

# **Annual Report on Timely Action, Fees and Program Improvements**

**State Fiscal Year 2021**



**January 2022**

## **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 charged with protecting and enhancing the Commonwealth's natural resources - air, water, and land - to provide for the health, safety, and welfare of all people, and a clean and safe environment for future generations. In carrying out this mission, MassDEP commits to address and advance environmental justice and equity for all people of the Commonwealth; provide meaningful, inclusive opportunities for people to participate in agency decisions that affect their lives; and ensure a diverse workforce that reflects the communities we serve.

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 (the Fees Regulation). 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 meet those schedules. The purpose of the Fees Statute and Regulation is to provide for orderly and efficient administration of MassDEP's permitting and compliance programs.

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.

## II. HIGHLIGHTS OF MassDEP ACCOMPLISHMENTS: SFY21

State Fiscal Year 2021 (SFY21) continued to be marked by the COVID-19 pandemic and changing work practices both within the agency and across the Commonwealth. Over the course of the year, MassDEP focused on ensuring that its work promoted equity and environmental justice, increased diversity and inclusion within the agency, and provided timely opportunities for meaningful participation in agency decisions for all people in the Commonwealth. Addressing emerging contaminants continued to be an important focus in many programs, including providing support for municipalities and others faced with PFAS contamination.

Total timely action permitting fee revenues for SFY 2021 were \$18.4 million pursuant to 310 CMR 4.00. MassDEP's timely action permit application fees totaled \$1.07 million for those permit categories tracked in MassDEP's Permit Information Management System (PIMS) and in MassDEP's Accela systems. MassDEP collected \$10.2 million in Annual Compliance Fees, \$4.2 million in Chapter 21E Annual Compliance Fees, \$2.3 million in total Permit Application Fees, and \$1.7 million in Wetlands Notices of Intent Fees, totaling \$18.4 million overall. Due to the COVID-19 emergency, SFY20 invoicing for Chapter 21E Annual Compliance Fees was delayed, resulting in an increase in SFY21 fees collected compared to previous fiscal years.

Environmental enforcement activities included 4,313 Compliance Inspections, 1,645 Lower-Level Enforcement actions and 488 Higher Level Enforcement actions, resulting in \$1.8 million of MassDEP Penalty Assessments and \$1.2 million in MassDEP Penalty Collections.

MassDEP's responses to these challenges and others, as well as a summary of the fee revenues and compliance and enforcement activities, are detailed in this report.

### Work during the COVID-19 Pandemic

In March 2020, Governor Baker issued public health orders closing state offices due to the pandemic. The agency, like our partners in state government and other sectors, adapted by developing transformational work strategies. MassDEP's staff adapted to remote work and 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 to essential drinking water and wastewater personnel across the state.

MassDEP staff addressed COVID-19 driven changes in the fourth quarter of SFY2020 by switching to remote work. Plans were developed for coverage of essential tasks that continued into SFY21. 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 the public and our employees and the agency developed alternative compliance verification methods. The

information technology group, working with the Executive Office of Energy and Environmental Affairs 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. Over the course of SFY21 each MassDEP employee was provided with a state laptop. In SFY21, additional planning began to move data and electronic resources to the cloud. When completed in SFY2022 this migration effort will facilitate easier access to materials by MassDEP staff.

## Equity and Environmental Justice

The agency remains committed to advancing environmental justice and equity and ensuring a diverse and inclusive workplace culture. At the start of the fiscal year, and after input from staff across the agency, the Commissioner announced a revision to the agency's Mission Statement that explicitly includes these principles as central to MassDEP's work of environmental protection.

### ***Mission Statement***

***MassDEP's mission is to protect and enhance the Commonwealth's natural resources - air, water, and land - to provide for the health, safety, and welfare of all people, and a clean and safe environment for future generations.***

***In carrying out this mission MassDEP commits to address and advance environmental justice and equity for all people of the Commonwealth; provide meaningful, inclusive opportunities for people to participate in agency decisions that affect their lives; and ensure a diverse workforce that reflects the communities we serve.***

In SFY21, MassDEP updated its guidance on enforcement in cases where violations affect environmental justice areas. MassDEP has provided new guidance for considering the 'public interest' factor as an upward adjustment of a penalty assessment when the enforcement action is one for which a civil administrative penalty for violating laws and regulations administered by MassDEP is to be assessed. The policy applies where such violations have occurred within an environmental justice population, or where violations that occurred outside a mapped environmental justice population affect an environmental justice population.

