



Department of Environmental Protection

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MassDEP Summary of Draft 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 seeking to amend 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 Congress 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 proposes to amend 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.”