October 30, 2015

TERMINAL GROUP COMMENTS

The petroleum terminals on Chelsea Creek (the “Terminal Group”) hereby submit these comments to the Massachusetts Department of Environmental Protection (“MassDEP”) on its “Preliminary Regulatory Recommendations.” These comments focus on the proposed recommended changes to the Designated Port Areas (“DPA”) regulations. The DPA Program is designed to protect and preserve the industrial waterfront in Massachusetts. DPAs are essential to the Commonwealth’s economy, and the Chelsea Creek DPA also ensures energy security for the citizens of Massachusetts.

As discussed below, the Terminal Group is concerned that changes to the DPA regulations would impede the operations of the water-dependent industrial facilities, jeopardize navigational safety, and pose substantial risks to public safety.

1. Purpose of DPAs
2. 301 CMR 25.00

The Commonwealth, in its regulations governing DPAs, 301 CMR 25.00, has set forth the purpose of DPAs. It has:

…identified DPAs as geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water. These water-dependent industrial uses vary in scale and intensity but generally share a need for infrastructure with three essential components: a waterway and associated waterfront that has been developed for some form of commercial navigation or other direct utilization of the water; backland space that is conducive in both physical configuration and use character to the siting of industrial facilities and operations; and land-based transportation and public utility services appropriate for general industrial purposes.

This special combination of industrial attributes is found in a very limited and diminishing portion of the coastal zone, and particularly few areas are of sufficient contiguous extent to invite concentrations of related businesses and/or large scale facilities. Because economic, environmental, and social factors now virtually preclude further development of such an intensive nature, **what remains of the industrialized coast should be preserved to the maximum extent practicable in order to meet the long term, cumulative space needs of the water-dependent industries which these areas are so well-suited to accommodate. As a matter of state policy, it is not desirable to allow these scarce and non-renewable resources of the marine economy to be irretrievably committed to, or otherwise significantly impaired by, non-industrial or nonwater-dependent types of development which enjoy a far greater range of locational options.**

Accordingly, within DPAs it is the intent of the CZM Program to encourage water-dependent industrial use and to prohibit, on tidelands subject to the jurisdiction of M.G.L. c. 91, other uses except for compatible public access and certain industrial, commercial, and transportation activities that can occur on an interim basis without significant detriment to the capacity of DPAs to accommodate water-dependent industrial use in the future.

(Emphasis added). 301 CMR 25.01(2).

1. Discussion

At present, MassDEP has not released the specific language of its proposed recommended changes. However, the Terminal Group believes that if the regulations are amended in such a manner as to allow greater flexibility in authorizing the construction of recreational marinas and docks within a DPA, such as the Chelsea Creek DPA, these changes would harm the water-dependent industrial uses and undermine the very purpose of the DPA.

With the establishment of DPAs, the Commonwealth recognized the economic and labor benefits brought to the state by active working industrial ports. Thus, the Commonwealth specifically states in its current regulations and policy that the industrialized coast should be preserved to the maximum extent practicable. Indeed, the water-dependent industries are vital to the region’s current and future economic growth.

1. Navigational Safety

Several of the proposed recommended changes appear to encourage recreational boating within DPAs. Such a proposal could, for example, have significant adverse impact on the industrial vessel traffic in the Chelsea Creek DPA.

            As has been the case for decades, if not a century or more, Chelsea Creek is **an industrial waterway** in Boston Harbor that is used by large, ocean-going vessels, barges and tugboats to bring significant volumes of petroleum products (gasoline, diesel fuel, home heating oil, and jet fuel) to the Boston metropolitan area. The Creek is narrow and winding and requires careful navigation by the petroleum tankers and other large vessels that transit the waterway.  The petroleum tankers currently transiting the Creek, known as “Boston Beamers,” measure 90 feet wide, 600 feet long, and weigh up to 50,000 tons.  It is anticipated that over time, there will be fewer Boston Beamers available and even larger vessels will be used on the Creek. These vessels cannot readily slow down or change direction if they see a small boat in their path. Moreover, while trying to avoid a recreational craft, a vessel could be forced out of the channel and run aground. Therefore, allowing small craft in Chelsea Creek would (1) jeopardize navigational safety, and (2) pose significant risk to public safety. Accordingly, MassDEP should not adopt any changes to the DPA regulations that would facilitate mixed use of the Chelsea Creek DPA, allowing the construction and use of marinas and docks for recreational boating alongside the water-dependent industrial facilities. Such changes would be inconsistent with the interests of the Commonwealth.

1. DPA Decisions Should Rest with the Commonwealth

It is important that decisions regarding uses in DPAs be made at the state level. All parties should have the opportunity to comment on proposed mixed uses within a DPA, but the Commonwealth, not municipalities, should manage and plan for uses in DPAs. The Commonwealth has a much better ability to weigh all the benefits and detriments of a proposal as it would impact the entire state, not simply an individual locality.

1. Conclusion

Based on these concerns, it is important that MassDEP carefully craft any proposed changes to the DPA regulations so that they support and maintain efficient operations of the water-dependent industrial facilities within each DPA. The Terminal Group remains concerned that broad changes could inadvertently authorize mixed uses on Chelsea Creek that would not be compatible with industrial operations. Moreover, such amendments to the regulations could hinder the distribution of refined petroleum products throughout the Boston metropolitan area, thereby jeopardizing the region’s current and future economy. Those results would be inconsistent with the Commonwealth’s stated policy regarding DPAs.

Accordingly, the Terminal Group respectfully requests that MassDEP provide for an additional comment period once the specific language of the proposed regulatory changes is drafted.