The MassDEP Director of

Environmental Justice developed Public Involvement and Community Engagement Guidance and conducted training on this new Guidance across the agency. The Public Involvement and Community Engagement Guidance provides a roadmap and guide that we can use to conduct public involvement activities, lists specific permits (which will be reviewed periodically) and activities to

which this guidance is applicable, and notes resources available for language translation and interpretation, and other services. The Guidance will be regularly reviewed and refreshed. The public involvement and community engagement training along with other EJ training sessions will be conducted annually led by the Director of Environmental Justice.

An internal Environmental Justice Resources page was developed to assist staff with key agency activities conducted in EJ populations. The intranet page consists of informational resources associated with EJ to assist staff with identifying EJ populations, language access tools, community engagement and public involvement resources to name a few. This page further arms MassDEP staff with the tools and resources needed to advance the environmental justice program at the agency. This page is frequently updated to ensure staff have the most up to date information.

Throughout SFY21, senior managers met regularly to discuss Environmental Justice and equity and diversity issues at MassDEP. In addition, the agency established an Advisory Committee on Equity and Diversity within MassDEP. Comprised of 13 members from a variety of positions and from a variety of MassDEP offices, this group meets regularly to provide the Commissioner and senior staff with recommendations for action to improve our internal and external processes and structures and, on an ongoing basis, identify areas where we should focus our attention.

MassDEP will continue to work with other agencies to implement the Secretary of Energy and Environmental Affairs' updated 2021 Environmental Justice Policy and develop its own agency specific Environmental Justice Strategy. The MassDEP Office of Environmental Justice and the MassDEP Office of Diversity and Civil Rights work to ensure that agency staff provide meaningful opportunities for involvement with agency decision-making and that our staff reflect the diversity of the people of the Commonwealth that we serve. The agency is committed to ensuring opportunities for engagement and promoting an equitable distribution of environmental benefits. Hiring, recruitment, and promotional efforts intentionally include working towards our diversity goals.

## Emerging Contaminants: PFAS

The category of chemicals known as per- and polyfluoroalkyl substances, or PFAS, continue to be a major focus of the agency. General understanding of these substances and their effects on human health and the environment continue to advance rapidly. Additional research, data collection, and program investigation continued our understanding of PFAS in wastewater, biosolids and landfill leachate. MassDEP continues to follow the developing science, including investigation and standard development at the federal level, and to develop programmatic strategies for Massachusetts to protect human health and the environment. Over the course of the year, MassDEP has:

- Supported 1,641 Public Water Systems (PWSs) in addressing PFAS in drinking water. 609 PWSs were sampled or in the process of taking samples as of June 30, 2021;
- Continued to implement the Massachusetts Maximum Contaminant Level (MCL) for six PFAS compounds at large and medium Public Water Systems (promulgated in October 2020);
- Developed online forms for submitting analytical results for PFAS from certified laboratories, and developed information technology systems to enable rules-based analysis of the data, and data visualization through the EEA public data portal;
- Provided \$5 million in grants to PWS for the design and planning of treatment systems to protect drinking water against PFAS;
- Continued to offer certification through the Laboratory Certification Program for testing drinking water for PFAS to support PWSs;
- Provided free testing of private wells that are representative of conditions in municipalities that are not served by public systems;
- Supported the investigation, assessment, and remediation at sites with PFAS contamination under the Massachusetts Contingency Plan (MCP), applying the reportable concentrations and cleanup standards for six PFAS compounds;
- Responded to Imminent Hazard levels in private wells and provided compliance assurance assistance for the sites with PFAS contamination, as well as enforcement measures, when appropriate, to address releases of PFAS to the environment;
- Required sampling of wastewater and biosolids through permit modifications; and
- Collected unused firefighting foam for disposal ensuring that foam containing PFAS will not be released to the environment. A total of 210,499 pounds or 24,292 gallons of legacy concentrate foam was collected and destroyed as of June 30, 2021.

More information on MassDEP's PFAS work can be found here: <https://www.mass.gov/info-details/per-and-polyfluoroalkyl-substances-pfas>

## Climate Initiatives

The Baker-Polito Administration has made addressing climate change a priority, and the Executive Office of Energy and Environmental Affairs has supported work to meet the challenges ahead. The Clean Energy and Climate Plan (CECP) for 2030 and a 2050 Decarbonization Roadmap were released as draft plans in December of 2020. The 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 (GHG) reduction goals in the near- and long-term. Over the last year, MassDEP has been reviewing and updating these programs.

