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May 28, 2015

Ms. Kathleen B. Kerigan
Director for the Office of Regulatory & Permit
Ombudsman & Special Projects
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108-4747

RE: Wetland Regulation Impact on Dam Safety Projects

Dear Director Kerigan:

As a follow-up to our May 19th meeting, I am taking this opportunity to formerly provide you my thoughts and opinions on how current Wetland Protection Act Regulations impact dam safety engineering design in the Commonwealth. I believe this has relevance in light of your office's mandate to carry out Governor Baker's Executive Order No. 562 to reduce unnecessary regulatory burden.

As you know, the Department of Conservation and Recreation (DCR) is responsible for the safety of dams in the Commonwealth. Under 302 CMR 10.00, the DCR has the responsibility for the "review and approval of plans for the construction, alteration, modification, repair, enlargement, and removal of dams, quality assurance of construction, acceptance of construction, notification of intent to construct".

The main focus of the design repairs to dams is to improve safe operation under a full range of operating conditions including flooding. The majority of dams are classified as either Significant or High Hazard, meaning that, if they were to fail and create a sudden, uncontrolled release of water, there would be a likelihood of loss of life. The design engineer's goal is to develop repairs that meet and exceed minimum factors of safety against dam failure and thus hold public safety paramount.

Many dam repairs involve downstream slope flattening to improve structural stability of the earthen embankment. This oftentimes requires altering (filling) at the embankment toe, where vegetated wetlands have developed. Typically, these wetlands have developed only as the result of the existence of the dam/impoundment and the normal seepage through the embankment that provide hydrologic conditions for wetland growth.

Current there is no exemption under Wetland Protection Act Regulations (310 CMR 10.00) for wetland alteration necessitated due to dam safety repairs. Thus, repair projects require either (a) alteration of the dam design repair to avoid wetland; or (b) wetland replication that adds design, construction and monitoring costs to the project. These added costs can amount to tens of thousands of dollars to dam improvement projects.



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Also, permanent wetland alternation in excess of 5,000 ft², triggers, at a minimum, the filing of an Environmental Notification Form (ENF) under the Massachusetts Environmental Protection Act (MEPA – 301 CMR 11.00). This results in an added layer of regulatory oversight, which can require yet more environmental impact assessments and alternative analyses under the Environmental Impact Report (EIR) process. This most definitely increase the cost to the project and oftentimes can significantly delay the commencement of construction.

In conclusion, it is my opinion that treating dam repairs in the same fashion as proposed shopping malls, subdivisions, etc. in terms of WPA enforcement is not equitable. Dam Safety (i.e. public safety) should trump wetland protection in this instance. I would ask that DEP consider relaxing the wetland replication requirements and MEPA threshold triggers for dam safety repair/improvement – related projects.

I would be happy to discuss this issue further and would gladly volunteer to be part of an action group to investigate changes to wetland regulations dealing with dam repairs.

Sincerely,

GZA GEOENVIRONMENTAL, INC.

A handwritten signature in blue ink, appearing to read 'Peter H. Baril'.

Peter H. Baril, P.E.

Principal/Hydrologic Engineer