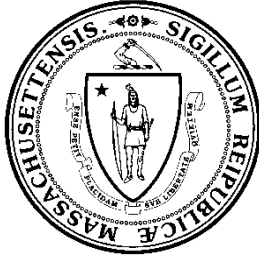


# **Annual Report on Timely Action,**

## **Fees and Program Improvements**

**State Fiscal Year 2020**



**June 30, 2021**

### **Commonwealth of Massachusetts**

*Charles D. Baker, Governor*

*Karyn E. Polito, Lieutenant Governor*

### **Executive Office of Energy and Environmental Affairs**

*Kathleen Theoharides, Secretary*

### **Department of Environmental Protection**

*Martin Suuberg, Commissioner*

## **I. INTRODUCTION**

The Massachusetts Department of Environmental Protection (MassDEP), an agency within the Executive Office of Energy and Environmental Affairs (EEA), is responsible for the protection of human health, safety and the environment for the Commonwealth's citizens by ensuring that they have clean air and water; the safe management and disposal of solid and hazardous wastes; the cleanup of hazardous waste sites and spills; and the preservation of wetlands and coastal resources.

MassDEP's permitting and annual compliance fee program was established in 1990 with the passage of M.G.L. c.21A Section 18 (the Fees Statute) and the promulgation of 310 CMR 4.00, the Department's Timely Action Schedule and Fee Provisions. In return for the payment of fees to support its environmental programs, MassDEP sets specific schedules for permit review supported by a money back guarantee if MassDEP fails to perform. The purpose of this statute and these regulations is to provide for the orderly and efficient administration of the permitting and compliance programs administered by the Department.

The Legislature directed MassDEP to report annually on its permitting and compliance performance and to provide a summary of the significant improvements the Department has made in these areas. This report is provided in response to that requirement.

Please visit our website at [www.mass.gov/DEP](http://www.mass.gov/DEP) for more information about these accomplishments and MassDEP's environmental programs.

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## II. HIGHLIGHTS OF MassDEP ACCOMPLISHMENTS: SFY2020

State Fiscal Year 2020 marked the 50<sup>th</sup> anniversary of Earth Day but may be remembered more for unique disruptive challenges: a global pandemic, focused awareness on equity and environmental justice, protests and institutionalized inequalities, and increased concern and understanding of a class of emerging contaminants known as PFAS. MassDEP’s responses to these challenges and others are detailed below.

### **Work during the Coronavirus COVID-19 Pandemic**

In the second half of fiscal year 2020, a novel Coronavirus rapidly spread around the world. In March 2020 the Coronavirus – COVID-19 pandemic resulted in Governor Baker issuing public health orders closing state offices. The agency, like other parts of state government and the economy, adapted by necessity with the development of a transformational work strategy for all MassDEP employees. Throughout the world, the United States, and Massachusetts, lives have been changed dramatically as the pandemic prompted restructured institutions and lives. MassDEP supported its regulated communities in a variety of ways, including continued emergency response work, regular Commissioner calls with specific sectors, and distribution of personal protective equipment for essential drinking water and wastewater personnel.

MassDEP staff addressed COVID-19 driven changes in the fourth quarter of SFY2020 by initially switching to remotely working from home as guided by Governor Baker’s orders. Plans were then developed for coverage of essential tasks. The Emergency Response group continued its regular field deployments, while other field work was paused while new safety protocols were developed for inspections and site visits. Protocols were developed for inspections and enforcement activities that ensure the safety of all people involved, and increased reliance on alternative compliance verification methods were created – such as virtual inspections using video platforms. The information technology group, working with EEA and the Executive Office of Technology Services and Security (EOTSS), provided needed IT capabilities while working remotely, and additional security measures were enabled for accessing office materials from home computers. Information provided on-line through the EOEEA data portal, and the online permitting systems smoothly, demonstrating that the future envisioned for online data sources is essential, and can be effective for the public and agency staff.

### **Equity and Environmental Justice**

The agency is committed to ensuring a diverse and inclusive workplace culture, and has worked to provide consistent outreach to affected communities when considering key environmental decisions that would affect environmental justice populations. MassDEP will continue to work with other agencies to implement the Secretary’s Environmental Justice Policy and develop an agency specific

Strategy for this cross cutting work. Training on engagement and public outreach has been brought to each Bureau and Regional Office and project specific involvement plans are now included as integral parts of our key agency activities. More work has to be done, and the agency is committed to ensuring opportunities for engagement, and promoting an equitable distribution of environmental benefits to all residents of the Commonwealth.