On March 26, 2021, Governor Baker signed *An Act creating a next generation roadmap for Massachusetts climate policy* (Chapter 8 of the Acts of 2021) into law. The law establishes new goals for emissions reductions: achieving net-zero status by 2050; reducing GHG emissions by 50% by

2030; reducing GHG emissions by 75% by 2040. The Act significantly increases protection for Environmental Justice communities across Massachusetts, authorizes the Administration to implement a new, voluntary energy efficient building code for municipalities, and authorizes the Commonwealth to procure an additional 2,400 Megawatts (MW) of clean, reliable offshore wind energy by 2027.

Chapter 8 directs MassDEP to evaluate and seek public comment on incorporating cumulative impact analyses in the assessment and identification of certain categories of permits and approvals and to propose regulations to include cumulative impact analyses for defined categories of air quality permits identified through the evaluation and public comment process. The agency began a stakeholder process to guide this work, which is expected to result in draft regulations that will be available for public comment in 2022.

Additional efforts to reduce GHG emissions included:

- Administration of a state grant program to distribute Volkswagen settlement funds. MassDEP allocated the maximum amount allowed (15%) of the Volkswagen emissions settlement funds for light-duty electric vehicle charging equipment.
- MassDEP and its partners continued to implement the Global Warming Solutions Act, as amended in 2021. The air regulations that create annual declining caps for greenhouse gas emissions from specific sectors (known as “3(d) regulations” for the section of the Global Warming Solutions Act which required their creation) will continue to be implemented to achieve emissions reductions, as will other regulations that address refrigerant leaks, vehicle emission standards, and the electricity sector.
- MassDEP continued to support the initiatives directed by the Executive Office of Energy and Environmental Affairs, including the action items in the State Climate Hazard Mitigation and Climate Adaptation Plan (SHMCAP), and supporting the Municipal Vulnerability Program’s (MVP) grant review process for municipal climate resiliency projects.

## Recycling and the Solid Waste

In SFY21, MassDEP continued to develop the Solid Waste Master Plan and provided additional opportunities for engagement and comment. Initially proposed in 2019, with a second public comment period over the summer of 2020, a total of nine stakeholder meetings were held to receive input on the next 10-year strategic plan covering 2020-2030. 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 Plan, finalized

as of the issuance of this report, sets a broad vision of waste management in the Commonwealth, with new disposal and recycling goals:

- Reduce disposal statewide by 30 percent (from 5.7 million tons in 2018 to 4 million tons in 2030) by 2030, and
- Achieve a 90 percent reduction in disposal to 570,000 tons by 2050.

The draft Plan, accompanied by draft regulatory changes, also proposed expanding waste bans from landfill disposal for certain materials - a lower threshold of organic materials and new bans on disposal of mattresses and textiles as described in more detail below.

MassDEP's new Solid Waste Master Plan builds on the vision of the 2010-2020 Plan that presented a "pathway to zero waste" and encouraged a shift in mindset to thinking of "waste" as materials or a resource to be reused. The 2020-2030 Master Plan and regulations set new, aggressive state-level waste reduction goals that align with our carbon emission reduction programs, invest in innovation, and enhance ongoing engagement with communities across the Commonwealth. The Plan also includes initiatives to strengthen engagement with and support of environmental justice communities, including:

- increasing engagement with environmental justice populations in all phases of MassDEP's regulatory process;
- improving recycling grant evaluation criteria to recognize environmental justice community issues;
- promoting small-scale composting assistance to enable composting at community gardens in environmental justice areas;
- and promoting and encouraging the use of electric and hybrid trash and recycling collection vehicles in environmental justice communities.

The 2020-2030 Master Plan announced increased recycling business development grants and a new recycling research and development grant program to drive innovation in recycling and waste reduction. This program will be developed in consultation with a new Recycling Market Development Council that will promote the use of recycled materials by state agencies. The Plan addresses materials banned from disposal in the trash (waste bans) and strategies to improve compliance with those requirements.

Finally, the 2020-2030 Master Plan addresses increasingly constrained and decreasing disposal capacity in the state and region, tight capacity at materials recovery facilities, and supports waste reduction strategies, including anaerobic digestion and composting. MassDEP will 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 steps to lessen the impact of these events – particularly during the COVID-19 pandemic. The recycling industry was severely affected by the economic changes and other practices over the course of the year. 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.

Additional information on the Plan is on the MassDEP website here:

<https://www.mass.gov/guides/solid-waste-master-plan>

## **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, with the addition of 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 Agency, MassDEP works with the University of Massachusetts Amherst and the Massachusetts Water Resources Authority to provide technical assistance to public schools and public and 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 were 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 both accelerated planned improvements and required unanticipated changes to work practices and technological tools used by the agency.

