

A Summary of the Revised Water Management Act Regulations – 310 CMR 36.00
Massachusetts Department of Environmental Protection
Effective November 7, 2014

Background:

These regulations implement a framework developed during an extensive Executive Office of Energy and Environmental Affairs (EEA) stakeholder process known as the Sustainable Water Management Initiative (SWMI). The purpose of SWMI was to reevaluate the way the Commonwealth manages water so that there is enough water for the many and sometimes competing long-term needs of our communities and our aquatic ecosystems. A [SWMI Framework](#), based on extensive scientific analyses and an active stakeholder process that included 15 Advisory Committee meetings, 18 Technical Subcommittee meetings, and numerous workgroup meetings, was released in November of 2012.

The SWMI Framework:

The SWMI Framework, developed by EEA, the Department of Environmental Protection (MassDEP), the Department of Fish and Game, and the Department of Conservation and Recreation, outlines a pathway that is intended to reduce the level of controversy and litigation surrounding MassDEP water withdrawal permitting decisions by establishing a more transparent, predictable, flexible, and science-based system. The SWMI Framework includes a methodology for relating impacts to aquatic resources to natural and manmade conditions, including the withdrawal of groundwater. The SWMI Framework includes:

- *Safe Yield*: An element of MassDEP’s Water Management Act (WMA) permitting that limits the amount of water that can be withdrawn during drought conditions includes an environmental protection factor, and is linked to streamflow criteria.
- *Science-based Streamflow Criteria*: Criteria that protect ecological uses of our waterways and fish and wildlife by specifying flow alteration goals and corresponding mitigation requirements when water withdrawals conflict with these goals.
- *Clear permitting pathway*: Permitting categories, or “Tiers,” that describe proposed requirements associated with a water withdrawal permit and generally require mitigation commensurate with impact if the withdrawal amount is increased, or minimization if it occurs in an impaired basin.

This framework balances the economic need for water consumption, public health and safety, and protection of natural resources for both human enjoyment and ecological health.

Water Management Act Regulations:

The SWMI Framework was utilized to revise the WMA regulations (310 CMR 36.00); revisions to the regulations were made following nearly five years of comprehensive stakeholder review and input from public water suppliers, business interests, and environmental organizations. These regulations establish enforceable standards, criteria, and procedures (including permit procedures) to implement the WMA (M.G.L. c. 21G). The regulations are intended to comprehensively manage water withdrawals throughout the Commonwealth to ensure an appropriate balance among competing water needs and the preservation of water resources.

The following SWMI-related elements have been incorporated into the revised WMA regulations:

- Safe Yield: A new methodology for calculating the amount of water that can be withdrawn from a basin. (310 CMR 36.13)

- Baseline: The volume of water, based on 2003 through 2005 water withdrawals, above which a permittee will be required to mitigate the impacts of increasing withdrawal volumes. (CMR 310 36.03)
- Streamflow Criteria: Criteria that were developed to guide permit conditions to protect the natural resources and ecology of waterways by specifying flow alteration percentages and corresponding mitigation requirements for water withdrawals. (310 CMR 36.14, 36.19, 36.20 and 36.22)
- Coldwater Fish Resources: Waters that support a population of coldwater aquatic life. (310 CMR 36.03). All applicants seeking withdrawals that will impact coldwater fish resources will be required to evaluate options for minimizing the impact by shifting permitted withdrawals to their other withdrawal points, if any, and optimizing the timing of withdrawals. (310 CMR 36.21(3) and (4), 36.22 and 36.28(3)(f))
- Permit Review Categories: Permit review categories, or “tiers,” determine the requirements for obtaining a WMA permit. (310 CMR 36.19)
- Minimization Requirements: All applicants seeking to withdraw water from groundwater depleted subbasins (August net groundwater depletion of 25% or more) will be required to minimize the impact of their withdrawal to the extent feasible through a combination of conservation, optimizing the timing of withdrawals, and returning water to the subbasin. (310 CMR 36.21, 36.22 and 36.28(3)(f))
- Mitigation Requirements: Applicants seeking an increased withdrawal over their baseline (permit tiers 2 and 3) will be required to develop and implement mitigation plans to offset the impacts of their increased withdrawal, to the extent feasible. (310 36.21, 36.22 and 36.28(3)(f))

In addition to these key SWMI elements, the revised regulations include the following changes:

- provisions pertaining only to the first round of registrations that are now outdated (formerly 310 CMR 36.07) are deleted;
- substantive provisions of existing policies that exempt certain withdrawals from regulation (310 CMR 36.05) are adopted in regulation;
- provisions for modification or transfer of registrations (310 CMR 36.08 and 36.09) are updated;
- regulations for water supply emergencies (310 CMR 36.40 through 36.42) are incorporated;
- substantive provisions of an existing policy on replacement wells (310 CMR 36.03, 36.08(1)) are adopted in regulation; and
- the basin expiration dates (310 CMR 36.17) are updated.

MassDEP has created a companion [WMA Permit Guidance](#) document to expand upon the permitting process laid out in the WMA regulations.