## Emerging Contaminants: PFAS

Knowledge of chemicals known as per and polyfluoroalkyl substances, or “PFAS”, and their effects on human health and the environment advanced rapidly, also demanding long established environmental programs to consider these new compounds. MassDEP followed the developing science, reviewed new research and worked on program development in a variety of agency programs. Efforts included creating new standards through regulatory promulgation, supporting waste site cleanup work, providing funding for monitoring of PFAS in drinking water and for new treatment systems, and collecting unused PFAS products to ensure they are not released to the environment.

Throughout the year MassDEP continued to increase its understanding and respond to the effects of PFAS. Work was initially focused on locations in the state where PFAS has been found – at waste sites and in drinking water.

- ❖ The Bureau of Waste Site Clean Up (BWSC) promulgated reportable concentrations and cleanup standards for 6 PFAS compounds (PFAS6) on December 27, 2019 and continues to oversee the work of Licensed Site Professionals making clean up decisions for those sites.
- ❖ The Bureau of Water Resources (BWR) Drinking Water Program followed with its work to establish a Massachusetts Maximum Contaminant Level (MCL) for drinking water. That standard proposed in December 2019 enjoyed a robust comment period and high level of stakeholder involvement. A final drinking water MCL was established for 6 PFAS compounds (“PFAS6”) on October 2, 2020.
- ❖ Drinking Water Laboratory certification for PFAS was established on June 12, 2020 and offered through the Lab Certification Program for interested laboratories.
- ❖ The agency also supported a program to collect unused firefighting foam with PFAS from across the commonwealth to prevent its release to the environment. A total of 199,262 pounds or 23,021 gallons of legacy concentrate foam was collected and destroyed as of June 30, 2020.

The FY19 Supplemental Budget included \$8.4 million in funding for PFAS testing of public drinking water sources as well as other PFAS related efforts, including grants for the design of PFAS treatment. PFAS testing is available to all Public Water Suppliers (PWSs) and selected owners of private wells that are representative of conditions in municipalities that are not served by public systems. In FY2020 the grants for treatment design programs were initiated. To date, 385 PWSs have signed up for free sampling, and 351 of these have been sampled or are in the process of taking samples.

- A total of \$5 million of the \$8.4 million supplemental budget has been allocated to support the design of PFAS treatment systems at PWSs with water that exceeds the PFAS MMCL.
- In September 2020, Round 1 of PFAS treatment planning and design grants awarded \$2 million to 10 communities to reimburse or pay for new work to plan and design facilities that help address impacts of PFAS6 on drinking water supplies. Those projects are underway.
- In March 2021, Round 2 awarded \$3 million in grant funding to 17 communities.
- The supplemental budget also included \$10.65 million to support zero-percent interest loans for PWSs to install treatment for PFAS removal. A list of the 30 PWS's with exceedances and PWS's that have received Drinking Water State Revolving Fund loans is available on the MassDEP PFAS webpage <https://www.mass.gov/info-details/per-and-polyfluoroalkyl-substances-pfas> (see story map).
- Significant information technology improvements are underway to enable online reporting of PFAS data by certified laboratories, enable rules-based analysis of the data, and data visualization through the EOEEA public data portal.
- MassDEP has implemented the cleanup standards in the Massachusetts Contingency Plan (MCP), promulgated in December 2019, for PFAS in soil and groundwater. The agency will also continue to support source identification and investigation work, compliance assurance assistance, as well as enforcement steps, when appropriate, to address releases of PFAS to the environment.
- Governor Baker's proposed budget for FY2022 includes funding for staff to support all of MassDEP's ongoing work related to addressing PFAS. The Administration is seeking the Legislature's support of this proposal.

Additional research, data collection, and program investigation continued to understand PFAS in wastewater, biosolids and landfill leachate. The state of scientific knowledge about these compounds and their effects on human health continue to evolve rapidly, and the agency will follow the latest science and knowledge to protect our citizens and the environment. More information on MassDEP's PFAS work can be found here: <https://www.mass.gov/info-details/per-and-polyfluoroalkyl-substances-pfas>

## Climate Initiatives

Addressing climate change is a key priority of the Baker Polito Administration, which released a draft Clean Energy and Climate Plan (CECP) for 2030 and a 2050 Decarbonization Roadmap in December of 2020. The actions in the draft 2030 CECP requires MassDEP to fulfill numerous commitments to review existing programs and adopt additional programs for the electricity, transportation, building, and other sectors to assist the Commonwealth to achieve the greenhouse gas reduction goals in the near- and long-term.

