

PERMIT PROCEDURES: 314 CMR 2.00

As part of MassDEP's Regulatory Reform Initiative, these regulatory revisions will harmonize the public notice requirements for state surface water discharge permits with EPA's procedures for issuing National Pollutant Discharge Elimination (NPDES) permits, in response to a request for these changes by EPA. The revisions will also eliminate public notice in newspapers for other draft state discharge permits (groundwater, reclaimed water, and sewer connection and extension permits), relying instead on notice in the Environmental Monitor. This will result in a more streamlined process for MassDEP as well as for regulated entities, including in particular municipalities.

Surface water discharge permits and NPDES permits are issued by MassDEP and EPA, respectively under their relevant authorities, the Massachusetts Clean Waters Act, M.G.L. c. 21, § 43, and the federal Clean Water Act. 314 CMR 2.00 establishes procedures for processing substantive permit applications for state surface water and groundwater discharges, sewer extensions and connections, and reclaimed water permits, all issued by MassDEP. The required procedures address timing and content of public notice, opportunity for public comment, public hearings, and requests for adjudicatory hearings. Until recently, EPA fulfilled state and federal notice requirements for surface water discharge/NPDES permits by publishing notice of all draft permits in a newspaper but has now eliminated publication in newspapers for draft permits for minor discharges (under 1 million gallons per day). The public is notified of these minor draft permits only on EPA's webpage. As a result, minor discharge applicants are currently required to provide public notice in a newspaper only to satisfy state notice requirements in 314 CMR 2.00. This requirement has represented a financial burden on municipalities and caused delays in jointly issuing these permits. MassDEP is proposing changes to 314 CMR 2.00 to align our surface water discharge permit notice procedures with EPA's permit notice procedures, and to update the public notice requirements to more efficiently issue other discharge permits, and increase transparency and public involvement. The proposed revisions will provide for the following:

Public notice of jointly issued surface water discharge permits by EPA on the EPA website or newspaper for all surface water discharge permits.

- Minor discharge permit applicants will not be required to publish notice of their draft permits in a newspaper.
- MassDEP will post on the MassDEP website a list of the draft surface water discharge permits available for public comment, with a link to the EPA's website for full access to draft joint permits, background documents, and fact sheets.
- Newspaper public notice for groundwater, sewer and reclaimed water permits will be replaced with publication in the Environmental Monitor by the applicant. DEP will publish a list of permits undergoing public review and comment on its website.
- Explicit authority to withdraw a draft permit and terminate a permit at the request of a permittee.
- A requirement that a public notice include information on how a person or group may intervene in the permit proceedings in conformity with 310 CMR 1.01(7).

BRP WASTEWATER REGULATORY REFORM PROPOSALS
Water Resources Commission – December 13, 2012

- A new section that implements a statutory amendment to M.G.L. c. 21A, § 16, which provides that submitting false, inaccurate or misleading information is a violation of 314 CMR 2.00.
- A new section on violations will encourage permit applicants to provide true and accurate information that MassDEP requires to make sound permitting decisions.
- Other minor revisions reorder sections and refine regulatory language for clarity. Stylistic and formatting changes are intended to make these regulations more readable and user friendly.

BRP WASTEWATER REGULATORY REFORM PROPOSALS
Water Resources Commission – December 13, 2012

WASTEWATER - TITLE 5: 310 CMR 15.000

The purpose of 310 CMR 15.000, Title 5 of the State Environmental Code (Title 5), is to provide for the proper siting, construction, upgrade, and maintenance of on-site sewage disposal systems and the appropriate means for the transport and disposal of septage in order to protect public health, safety, welfare and the environment. As part of MassDEP's Regulatory Reform Initiative, MassDEP proposes to streamline Title 5 reviews by 1) eliminating duplicative approvals of certain on-site wastewater and disposal systems by MassDEP when local boards of health, referred to as Local Approving Authorities, also issue the same approvals; and 2) authorizing MassDEP to contract out to third parties the administration of approvals for alternative wastewater treatment systems.

Duplicative Approvals

Title 5 provides that most decisions to approve on-site wastewater treatment and disposal systems are made by local boards of health. However, MassDEP must also review and approve the following systems:

- Installation of re-circulating sand filters or equivalent alternative technology in nitrogen sensitive areas (310 CMR 15.202(5));
- Nitrogen aggregation plans (310 CMR 15.216(5)(a));
- Tight tanks (310 CMR 15.260(1));
- Shared systems (310 CMR 15.293(1)); and
- Variances (310 CMR 15.412(2)).

MassDEP's review of these systems involves a desk top review of the local approval and rarely results in a reversal of the local decision. Elimination of this duplicative review and approval process will streamline permit issuance while not compromising on the protection of public health, safety or the environment.

