



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

**COMMISSIONER'S DIRECTIVE**

**APPEALS OF WATER MANAGEMENT ACT  
REGISTRATION RENEWAL STATEMENTS**

On December 31, 2007, the Massachusetts Department of Environmental Protection ("MassDEP" or "the Department") issued approximately 370 Registration Renewal Statements ("Registration Renewals") pursuant to M.G.L. c. 21G, and the regulations promulgated thereunder at 310 CMR 36.04(1) and 36.10.

The Registration Renewals provide Registrants with the opportunity to request an adjudicatory hearing in accordance with G.L. c. 30A, § 10 and 310 C.M.R. 1.00 to resolve any legal and/or factual disputes arising from the Registration Renewals. In recognition of the potential for a large number of simultaneous appeals, many of which will likely involve common legal or factual issues, and to ensure the efficient, timely, and fair resolution of all adjudicatory appeals, I am issuing this directive to coordinate the conduct of these hearings with the schedule for the Department's guidance documents referenced in the Registration Renewals. All MassDEP personnel and other persons or entities involved in the adjudicatory hearing process for these appeals are instructed to comply with this Directive.

**MassDEP's Guidance Development Schedule**

The Department is in the process of completing the Guidance Documents referenced in each Registration Renewal. The schedule for finalizing the model is as follows:

Four (4) plans will be developed during early to mid 2008, each of which will involve review and comment by the Water Management Advisory Committee, with additional input by the Massachusetts Water Works Association ("MWWA") and other interested stakeholders.

1. The Seasonal Demand Management Plan
  - Draft – February 2008
  - Final – April 2008
2. Conservation Plans for each statewide standard (65 RGPCD and 10 UAW)
  - Draft – March 2008
  - Review w/ Advisory Committee– April, May 2008
  - Final – May 2008
3. Reservoir Drought Management Plan
  - DRAFT Criteria- June 2008.
  - Review w/Advisory Committee- June, July 2008
  - Final- August 2008

#### 150-Day Stay

1. The Guidance Documents may resolve some or all issues raised in appeals of Registration Renewals. Accordingly, all appeals of Registration Renewals shall be stayed for a period of at least 90 days commencing from the date each appeal was filed with MassDEP's Office of Appeals and Dispute Resolution ("OADR"). See Stay Procedure Below. The purpose of the stay period is to provide Registrants with an opportunity to review the Guidance documents and to make their decisions regarding the implementation of their conservation measures after the Guidance is in place.

2. Within 30 calendar days of receiving a copy of the final relevant plan(s), the Registrant will inform the Department's Litigation Manager in Office of General Counsel, and OADR in writing whether the final relevant plan resolves the matters it appealed. The Department shall respond in writing to the Registrant and OADR within 60 calendar days of Registrant's report to the Department and OADR regarding whether the appealed matters are at that time resolvable.

3. If the parties cannot resolve the matters at the time the Department files its report, the stay will be lifted and the Pre-Screening Process will proceed in accordance 310 CMR 1.01(5)(a)(15).

#### Stay Procedure

1. By Order issued by a Presiding Officer ("the Stay Order"), all appeals of Registration Renewals shall be automatically stayed for a period of at least 90 days commencing from the date that the appeal was filed with OADR. If the appeal is not resolved within the initial 90 day period, the Presiding Officer may commence the Pre-Screening Process in accordance with 310 CMR 1.01(5)(a)(15), or issue another stay of the appeal not to exceed an additional 60 days. If

an appeal has not been resolved within 150 days after the appeal's filing, the Presiding Officer shall issue a written recommendation to the Chief Presiding Officer whether the appeal should be transferred to the Division of Administrative Law Appeals ("DALA") for further proceedings before a DALA Administrative Magistrate. Upon review of the recommendation, the Chief Presiding Officer may transfer the appeal to DALA.

2. The issuance of such a Stay Order does not necessarily mean a filed appeal satisfies the requirements of 310 CMR 1.01. The Presiding Officer may vacate or modify the Stay Order at a later date if he or she recommends that the appeal be dismissed consistent with 310 CMR 1.01.

3. During the initial 90-day stay period, and at any time thereafter, the parties to an appeal may request the assistance of a MassDEP mediator to facilitate their settlement discussions. The request should be made in writing to Ms. Aprel McCabe, Administrator of OADR's Alternative Dispute Resolution Program, by (i) sending an electronic mail message to Ms. McCabe at [Aprel.McCabe@state.ma.us](mailto:Aprel.McCabe@state.ma.us), or (ii) sending written correspondence to Ms. McCabe by hand delivery at OADR or facsimile delivery at (617) 574-6880. The Presiding Officer may also order the parties to attend an Alternative Dispute Resolution Information Session that will be facilitated by Ms. McCabe.

#### Consolidation of Issues

1. In accordance with the mandate of 310 CMR 1.01(1)(b), the Presiding Officers of OADR in consultation with the Chief Presiding Officer are directed to take steps "to secure [the] just and speedy determination of every appeal," including adopting consolidated briefing and hearing schedules for legal issues that are common among the Registration Renewal appeals.

#### Commissioner's Final Decision

1. For any appeal that is not resolved by settlement or dispositive motion, the Presiding Officer or DALA Administrative Magistrate shall conduct a hearing on the appeal in accordance with 310 CMR 1.01, and issue a Recommended Final Decision on the appeal to the parties pursuant to 310 CMR 1.01(14)(a).

2. In accordance with 310 CMR 1.01(14)(b), the Commissioner shall continue to approve and sign every Final Decision of the agency, except where the Commissioner designates another to do so in her place. The Commissioner will issue the Final Decision or Remand Decision for further adjudicatory proceedings, as appropriate. If a Final Decision differs from the Recommended Final Decision, the Commissioner shall provide an appropriate statement of her reasons in accordance with 310 CMR 1.01(14)(b). The Commissioner will issue the Final Decision or Remand Decision, as appropriate, for distribution to the parties.



Laurie Burt, Commissioner

4/14/08  
Date