Massachusetts is a leader of the multi-state **Transportation and Climate Initiative (TCI)**, which is working to build a regional program that would cap and reduce greenhouse gas emissions from the transportation sector across the Northeast and Mid-Atlantic, and invest the proceeds in a cleaner, more

resilient, and more equitable low-carbon transportation system. Announced in a **December 2018 Press Release**, Massachusetts joined with eight states (Connecticut, Delaware, Maryland, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia) and Washington, DC in a new effort to develop a regional policy for low-carbon transportation. As part of the effort, **the jurisdictions issued a statement** describing the goal of their collaboration to:

...design a regional low-carbon transportation policy proposal that would cap and reduce carbon emissions from the combustion of transportation fuels through a cap-and-invest program or other pricing mechanism... [and]... to complete the policy development process within one year, after which each jurisdiction will decide whether to adopt and implement the policy.

While the overall goal is to reduce the far-reaching climate impacts of vehicles and fuels, Massachusetts is particularly focused on delivering benefits to communities that are under-served by current transportation options and disproportionately burdened by pollution.

Program development work has included local Massachusetts outreach and regional collaboration.

- In 2019, eleven regional workshops were held in Massachusetts to engage with the public and seek input on a draft TCI program framework. Interested individuals were also encouraged to **provide feedback using the online portal on the TCI website**.
- A TCI draft program framework for a regional policy was released in October 2019 - available here: **Transportation and Climate Initiative (TCI)**. Following the release of the draft framework, the participating jurisdictions began working on a draft Memorandum of Understanding.
- In December 2019, TCI released and invited public input on the **draft Memorandum of Understanding**, along with estimates of environmental and health benefits, building on the Draft Program Framework.
- In December 2020, Massachusetts along with Connecticut, Rhode Island and the District of Columbia became the first jurisdictions to sign the final Memorandum of Understanding launching the Transportation and Climate Initiative Program (TCI-P). In addition, [eight other Northeast, Mid-Atlantic, and Southeast states the other TCI jurisdictions signed a statement indicating their commitment to continue supporting the development of the program.](#)

## Recycling and the Solid Waste

The recycling and solid waste disposal markets have been under stress in recent years from rising costs for recycling, changing international markets, decreased landfill capacity and the COVID – 19 pandemic of 2020. MassDEP is in the process of finalizing the 2030 Solid Waste Master Plan which will set out a broad vision of waste management in the Commonwealth for the next decade. The current Solid Waste Master Plan for 2010 – 2020, presented a “pathway to zero waste” and a shift in mindset to thinking of “waste” as materials or a resource to be reused. The plan highlights diverting waste from disposal as:

- An **environmental opportunity** that will help Massachusetts reduce greenhouse gas emissions, conserve natural resources, and supplement energy conservation;
- An **economic development opportunity** that can spur the expansion of businesses and jobs in the Commonwealth, using materials diverted from waste to make new products and to compete in the global marketplace; and
- An **opportunity to reduce disposal costs** for waste generators and municipalities.

The new Master Plan will address increasingly constrained and decreasing disposal capacity in the state and region, tight capacity at materials recovery facilities, and describe support for waste reduction strategies including anaerobic digestion and composting. The Plan will also address materials banned from disposal in the trash (waste bans) and strategies to improve compliance with those requirements.

In response to some feedback received on the draft Solid Waste Master Plan when it was released for public comment in 2019, along with the advent of COVID-19, heightened focus on equity and injustice as well as the continued impacts of climate change, MassDEP developed further opportunities for input and public engagement. MassDEP held four additional virtual public meetings on the draft plan over the summer of 2020 and accepted additional public comment through September 15, 2020. The re-opened public comment period focused specifically, but not exclusively, on issues of environmental justice, climate change, and the impacts of the COVID-19 pandemic as they relate to solid waste management in Massachusetts. The final Solid Waste Master Plan will be released in 2021.

MassDEP will also continue to focus on helping municipalities confront a recycling market that has changed significantly in recent years through a variety of technical and financial assistance programs. Supporting these programs, as well as expanding recycling capacity and reducing contamination of materials to be recycled should also drive innovation in this area to move the commonwealth toward a zero-waste future. The Department is engaged in ongoing conversations with recycling processors, haulers and municipalities to fully understand the challenges faced in collecting, processing and marketing recyclable materials, and have taken a number of steps in an attempt to lessen the impact of these events – particularly during the COVID-19 pandemic. Once the Coronavirus dramatically changed the economy and everyday practices in the winter and spring of 2020, the recycling industry was also severely affected. MassDEP held regular open calls with the waste and recycling sector to answer questions and provide information during the period of restricted activities due to the pandemic.