MassDEP will, however, continue to review and approve the following types of systems:

- Systems 10,000 gallons per day (GPD) or greater (310 CMR 15.003(2));
- Systems for Commonwealth agencies and the federal government (310 CMR 15.003(2)); and
- Systems for schools proposing to alter flow, which require a Variance (310 CMR 15.416).

MassDEP also proposes to eliminate the requirement for its involvement in determinations as to whether facilities asserted to be in separate ownership are in fact a single facility (310 CMR 15.011). MassDEP will continue to provide local boards of health with technical assistance on complex projects. Additionally, in cases involving sensitive resources or unusually complex projects, 310 CMR 15.003(2)(c) provides MassDEP with authority to intervene in the local permitting process.

Approving Innovative Alternative Technologies

MassDEP proposes to streamline the review and approval for innovative and alternative on-site wastewater treatment technologies by designating a third party to act as an authorized agent to research, review and evaluate emerging technologies. MassDEP will explore options for identifying a third party authorized agent through existing organizations that perform these services, as well as

BRP WASTEWATER REGULATORY REFORM PROPOSALS
Water Resources Commission – December 13, 2012

through national standard-setting organizations and potential partners who could administer these approvals. This will allow MassDEP to provide more streamlined and effective review for environmentally beneficial on-site wastewater treatment technologies. MassDEP will continue to set standards and provide oversight in the review of new wastewater treatment technology proposals, and will oversee the work of the authorized agent. MassDEP will also develop an auditing protocol to ensure effective results are demonstrated in the field.

The approval of on-site installation and use of innovative alternative technologies will remain unchanged. Local boards of health will approve most systems; MassDEP and the local board of health will approve piloted systems.

Other Proposed Changes to Title 5:

- Authority for MassDEP to allow wastewater containing wastes from activities listed under the Standard Industrial Classification Codes set forth at 310 CMR 15.004(5), if MassDEP determines that constituents of the waste are the same as sanitary sewage, to be discharged to a Title 5 system. This change will allow wastewater from industries such as breweries and wineries to be discharged to a Title 5 system provided MassDEP determines the wastewater has the same characteristics as sanitary sewage.
- Additional eligibility criteria to qualify as a soil evaluator, based on sufficient education in soil science, are proposed within 310 CMR 15.017.
- New violations for failure to submit soil evaluation and inspection forms to the approving authority, failure to provide information required by the approving authority, and making false, inaccurate or misleading statements in documents submitted to the approving authority (at 310 CMR 15.024) are proposed to clarify these obligations and reflect additional statutory authority to issue penalties for false and misleading submissions.
- Reduction of the design flow for one-bedroom elderly housing units from 150 GPD to 110 GPD making the design flow consistent with other residential flow estimates in 310 CMR 15.203. The current 150 GPD design flow will continue to apply only to two-bedroom elderly units. Elderly housing with units that have more than two bedrooms will continue to use the 110 GPD flow per bedroom.
- Revisions to Title 5 to reflect the rescission of 314 CMR 6.00 in 2009, and consolidation of those specific standards into the regulations at 314 CMR 5.00.

WASTEWATER- SEWER EXTENSION AND CONNECTION PERMITTING: 314 CMR 7.00; 12.00; 257 CMR 2.00

MassDEP is proposing to eliminate its permitting requirements for sanitary and industrial connections to, and extensions of, public sewer systems. This regulatory package involves three sets of regulations: 314 CMR 7.00, the Sewer Extension and Connection Permit Program; 314 CMR 12.00, Operation, Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers (O&M regulations); and 257 CMR 2.00, Board of Registration of Operators of Wastewater Treatment Facilities. The proposed revisions involve rescinding 314 CMR 7.00, incorporating certain provisions of 314 CMR 7.00 into 314 CMR 12.00, and clarifying an exemption in 257 CMR 2.00.

314 CMR 7.00. The regulations at 314 CMR 7.00 require a permit from MassDEP for connections to, and extensions of, local sewer collection systems. Prior to applying for a permit from MassDEP, an applicant must first obtain a local permit from the Department of Public Works, Sewer Department or Wastewater Treatment Facility. MassDEP approval typically does not apply different criteria or add significantly different conditions than these local permits. In all cases, the MassDEP permit requires compliance with the local permit. MassDEP proposes eliminating the current duplicative state permitting requirements for sanitary and industrial connections to, and extensions of, public sewer systems. These permitting requirements will continue to be regulated at the local level. The resource savings achieved by eliminating the state permitting requirement will enable MassDEP to provide enhanced assistance to municipalities in connection with their sewer collection and treatment systems, while maintaining the protection of public health, safety and the environment.

