

# PIPEFITTERS' ASSOCIATION

*Local Union 537*

35 TRAVIS STREET  
ALLSTON, MASSACHUSETTS 02134  
Telephone 617-787-5370 • Fax 617-787-5373

ASSISTANT BUSINESS MANAGER  
THOMAS P. KERR, JR.

BUSINESS AGENTS  
PAUL R. CAMPBELL  
SEAN P. TOLLAND

REFRIGERATION DIVISION  
BRIAN P. KELLY

BUSINESS MANAGER / FINANCIAL SECRETARY TREASURER  
LEO J. FAHEY

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THOMAS P. McGRATH

## MEMORANDUM

To: Meg Lusardi, Acting Commissioner  
Department of Energy Resources

From: Leo J. Fahey, Business Manager

Date: September 29, 2014

RE: **Proposed Regulation 225 CMR 19.00 – Statement of Opposition**

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I'm writing at this time of behalf of the men and women of Pipefitters Local 537. Local 537 represents nearly 3,000 members living and working in the Greater Boston, Worcester, Springfield and South Eastern Massachusetts areas; many of whom are working or have worked on energy savings projects.

Unfortunately, I was unable to attend yesterday's hearing because of out-of-state business. I did receive a report on the hearing and was shocked to hear that no one spoke in favor of the proposed regulations; as a member of a state licensing board, I would have expected some comments to be offered at the hearing.

I would like to begin my comments on the proposed regulations by taking a look at when the Energy Services Management (EMS) law was adopted in 2005. Our union was one of many organizations – from the US Department of Energy (DOE) to the Massachusetts Municipal Association (MMA) to numerous trade unions – that formed a coalition to secure passage of the enabling legislation.

Local 537 continues to be a strong supporter of EMS contracts and has urged the Mass. School Building Authority to adopt this program for schools undergoing renovations.

However, we are strongly opposed to the proposed regulations and request that they be withdrawn at this time. I offer the following reasons for my request:

- The lack of outreach to stakeholders like Local 537 & the other pipefitting and plumbing unions, the IBEW, sheetmetal workers, sprinklerfitters, and the Massachusetts Building Trades Council.
- The lack of outreach to small business owners (as indicated in your Small Business Impact Statement posted online)
- The current process seems to be working fine – I have not seen or heard of any justification for proposing the new regulations other than 4 bullet points listed on your hearing notice – DOER has failed to provide detailed information on “why” the new regulations are needed.
- My understanding is that the new regulations will result in a more cumbersome and expensive process, mandated and controlled by DOER instead of by municipalities.
- DOER would control the process by creating new and undefined “Guidelines” and forms that communities “shall use” – see 225 CMR 19.03, subsection 3.

- We're also concerned about 225 CMR 19.09 which sets forth enforcement options that DOER could utilize to conduct "investigations" where its suspects local officials have failed to comply with "Guidelines." These provisions seem harsh and investigations can be conducted in response to a complaint. We assume losing bidders will abuse the complaint process, adding time and costs to the EMS process.

The NOTICE OF PUBLIC COMMENT AND HEARING for the proposed regulations states that they will provide "an optional process for local governmental bodies to procure energy efficiency improvements." Yet, they offer very little information to reinforce that they're optional. The proposed regulations repeatedly include words like "must" and "shall" and include requirements that DOER forms must be used.

It seems the regulations should include some language about them being optional, probably in Section 19.01: "Application and Authority", to hammer home the fact that communities are not required to use this process. Another concern with them being 'optional' for communities is that the practical effect will be a movement to push communities into utilizing the new process under 225 CMR 19.00.

In closing, we view these regulations as flawed, both in terms of process and impact. We strongly urge DOER to withdraw the proposed regulations at this time and start a conversation with the entities that fought for passage of the enabling legislation in 2005.

Thank you for your attention in this matter. Please feel free to contact me to discuss this memorandum at [Fahey@pipefitters537.com](mailto:Fahey@pipefitters537.com) or (617) 787-5370 ext. 4.

Leo Fahey  
Business Manager  
Financial Secretary-Treasurer