## Massachusetts' Assistance Program for Lead in School Drinking Water

In January 2020, Governor Charlie Baker and State Treasurer Deborah Goldberg launched an expanded assistance program to help Massachusetts public schools and public childcare facilities and now also private childcare facilities voluntarily test for lead in drinking water. This program built upon the success of the original Assistance Program, which saw nearly 1,000 public schools and childcare facilities sampled from 2016-2019. Supported by a nearly \$1 million grant from the Water Infrastructure Improvements for the Nation (WIIN) Act in funding from the U.S. Environmental Protection, MassDEP works with the University of Massachusetts – Amherst and the Massachusetts Water Resources Authority to provide technical assistance to public schools and public/private childcare facilities to establish a lead in drinking water monitoring program. The technical assistance helps facilities develop a site-specific sampling plan, provide lab analysis of samples taken at taps and water fountains used for drinking and cooking, assist with the identification of fixtures with lead concentrations over the laboratory analytical testing limit of 1 part per billion (ppb), and recommend possible remedial actions.

After facilities receive their sampling results, they are encouraged to take remedial actions at any location with levels of lead above the lab testing limit and to communicate the results and short-term action plans to parents and staff. Facilities communicate this information through emails, automated informational calls, letters, website postings, printed postings, newspaper articles, and meetings. Actions taken to address lead levels include removing and replacing fixtures, using signage to indicate fixtures that are not intended to be used for drinking water, and implementing water line flushing programs.

Complementing the Expanded Assistance Program, also in January 2020, the Clean Water Trust launched its new School Water Improvement Grant (SWIG) program. SWIG covers the cost of water bottle filling stations to address detections of lead in drinking water at eligible public schools. The pilot funding round in Spring 2020 consisted of an initial \$1 million (out of a total of \$5 million).

From January through June 2020, the MassDEP Expanded Assistance Program accepted 88 schools and childcare facilities into the program. Interest and participation in the program was greatly affected by pandemic related impacts. The SWIG program accepted 37 school districts into its pilot funding round and in April 2020 awarded grants for the purchase and installation of 319 water bottle filling stations.

More information on the Expanded Assistance Program is available at <https://www.mass.gov/assistance-program-for-lead-in-school-drinking-water>.

## Innovation: Develop a Cutting-Edge Information Technology System

The COVID-19 pandemic and changes to work practices have confirmed the importance of online resources and accessible technology systems. MassDEP will continue working with the Executive Office of Energy and Environmental Affairs (EOEEA) in transforming its current information technology system and building a new enterprise-wide framework for information management. The Energy and Environmental Information and Public Access System (EIPAS) is currently constructed to support the



technology needs of EOEAA's agencies and allow them to better serve customers and the public by maximizing the effectiveness through better use of shared data and online tools. It is able to provide secretariat and agency-wide features such as:

- paperless online permitting,
- online portals providing detailed information about regulated entities, permits, inspection and enforcement activities and environmental test results to citizens online,
- greatly expand agency efficiency through technology -assisted tools such as rules-based processing and data visualization tools to assist with compliance screening of reports, data, remote monitoring data, and sensors.

Fundamental system design work and construction of the permitting platform has been completed, and on-line permitting is now available for 195 permits/licenses /notifications with approximately 130 more permits/licenses/notifications to be implemented online by June 2022. Other complementary modules to improve compliance and enforcement processes, automating selected data and report screening and providing additional data to citizens and regulated entities are planned to be added to the EIPAS system or improved over the next several years. This year MassDEP will enhance our use of information management systems to make our compliance and enforcement efforts more efficient and effective. For example, MassDEP is:

- Using digital mapping and data visualization tools to compliment data analysis and communication;
- Continuing development of automated methods of data analysis through rules-based processing of regulated entity environmental monitoring data;
- Starting development of redesigned compliance and enforcement module for MassDEP staff; and
- Undertaking information management activities to support the PFAS program described in the previous paragraph, including online submission of data, rules-based processing of the submitted data, and an online portal for citizens to view the submitted data.

## New Legislative Initiatives

MassDEP followed legislation in SFY 2020 that included direction for the agency to establish new or expanded regulatory programs for overseeing the use of chemicals used as flame retardants, and public notification of sewer and stormwater overflows from wastewater systems. Those bills passed and were signed into law in December 2020, and MassDEP is working on implementing the new requirements and developing regulations for these new programs.



