the B&B Bogs. Impoundments on Shorts Brook provide water for the B&B Bogs. The total permitted bog acreage is 120.9 acres. The total registered and permitted bog acreage is 138.2 acres.

Notice of this WMA application was published in the Environmental Monitor on June 22, 2016, and mailed to registrants and permittees in the Taunton River Basin, as well as registrants and permittees near the site in the Buzzards Bay Basin. The applicant also completed the public notice requirements stipulated by the WMA regulations at 310 CMR 36.23. No written comments were received as a result of the public notice.

### **The Water Management Act Factors To Be Considered in Permitting**

The Water Management Act (M.G.L. c. 21G, § 7) requires that MassDEP issue permits that balance a variety of factors including:

- Impact of the withdrawal on other sources of water;
- Time of year when the withdrawal will be made;
- Water available within the safe yield of the source;
- Reasonable protection of existing water uses, land values, investments and enterprises;
- Use to be made of the water withdrawn;
- Reasonable conservation consistent with efficient water use;
- Reasonable protection of public drinking water supplies, water quality, wastewater treatment capacity, waste assimilation capacity, groundwater recharge areas, navigation, hydropower resources, water-based recreation, wetland habitat, fish and wildlife, agriculture, floodplains; and
- Reasonable economic development and job creation.

### **Water Management Regulation Revisions**

In 2010 the Executive Office of Energy and Environmental Affairs (EEA) convened the Sustainable Water Management Initiative (SWMI) for the purpose of incorporating the best available science into the management of the Commonwealth's water resources. SWMI was a multi-year process that included a wide range of stakeholders and support from the Departments of Environmental Protection, Fish and Game, and Conservation and Recreation. In November 2012 the *Massachusetts Sustainable Water Management Initiative Framework Summary* (<http://www.mass.gov/eea/docs/eea/water/swmi-framework-nov-2012.pdf>) was released.

On November 7, 2014, the Department adopted revised Water Management Regulations at 310 CMR 36.00 that incorporate elements of the SWMI framework and the Water Conservation Standards adopted by the Massachusetts WRC. The regulations reflect a carefully developed balance to protect the health of Massachusetts' water bodies while meeting the needs of businesses and communities for water.

### **Safe Yield in the Taunton River Basin**

This permit is being issued under the safe yield methodology adopted by the Department on November 7, 2014, and described in the regulations at 310 CMR 36.13. As of the date of issuance of this permit, the safe yield for the Taunton River Basin is 134.40 million gallons per day (MGD), and total registered and permitted withdrawals are 92.45 MGD, leaving 41.95 MGD

potentially available. The maximum withdrawals that will be authorized in this permit, and all other permits currently under review by the Department within the Taunton River Basin, will be within the safe yield and may be further conditioned as outlined in the regulations.

### **Mitigation Requirements for Cranberry Growers**

Water Management Act regulations specify mitigation planning requirements at 310 CMR 36.22(6). Direct mitigation, *i.e.*, activities that can be volumetrically quantified and compared to the permitted volume of water over baseline, is to be evaluated first. Direct mitigation activities outlined in the regulations include surface water releases, returning wastewater to groundwater, stormwater remediation, and infiltration and inflow control programs. However, most of these are likely to be infeasible for cranberry growers and, in the case of surface water releases, counter to the best practices of the industry. Wherever possible, cranberry growers should be returning the water used on their bogs in-season to a tail-water recovery pond to address the water quality impacts associated with the use of fertilizers and pesticides, instead of releasing the water downstream. Cranberry cultivation does not result in wastewater that can be returned to the subsurface, and the Department does not expect them to undertake stormwater remediation and infiltration and inflow programs because they do not have access to or control over stormwater or sewage collection systems.

When direct mitigation is unavailable or insufficient to fulfill a permittee's mitigation requirement, indirect mitigation activities that will improve fluvial habitat must then be considered. Indirect mitigation activities outlined in the regulations include water quality improvements. Typically, cranberry growers have a Farm Plan, developed in conjunction with the Plymouth County Conservation District (PCCD), which serves as a plan of operations for the bogs. A standard feature of the farm planning process is an evaluation of the measures each individual cranberry grower has implemented, or should implement to the extent feasible, to address water quality impacts. The Department believes the adoption and implementation of the recommendations made in an approved Farm Plan during the term of the permit will, in most cases, fulfill a permittee's mitigation requirement.

### **Permit Conditions**

The Department has developed a set of permit conditions at 310 CMR 36.28 that are considered for inclusion in each permit. Not all of these permit conditions apply to every permitted water withdrawal. In addition, some permits have unique permit conditions to address site-specific issues.