314 CMR 12.00. MassDEP will focus its attention on public health, safety and environmental issues associated with the collection and treatment of wastewater, such as infiltration and inflow (I/I), capacity issues at treatment facilities and within collection systems, sanitary sewer overflows, and industrial pretreatment programs. This will be accomplished by changes to 314 CMR 12.00 that will require all municipalities to incorporate the following into their Operation and Maintenance Program:

- Require an I/I identification and elimination program as part of municipal operation and maintenance procedures;
- Incorporate sanitary sewer overflow reporting requirements from the sewer regulations into the O&M regulations;
- Require municipalities to conduct sewer system evaluations to identify areas where limited capacity could lead to sanitary sewer overflows;
- Require municipalities to develop offset programs for systems or portions of systems that experience chronic overflows or where evaluation identifies a potential problem area; and
- Incorporate pretreatment standards for industrial discharges from the sewer regulations into the O&M regulations.

257 CMR 2.00. MassDEP proposes to modify the certified operator exemption for operating treatment facilities of 100 gallons per day or less to remove the requirement that such treatment facilities conduct their treatment in batches of two liters or less. This change will be pursued with the Board.

WASTEWATER - LAND APPLICATION OF SLUDGE AND SEPTAGE – RESIDUALS PRESUMPTIVE

APPROVAL; 310 CMR 32.00

As part of MassDEP's Regulatory Reform Initiative, these regulatory revisions create a presumptive approval process for renewals of Type I suitability approvals issued for the land application of wastewater sludge, and also allow longer terms for all suitability approvals. Materials classified as Type I are fertilizers or soil improvement products made from the residual products of the wastewater treatment process. Approximately 30% (or 53,513 dry tons) of all wastewater sludge generated annually in Massachusetts (approximately 176,732 dry tons) is beneficially reused and monitored under 310 CMR 32.00. The highest quality materials are classified as Type I. Type I materials may be used, sold and distributed on any site without further approvals, while other types require prior Departmental approval of each application. The presumptive renewal mechanism at 310 CMR 32.13(11)(b) will be available for Type I materials which have met very high quality standards and are able to be generally applied in Massachusetts. Renewal applications will be reviewed under the same process as an initial application. The changes create a presumption of renewal for Type I approvals if MassDEP does not require additional information, issue a written approval, or deny approval within 45 days of the renewal application submittal. The changes are expected to allow for more efficient issuance of renewed approvals, saving both applicants and MassDEP staff resources without compromising environmental protection. These changes will also permit the issuance of suitability approvals for longer terms. Currently these approvals may be issued for a period no longer than two years. MassDEP proposes to increase the maximum period, allowing terms up to five years.

SITE SPECIFIC WATER QUALITY CRITERIA FOR COPPER AND ZINC, Surface Water Quality Standards;
Table 28, 314 CMR 4.00

Pursuant to M.G.L. c. 21, section 27 and 314 CMR 4.05, Mass DEP proposes to revise the site specific copper criterion for twelve surface water segments and site specific zinc criteria for one segment. The current criteria for these metals, found at 314 CMR 4.05(5)(e), which incorporate The National Recommended Water Quality Criteria; 2002, EPA822-R-02-047, November 2002, and currently in facility permits, are overly stringent for the identified waters. Using water quality data from each segment and a sound scientific approach, site specific numerical limits for copper and zinc were developed for each of the twelve segments.

The site specific numerical limits have been approved by EPA Region 1. The proposed criteria, while still protective, are based on water quality conditions of the affected waters. Designated uses of the waters will continue to be protected once these limits have been adopted, and will be applied to individual discharges through adjusted permit limits. The table in the regulations lists the river name, site specific criteria and geographic markers.

The revisions will make it easier and less costly for the 12 surface water discharge / NPDES permittees (made up of six public wastewater treatment facilities, two private schools, two industrial facilities, one non-industrial commercial business and one residential facility) who discharge zinc or copper to the specified water bodies to treat their wastewater and to comply with permit effluent limitations and the Massachusetts Surface Water Quality Standards. MassDEP has discussed the proposed revisions with the affected permittees and EPA and has received considerable support for these changes. No opposition is anticipated as the proposed criteria are based on local data from these specific segments, making the standards more scientifically accurate. The environmental community did not oppose the last set of site specific copper criteria revisions promulgated for Massachusetts waters. Since the proposed criteria are based on site specific data, they are more appropriate than the recommended national criteria.

The changes are being made at this time as there are nine permittees whose applications for permit renewals are pending. MassDEP and EPA would like the new permits to be based on these proposed changes, rather than the current, more stringent nationally established criteria, which are more difficult and costly for permittees to meet.