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**Response To Comments
on Emergency Amendments to:
310 CMR 19.061 Solid Waste Management – Special Waste**

June 24, 2022

Regulatory Authority:

M.G.L. c. 111, §§ 150A

**This information is available in alternate format. Contact Glynis Bugg at 617-348-4040..
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On March 30, 2022, the Massachusetts Department of Environmental Protection (MassDEP) filed emergency amendments to 310 CMR 19.061 Solid Waste Management – Special Waste to be able to immediately respond to an order issued by the Massachusetts Department of Agricultural Resources confirming the detection of Highly Pathogenic Avian Influenza (HPAI) in domestic birds in Massachusetts.

The amendment was filed as an emergency regulation on March 30, 2022 to address a confirmed case of HPAI in Massachusetts. Pursuant to G.L. c. 30A, § 2, MassDEP held a virtual public hearing on May 10, 2022. The comment period closed on May 20, 2022. MassDEP received one comment via email from Fae Saulenas, a citizen, that is set out below along with MassDEP's response.

1. Comment: This is described as an emergency change driven by the current outbreak of Avian Flu. When the DEP presenter was queried by me as to the time frame that this change would apply to, I was told that the change would be permanent. This does not appear to meet the standard of an emergency response. I have been told that this is hardly the first outbreak of Avian Flu. As a citizen, this change appears to be addressing a more anticipated systemic and enduring public health threat. The language also appears to apply to species other than birds. The Commonwealth's white tail deer population which is purported to number 90,000 deer is reported to have 42% of that number testing positive for Covid19.

It appeared and was confirmed that I was the sole attendee at the May 10th 2022 meeting. As a citizen, I was surprised and disappointed that this change did not elicit more interest from the SMW communities with either landfills or incinerators who may impacted by this regulatory change.

As a direct abutter to the WIN Waste Innovations Facility on RT 107 in Saugus, I do not consider that the information presented to date adequately describes the actual intended purpose that supports a permanent change.

I would remind the DEP that despite their alleged oversight of the previous operator, Wheelabrator, it was two Whistleblowers who came forward to expose longstanding, egregious and flagrant violations of CMR's - resulting in one of largest environmental monetary awards in the Commonwealth, to date.

Response: MassDEP is amending 310 CMR 19.061 in accordance with the requirements of Massachusetts General Law Chapter 30A and published notice of the regulation in the Boston Globe, Worcester Gazette and Massachusetts Register. MassDEP also issued notice to stakeholders through its Solid Waste Advisory Committee, which is made up of members of the solid waste industry, municipal government, non-profit organizations, and others.

On March 30, 2022, MassDEP filed an emergency regulation to amend 310 CMR 19.061 in response to an order issued by the Massachusetts Department of Agricultural Resources confirming the detection of Highly Pathogenic Avian Influenza (HPAI) in domestic birds in Massachusetts. Although HPAI has been found in other states outside of Massachusetts, this was the first reported and confirmed case within Massachusetts. MassDEP filed the emergency amendments to allow MassDEP to approve, in consultation with the Department of Public Health, combustion facilities, ash landfills or other facilities to accept infected animal carcasses and associated waste material without the facility needing to wait the 45 days after submitting an application to accept such waste otherwise required by 310 CMR 19.061. The preferred method for disposal of carcasses and associated waste material infected with HPAI coming from all but the largest poultry farms (where on-site composting is preferred) is by incineration at municipal waste combustors or, if incineration capacity is insufficient or unavailable due to unforeseen circumstances, disposal at an ash landfill or other facility. The amendment is intended to allow disposal of infected carcasses and associated waste material as soon as possible to reduce potential spread of the disease.

The amendments were drafted broadly to enable MassDEP, in consultation with the Department of Public Health, to address not only the recent detection of HPAI but also potential future outbreaks of HPAI and other highly contagious animal diseases that require expeditious disposal of infectious wastes.

The purpose of the amendments is to ensure that Massachusetts can adequately address the outbreak of HPAI and other contagious animal diseases now and in the future. MassDEP provided information on why the amendment was necessary and how it would be implemented in instances where public health and the environment may be impacted by a highly contagious animal disease. Any approval issued to a combustion facility, ash landfill or other facility to accept infectious waste would include specific conditions to ensure safe handling and management of these materials to prevent transmission of any disease agents.