### **Findings of Fact for W.L. Byrne, Inc.'s Permit Conditions**

In the case of W.L. Byrne, Inc.:

- permit conditions specific to public water suppliers do not apply;
- there are no vernal pools or wetlands requiring monitoring to assess withdrawal impacts;
- there are no cold water fisheries;
- minimization requirements do not apply because W. L. Byrne's water withdrawals are from surface water sources and do not impact the groundwater levels in the subbasin where they are located;
- water conservation measures specific to cranberry production are required; and

- mitigation is required because this permit authorizes water withdrawals for cranberry production greater than the permittee's authorized withdrawal volume for 2005.

The following Findings of Fact are intended to describe the rationale, and to provide some additional detail, for each of the special conditions in the W.L. Byrne, Inc. DRAFT permit. The summary of permit conditions, as part of MassDEP's findings of fact, is not intended to, and should not be construed as, modifying any of the Permit conditions. In the event of any ambiguity between the summary and the actual permit conditions, the Permit language shall be controlling.

Special Condition 1, Authorized Annual Withdrawal Volume, sets an annual average withdrawal volume of 0.65 million gallons per day (MGD) for a total of 236.4 million gallons per year (MGY) over 365 days for the cultivation of 120.9 acres of cranberry bog located off Chestnut Street in Middleboro. This volume is based upon 6 acre-feet of water per acre of bog per year as explained in Special Condition 3. This volume is in addition to the registered volume of 0.15 MGD (56.4 MGY) to cultivate the original 17.3 acres of bog in the basin.

The historical formula for calculating water needs for cranberry cultivation assumes an average water requirement of 10 acre-feet of water per year for each acre of bog, or 3.26 MGY for each acre of bog. This formula and the thresholds established for WMA registration and permitting for cranberry bogs, were developed based on studies done by both the U.S. Department of Agriculture, Soil Conservation Service (now NRCS) and representatives of the Massachusetts cranberry industry. This average volume requirement can be greatly reduced by instituting water conservation Best Management Practices (BMPs).

Special Condition 2, Authorized Cranberry Acreage, lists the applicant's permitted and registered acreage in the basin.

Special Condition 3, Water Conservation Requirements, acknowledges that the applicant has implemented water conservation BMPs for all of its bogs, including:

1. annual flume and dike repair maintenance;
2. use of low-volume sprinkler heads;
3. on-site water supply/tailwater recovery system;
4. return of all unconsumed water back to the water supply/tailwater recovery system;
5. laser leveling of bog sections; and
6. sequential flooding of bog.

The permitted average daily volume of 0.65 MGD, or 236.4 MGY for the applicant's 120.9 acres of permitted bog is based on the data provided in the permit application, as well as the data contained in the 1988 *Water Conservation and Utilization Study Southeastern Massachusetts*, by the U.S. Department of Agriculture, NRCS. A volume of 6 acre-feet of water per year for each acre of bog was used to calculate the permitted volume. The 6 acre-foot per year volume was chosen by comparing the Chestnut Street Bog's construction characteristics to similar bog construction presented in the 1988 Study (Table A-5R in the Study). The 8.9 acres of the B&B Bogs were also assigned 6 acre-feet of water per year because those bogs have received a Certification of Best Management Practices from the Plymouth County Conservation District.

Special Condition 4, Mitigation of Withdrawals over 2003-2005 Baseline is required because W.L. Byrne is increasing its baseline withdrawal of 0.41 MGD (registered and permitted water withdrawals to cultivate 75.3 acres of bog as of 2005) by 0.39 MGD for water withdrawals to cultivate 54 acres of new bog plus the 8.9 acres at the B&B Bogs. W.L. Byrne Inc.'s Farm Plan includes specific best management practices that provide water quality benefits when they are implemented as part of the operation of the bogs. The Farm Plan is supplemented by an annual publication called the *Cranberry Chart Book* and prepared by the University of Massachusetts Cranberry Experiment Station.

Specific provisions of the Permittee's current Farm Plan that mitigate the impacts of the permitted water withdrawals include cultivation best management practices that provide water quality benefits by:

1. optimizing the use of fertilizer per The Best Management Practice Guide and UMass Cranberry Chart Book recommendations for nutrient management;
2. retaining excess nutrients through an on-site water supply/tailwater recovery system; and
3. reducing, whenever possible, nutrient and pesticide applications.

Implementation of the approved Farm Plan is required in Special Condition 4 of the permit to fulfill the permittee's mitigation requirement.

General Conditions applicable to all WMA permits are included.

The Department utilized the following information during the review of the application: the Massachusetts Geographic Information System (GIS). The data layers used included: 1997 through 2015 aerial photography, water supply layers, wetlands-related layers, natural habitat layers, DFW Coldwater Fisheries layer, flood zones and USGS maps. Department WMA staff conducted a site visit at the site on March 18, 2016.