### III. By the Numbers: MassDEP Permitting, Compliance and Enforcement in FY 2020\*

#### ***PIMS and Accela Timely Action Permit Application Fees and Activity\*\****

	FY 2019	FY 2020
Applications received	2,223	2,089
Total revenue	\$1.49 million	\$1.23 million
Final determinations issued	2,085	2,032
Refunds for missed timelines	0	1
Dollar value of timeline refunds	0	\$525

#### ***PIMS and Accela Timely Action Permit Application Final Determinations\*\*\****

	Applications Completed	Approved	Denied	Withdrawn
Air Quality	111	96	0	15
Waste Site Cleanup	0	0	0	0
Hazardous Waste	200	194	0	6
Lab Certifications	25	21	0	4
Solid Waste	236	225	1	10
Watershed Management	434	430	0	4
Water Pollution Control	99	95	0	4
Water Supply	555	546	0	9
Wetlands & Waterways	372	347	2	23
<b>Total – All Programs</b>	<b>2,032</b>	<b>1,954</b>	<b>3</b>	<b>75</b>

## Timely Action Fees Collected Under 310 CMR 4.00

	FY 2019	FY 2020
Annual Compliance Fees*****	\$10.8 million	\$10.8 million
Chapter 21E Annual Compliance Fees*****	\$3.8 million	\$2.7 million
All Permit Application Fees*****	\$2.9 million	\$2.5 million
Wetlands Notices of Intent	\$1.7 million	\$1.6 million
<b>Total Timely Action Fees Collected:</b>	<b>\$19.2 million</b>	<b>\$17.6 million</b>

## Compliance and Enforcement Activity

	FY 2019	FY 2020
Compliance Inspections	6,156	4,921
Lower Level Enforcement	2423	2008
Higher Level Enforcement****	650	518
MassDEP Penalties Assessed	\$2.3 million	\$2.4 million
MassDEP Penalties Collected	\$1.5 million	\$1.9 million

## Special Projects Permitting and Oversight Fund

For certain permit applications that need specialized attention or action due to project size, complexity, or technical difficulty, or where proposed projects serve significant public interests and offer opportunities to restore, protect, conserve, or enhance natural resources, an alternative timeline and fee structure may be required. Pursuant to Section 40 of Chapter 149 of the Acts of 2004, revenue derived from these projects is deposited into the Special Projects Permitting and Oversight Fund. During Fiscal Year 2020, the following active projects met these criteria:

Project Name	Total FY20 Costs Incurred	Total Project Costs Incurred	Receipts to Date 9-21-20	Permit Code	FY 20 Permit Volume
<b>TOTAL</b>	<b>\$2,096,292</b>	<b>\$17,322,487</b>	<b>\$21,163,163</b>		
Clean Energy Results Program	\$665,875	<b>\$13,932,070</b>	\$17,017,282		
Drinking Water & Waste Water	\$1,384,974	<b>\$3,205,512</b>	\$4,000,000		
South Coast Rail Ch91 & Water Quality Cert	\$27,357	<b>\$125,081</b>	\$67,795		
Triumvirate Environmental (Merrimack)	\$1,249	<b>\$7,584</b>	\$7,425		
Coventa Bondi's Landfill Cell 2 Expansion	\$1,983	<b>\$7,325</b>	\$28,600		
Cyn Oil Corporation HW License Renewal	\$4,632	<b>\$18,410</b>	\$7,960		
Vineyard Wind Ch91/401 WQC	\$1,446	<b>\$17,730</b>	\$26,001		
Lennar Multifamily Communities LLC	\$8,776	<b>\$8,776</b>	\$8,100		

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*\* Permitting, compliance, and enforcement counts and dollar amounts for prior fiscal years may vary from figures previously reported due to post-report data reconciliation.*

*\*\* PIMS and Accela Timely Action Permit Application volumes are only for those permit categories tracked in MassDEP's Permit Information Management System (PIMS) and in Accela, MassDEP's on-line permitting application*

*submittal system, and does not include certain categories such as Asbestos/demolition notifications which are tracked separately.*

*\*\*\*Final determinations include only applications that were approved, denied or withdrawn during the fiscal year and may not reconcile with the total number of applications received because some reviews begin in one fiscal year and conclude in the next.*

*\*\*\*\* Complete HLE with Referrals and Settlements (AG, EPA, DA, LSP).*

*\*\*\*\*\*Includes revenue allocated to the DEP Permit and Compliance Fund 0532*