**EEOEA Summary of Final Regulations**

**310 CMR 44.00: *DEP Selection, Approval and Regulation of Water Pollution Abatement Projects Receiving Financial Assistance from the State Revolving Fund***

The Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) is amending the Commonwealth’s Clean Water State Revolving Fund (“CWSRF”) program regulations (310 CMR 44.00).

**Background:** The CWSRF program is a federal-state partnership under which EPA provides federal grants as seed money to states to make below-market rate loans available to municipalities and wastewater districts for specified water pollution abatement projects. The Massachusetts Clean Water Trust (“Trust”) is a public instrumentality of the Commonwealth established under M.G.L. c. 29C to make loans to, or purchase local governmental obligations from, eligible entities to finance or refinance costs of such water pollution abatement projects.

Under M.G.L. c. 21, § 27A, the Department is responsible for promulgating regulations establishing a priority system and priority lists and for selecting projects for eligibility for loan approval, and for determination of eligible project costs for loans by the Trust. The Department may establish different levels of subsidy available for projects eligible under each of the priority lists by regulation. As a prior necessary condition under M.G.L. c. 21, § 27A, to award a loan, the Trust must receive a certificate issued by the Department approving the project and certifying those costs of the project as determined by the Department to be eligible for financial assistance.

**Proposed Amendment:** In a 2020 decision, the Massachusetts Appeals Court brought to light the racist origins of the legal terms “grandfathering” and “grandfather clause” in a decision involving the Massachusetts Zoning Act, G.L. c. 40A. *Comstock v. Zoning Board of Appeals of Gloucester*, 98 Mass. Appt. Ct. 168, 172-73, n.11 (2020). The Appeals Court explained that “the phrase ‘grandfather clause’ originally referred to provisions adopted by some States after the Civil War in an effort to disenfranchise African-American voters by requiring voters to pass literacy tests or meet other significant qualifications, while exempting from such requirements those who were descendants of men who were eligible to vote prior to 1867.” *Id*. Therefore, the Department is amending paragraph 44.07(3)(b)4. of the financing criteria section of the regulation to remove a parenthetical example that uses the phrase “grandfathered uses.”

**Schedule:** On June 10, 2022, the Department published the proposed changes in draft for public comment along with an announcement of the public hearing date in the Environmental Monitor. A public hearing was held on July 11, 2022; there were no attendees. No oral or written comments were received. The Department is now prepared to issue the amended regulations in their final form with no changes from the public comment draft.

**Stakeholder Support:** Because this amendment does not alter the meaning of the regulation, MassDEP has not conducted stakeholder outreach prior to drafting this amendment. MassDEP has engaged with the other state entities who make up the Trustees of the Clean Water Trust, and who jointly administer the SRF (the State Treasurer’s Office and Administration and Finance), and those entities support this change. MassDEP is not aware of, nor does it anticipate any significant opposition or concerns from any stakeholder related to the finalization of these regulations.

**Conclusion:** MassDEP seeks to finalize the revision with the only change to the regulation being the removal of a parenthetical example that uses the phrase “grandfathered uses.”