Please note annual reporting requirements, your renewal date, and any conditions that may apply. The regulations governing this statement can be found at 310 CMR 36.00-36.44. DEP's Timely Action and Fee Provision, 310 CMR 4.00, authorizes an annual compliance fee for Water Management Act registrations and permits. Please also note that this permit is for cranberry cultivation only; any change in use is subject to Department review and may require a permit application.



# Department of Environmental Protection

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## DRAFT WATER WITHDRAWAL PERMIT M.G.L. c. 21G

This permit is issued pursuant to the Massachusetts Water Management Act for the sole purpose of authorizing the withdrawal of a volume of water as stated below and subject to the following special and general conditions. This permit conveys no right in or to any property beyond the right to withdraw the volume of water for which it is issued.

PERMIT NUMBER: 9P4-4-25-182.04                      WATERSHED: Taunton

PERMITTEE:                      W.L. Byrne, Inc.  
   210 Wood Street  
   Middleboro, Massachusetts 02346

EFFECTIVE DATE:                      **DRAFT**

EXPIRATION DATE:                      February 28, 2030

USE:    Cranberry Cultivation

DAYS OF OPERATION:                      365

NUMBER OF WITHDRAWAL POINTS:                      5 surface water

### Withdrawal Point Locations

ID	Source	Latitude	Longitude	Location
1	Chestnut Bog Reservoir	41° 53' 31.3"	70° 49' 56.5"	Chestnut St., Middleboro
2	Chestnut Reservoir 1	41° 53' 46.3"	70° 49' 59.0"	Chestnut St., Middleboro
3	Chestnut Reservoir 2	41° 53' 47.4"	70° 50' 24.3"	Chestnut St., Middleboro
4	Chestnut Reservoir 3	41° 54' 8.3"	70° 50' 26.1"	Chestnut St., Middleboro
5	B&B Reservoir	41° 53' 12.4"	70° 50' 33.4"	Chestnut St., Middleboro

**SPECIAL CONDITIONS**

**1. Authorized Annual Withdrawal Volume**

This permit authorizes the withdrawal of water from sources in the Taunton River Basin. The permitted volume is expressed in millions of gallons, both as an average daily volume that may be withdrawn, and as a total volume that may be withdrawn annually from this source for the permit term. The withdrawal volume is based on 6 acre-ft of water per acre of bog per year.

The volume reflected by this rate is in addition to the 0.15 MGD (56.4 MGY) previously authorized to W.L. Byrne, Inc. under WMA Registration 4-25-182.29 for withdrawal from the Taunton River Basin.

Withdrawals are authorized as follows:

Permit Period	Authorized Permit Volume		Registration + Permit = Total Volumes	
	Daily Average (MGD)	Total Annual (MGY)	Daily Average (MGD)	Total Annual (MGY)
xx/xx/2016 to 2/28/2030	0.65	236.4	0.15 + 0.65 = 0.80	56.4 + 236.4 = 292.8

**2. Authorized Cranberry Acreage**

This permit authorizes W.L. Byrne, Inc. to withdraw water from the permitted withdrawal points listed above at Chestnut Street in Middleboro, for the cultivation of 120 acres of cranberry bog.

Bog Name	Address	Municipality	Permitted Acreage	Registered Acreage	Total WMA Authorized Acreage
Chestnut Bogs	Chestnut St.	Middleboro	112.0	12.0	124.0
B&B Bogs	Chestnut St.	Middleboro	8.9	5.3	14.2
Totals =			120.9	17.3	138.2

**3. Water Conservation Requirements**

W.L. Byrne, Inc. shall continue to adhere to the Best Management Practices (BMP's) as defined on Page 5 in the Memorandum of Agreement for Implementation of Water Conservation BMP's at Cranberry Bogs signed by the Cape Cod Cranberry Growers' Association, the Commission for Conservation of Soil, Water and Related Resources and the Department of Environmental Protection, effective September 8, 2004.

W.L. Byrne, Inc. has implemented water conservation BMPs for this bog, including:

1. annual flume and dike repair maintenance;
2. use of low-volume sprinkler heads;
3. on-site water supply/tailwater recovery system;
4. return of all unconsumed water back to the water supply/tailwater recovery system;
5. laser leveling of bog sections;

6. sequential flooding of bog.

4. **Mitigation of Withdrawals over 2003-2005 Baseline: Farm Plan/Chart Book**

The Permittee is required to mitigate the impacts of these permitted withdrawals because they are an increase over the Permittee's baseline withdrawal of 0.41 MGD (registered and permitted water withdrawals to cultivate 75.3 acres of bog as of 2005).

The mitigation requirement is fulfilled through implementation of the Permittee's Farm Plan, dated 2015, which was developed in conjunction with the Plymouth County Conservation District (PCCD). The Permittee shall operate its bogs according to the Farm Plan. The Permittee shall review its Farm Plan with the PCCD, and update as needed, every 5 years or if major changes are made to the farm or its operating practices.