MassDEP staff, our regulated community and our constituents have confirmed the importance of online resources and accessible technology systems. MassDEP will continue working with the Executive Office of Energy and Environmental Affairs 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 the Secretariat'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 provides the secretariat and agencies with 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; and
- Greatly expanded 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 online 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, automate selected data and report screening and provide 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 the 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 data management, 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 has been developing new regulatory programs to implement legislation enacted in SFY21 that directed the agency to:

- Establish new or expanded regulatory programs for overseeing the use of chemicals used as flame retardants; and
- Promulgate regulations to require public notification of sewer and stormwater overflows from wastewater systems.

Those bills passed and were signed into law in December 2020 and January 2021, respectively. By the end of SFY21 the agency had provided educational materials and compliance assistance to manufacturers and retailers of the named compounds subject to the flame retardant law's prohibitions. Stakeholder meetings were convened to discuss approaches for the sewer and combined sewer overflow notification regulations. Those proposed regulations were made available for public comment in the fall of 2021, and final rules became effective in January 2022.

### III. By the Numbers: MassDEP Permitting, Compliance and Enforcement in SFY21\*

	FY 2020	FY 2021
<b>Applications received</b>	2,198	2,244
<b>Total revenue</b>	\$1.24 million	\$1.07 million
<b>Final determinations issued***</b>	2,096	1,744
<b>Refunds for missed timelines</b>	1	0
<b>Dollar value of timeline refunds</b>	\$525	\$0

# Timely Action Permit Application Final Determinations\*\*

MassDEP Program	Final Determinations Issued***	Approved	Denied	Withdrawn
Air Quality	83	76	0	7
Waste Site Cleanup <sup>1</sup>	0	0	0	0
Hazardous Waste	132	130	0	2
Lab Certifications	27	24	1	2
Solid Waste	261	241	0	20
Watershed Management	433	430	0	3
Water Pollution Control	60	57	0	3
Water Supply	527	521	1	5
Wetlands & Waterways	221	209	0	12
<b>Total – All Programs</b>	<b>1744</b>	<b>1688</b>	<b>2</b>	<b>54</b>

<sup>1</sup> No permits were received in SFY21; 2014 MCP revisions eliminated the most common program permits.

<b>Timely Action Fees Collected Under 310 CMR 4.00</b>
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	<b>FY 2020</b>	<b>FY 2021</b>
Annual Compliance Fees	\$10.8 million	\$10.2 million
Chapter 21E Annual Compliance Fees	\$2.7 million	\$4.2 million****
All Permit Application Fees	\$2.5 million	\$2.3 million
Wetlands Notices of Intent Fees	\$1.6 million	\$1.7 million
<b>Total Timely Action Fees Collected:</b>	<b>\$17.6 million</b>	<b>\$18.4 million</b>

### 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 SFY21, the following active projects met these criteria:

Project Name	Total SFY21 Costs Incurred	Total Project Costs Incurred	Receipts to Date 8-23-21	Permit Code	Permit Volume
<b>TOTAL</b>	<b>\$1,179,244</b>	<b>\$18,450,682</b>	<b>\$21,289,782</b>		
Clean Energy Results Program	\$586,134	\$14,518,204	\$17,017,282		
Drinking Water & Wastewater Resource Control Inc. Landfill Exp.	\$450,000 \$84,200	\$3,655,512 \$84,200	\$4,000,000 \$84,200	SW26	1
MBTA/South Coast Rail	\$27,441	\$27,441	\$86,477		
5 & 15 Necco St Boston	\$14,574	\$14,574	\$8,806		
Safety Kleen Marlboro	\$13,526	\$13,526	\$12,012		
South Coast Rail Ch91 & Water Quality Cert	\$1,750	\$126,831	\$67,795		
Lennar Multifamily Communities LLC	\$1,619	\$10,394	\$13,211		
Speciality Minerals Inc	NA	NA	NA	SW01	1

NA = Not Applicable. Information not available at this time.

### Compliance and Enforcement Activity

	FY 2020	FY 2021
Compliance Inspections	5097	4315
Lower Level Enforcement	2019	1654
Higher Level Enforcement	518	490
MassDEP Penalties Assessed	\$2.5 million	\$1.8 million
MassDEP Penalties Collected	\$1.9 million	\$1.2 million

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

*\*\* Values include only those permit categories tracked in MassDEP's Permit Information Management System (PIMS) and in MassDEP's Accela on-line permitting application submittal system, and do not include certain categories such as Asbestos/demolition notifications, etc., 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.*

*\*\*\*\* Due to the Covid-19 emergency, FY20 invoicing for Chapter 21E Annual Compliance Fees was delayed, resulting in an increase in SFY21 fees collected.*