The Permittee shall review and implement, as applicable, guidance from the annual update of the Cranberry Chart Book, published and distributed by the University of Massachusetts Cranberry Experiment Station. The Chart Book is provided free of charge and is freely available on the UMass Cranberry Experiment Station's website. The Permittee shall register its contact information with the Experiment Station to receive the annual Chart Book editions.

Specific provisions of the Permittee's Farm Plan that mitigate the impacts of the permitted water withdrawals include cultivation best management practices that provide water quality benefits by:

1. optimizing the use of fertilizer per The Best Management Practice Guide and UMass Cranberry Chart Book recommendations for nutrient management;
2. retaining excess nutrients through an on-site water supply/tailwater recovery system; and
3. reducing, whenever possible, nutrient and pesticide applications.

**GENERAL CONDITIONS (applicable to all permittees)**

No withdrawal in excess of 100,000 gallons per day over the registered volume (if any) shall be made following the expiration of this permit, unless before that date the Department has received a renewal permit application pursuant to and in compliance with 310 CMR 36.00.

1. **Duty to Comply** The Permittee shall comply at all times with the terms and conditions of this permit, the Act and all applicable State and Federal statutes and regulations.
2. **Operation and Maintenance** The Permittee shall at all times properly operate and maintain all facilities and equipment installed or used to withdraw water so as not to impair the purposes and interests of the Act.
3. **Entry and Inspections** The Permittee or the Permittee's agent shall allow personnel or authorized agents or employees of the Department to enter and examine any property over which Permittee has authority, title or control, for the purpose of determining compliance with this permit, the Act or the regulations published pursuant thereto, upon presentation of proper identification and an oral statement of purpose.

4. **Water Emergency** Withdrawal volumes authorized by this permit are subject to restriction in any water emergency declared by the Department pursuant to M.G.L. c. 21G, §§ 15-17, M.G.L. c. 150, § 111, or any other enabling authority.
5. **Transfer of Permits** This permit shall not be transferred in whole or in part unless and until the Department approves such transfer in writing, pursuant to a transfer application on forms provided by the Department requesting such approval and received by the Department at least thirty (30) days before the effective date of the proposed transfer. No transfer application shall be deemed filed unless it is accompanied by the applicable transfer fee established by 310 CMR 36.33.
6. **Duty to Report** The Permittee shall submit annually, on a form provided by the Department, a certified statement of the withdrawal. Such report is to be received by the Department by the date specified by the Department. Such report must be submitted as specified on the report form.
7. **Duty to Maintain Records** The Permittee shall be responsible for maintaining withdrawal and all other records as specified by this permit.
8. **Metering** (If Applicable). Transferring cranberry withdrawals to another use requires the authorized volume be verified based on actual water use at the bog(s) to be transferred.
9. **Right to Amend, Suspend or Terminate** The Department may amend, suspend or terminate the permit in accordance with M.G.L. c. 21G and 310 CMR 36.29.

#### **APPEAL RIGHTS AND TIME LIMITS**

This permit is a decision of the Department. Any person aggrieved by this decision may request an adjudicatory hearing as described herein and in accordance with the procedures described at 310 CMR 36.37. Any such request must be made in writing, by certified mail or hand delivered and received by the Department within twenty-one (21) days of the date of receipt of this permit. The hearing request, including proof of payment of the filing fee, must be mailed to:

Case Administrator  
MassDEP Office of Appeals and Dispute Resolution  
One Winter Street  
Boston, MA 02108

No request for an appeal of this permit shall be validly filed unless a copy of the request is sent by certified mail, or delivered by hand to the local water resources management official in the community in which the withdrawal point is located; and for any person appealing this decision, who is not the applicant, unless such person notifies the permit applicant of the appeal in writing by certified mail or by hand within five (5) days of mailing the appeal to the Department.

#### **CONTENTS OF HEARING REQUEST**

310 CMR 1.01(6)(b) requires the request to include a clear and concise statement of the facts which are the grounds for the request and the relief sought. In addition, the request must include a statement of the reasons why the decision of the Department is not consistent with applicable rules and regulations, and for any person appealing this decision who is not the applicant, a clear and concise statement of how that person is aggrieved by the issuance of his permit.

**FILING FEE AND ADDRESS**

The Department's fee transmittal form, together with a valid check, payable to the Commonwealth of Massachusetts in the amount of \$100 must be mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

The request shall be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.

**EXEMPTIONS**

The filing fee is not required if the appellant is a municipality (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority.

**WAIVER**

The Department may waive the adjudicatory hearing filing fee for any person who demonstrates to the satisfaction of the Department that the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request, an affidavit setting forth the facts which support the claim of undue hardship.

Issuance Date: Draft 9/20/16

By: 

Jonathan E. Hobill, Regional Engineer  
Bureau of Water Resources  
Massachusetts Department of Environmental Protection

