Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection
One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

Certification of Massachusetts State Implementation Plan (SIP) Adequacy Regarding Clean Air Act Sections 110(a)(1) and (2) for the 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS)

February 9, 2018

Summary

The Massachusetts Department of Environmental Protection (MassDEP) certifies to the U.S. Environmental Protection Agency (EPA) that the existing Massachusetts State Implementation Plan (SIP) adequately meets the requirements of Sections 110(a)(1) and (2) of the federal Clean Air Act (CAA) with respect to the annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS), with the exception of MassDEP's Prevention of Significant Deterioration (PSD) program since MassDEP implements the federal PSD regulations rather than through SIP-approved state regulations.

Background

Sections 110(a)(l) and 110(a)(2) of the CAA require each state to submit a SIP to EPA that provides for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(1) requires that each state make a new SIP submission within 3 years after promulgation of a new or revised NAAQS to ensure that the SIP meets the requirements of the new or revised NAAQS. This type of SIP submission is commonly referred to as an "infrastructure SIP." Section 110(a)(2) lists the basic elements that infrastructure SIPs must address, which include emissions inventories, ambient air quality monitoring and data systems, programs for enforcement of control measures, and adequate resources to implement the plan.

On December 14, 2012, EPA strengthened the $PM_{2.5}$ NAAQS by lowering the primary annual standard from 15 to 12 micrograms per cubic meter ($\mu g/m^3$). EPA retained the $PM_{2.5}$ secondary annual standard of 15 $\mu g/m^3$ and retained the 24-hour standard of 35 $\mu g/m^3$. Therefore, MassDEP is required to make a SIP submission regarding the revised annual $PM_{2.5}$ NAAQS. In preparing this SIP submission, MassDEP followed guidance EPA issued in September 2014 [1] and in March 2016.[2] EPA's guidance states that where an air agency determines that the provisions in or referred to by its existing EPA-approved SIP are adequate for a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification. MassDEP is making such a certification for the 2012 annual $PM_{2.5}$ NAAQS.

Massachusetts SIP Elements

Listed below are the SIP elements required under CAA Section 110(a)(2) and a description of how the Massachusetts SIP satisfies the Section 110(a)(2) requirements. This certification does not include Section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to PSD since EPA has delegated full authority to MassDEP to implement the federal PSD regulations at 40 CFR 51.52, and Massachusetts is subject to a Federal Implementation Plan (FIP) for PSD.

[1] Memo from Stephen D. Page, Director OAQPS, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2)," September 13, 2013.
[2] Memo from Stephan D. Page, Director OAQPS, "Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)," March 17, 2016.

Massachusetts Statutory Authority and Regulations Meeting Clean Air Act Section 110(a)(1) and (2) SIP requirements for 2012 Annual $PM_{2.5}$ NAAQS*

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
110(a)(2)(A) Emission limits and other control measures	"…include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance…"	**M.G.L. c. 21A, s. 8**. *Organization of departments; powers, duties and functions.* Sets forth the powers and duties of the Department of Environmental Protection (MassDEP). **M.G.L. c. 111, s. 142 A-O**. These laws provide MassDEP with broad authority to prevent pollution or contamination of the atmosphere and to prescribe and establish regulations to prevent pollution or undue contamination of the atmosphere. **M.G.L. c. 21A, s. 18**. *Permit applications and compliance assurance fees; timely action schedules; regulations*. Authorizes MassDEP to establish fees applicable to the regulatory programs it administers. MassDEP is submitting this section to EPA for inclusion in the Massachusetts SIP (Attachment 3). **310 CMR 4.00**. *Timely Action Schedule and Fee Provisions*. Establishes fees for MassDEP's programs. **310 CMR 7.00**. *Air Pollution Control*. Many SIP approved air quality regulations within 310 CMR 7.00 provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters that satisfy the requirements of the CAA section 110(a)(2)(A) for the 2012 $PM_{2.5}$ NAAQS. Except for sections that are not required to be in the SIP, most of the regulations in this chapter have been approved by EPA or submitted to EPA for approval into the SIP.

* CFR refers to the U.S. Code of Federal Regulations; CMR refers to the Code of Massachusetts Regulations

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
		The regulations more specific to the control of $PM_{2.5}$ are found in the following sections of 310 CMR: 7.02. Plan Approval and Emission Limitations 7.03. Plan Approval Exemption: Construction Requirements 7.04: Fossil Fuel Utilization Facilities 7.05. Fuels All Districts 7.06: Visible Emissions 7.07: Open Burning 7.08. Incinerators 7.09: Dust, Odor, Construction and Demolition 7.19: Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NOx) 7.26. Industry Performance Standards 7.29. Emission Standards for Power Plants 7.34. Massachusetts NO_x Ozone Season Program ($MassNO_x$) (*proposed*) 7.40. Low Emission Vehicle Program 7.54: Large Combustion Emission Units Appendix A: Emission Offsets and Nonattainment Review Appendix C: Operating Permit Program Note that in a letter dated June 14, 2016, MassDEP committed to add a definition of "National Ambient Air Quality Standards (NAAQS)" to 310 CMR 7.00 that includes a calendar date to make clear that references to NAAQS in 310 CMR 7.00 encompass all the current NAAQS, including the 2012 $PM_{2.5}$ NAAQS. MassDEP will submit this definition to EPA for approval into the SIP no later than one year from the effective date of EPA's final action on the previously submitted ISIPs for ozone, lead, nitrogen dioxide, and sulfur dioxide. **310 CMR 60.00**. *Air Pollution Control for Mobile Sources* including 310 CMR 60.02: Massachusetts Motor Vehicle Emissions Inspection and Maintenance

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
		Program.
110(a)(2)(B) Ambient Air quality monitoring/data system	"…provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator…"	**M.G.L. c. 111, s. 142B-D.** Authorizes MassDEP to maintain and operate air sampling stations and devices, and to require, for the purpose of conducting a continuing inventory of air pollution sources of emissions, any person to register with MassDEP and provide emissions information. **310 CMR 7.02.** *Plan Approval and Emission Limitations.* **310 CMR 7.12**. *Source Registration*. **310 CMR 7.13**. *Stack Testing*. **310 CMR 7.14**. *Monitoring Devices and Reports*. **310 CMR 7.00: Appendix A**. *Emissions Offsets and Nonattainment Review*. Note that with this Certification MassDEP is submitting several updated sections of Appendix A to EPA for approval into the SIP. **310 CMR 7.00**: **Appendix C**. *Operating Permit Program*. MassDEP collects and reports ambient air quality data for all NAAQS pollutants. These data are reviewed, validated, and submitted to EPA's air quality system (AQS). On January 28, 1980, MassDEP submitted to EPA pursuant to 40 CFR § 52.1120 (36) a comprehensive air quality monitoring plan to meet requirements of 40 CFR part 58. MassDEP annually submits to EPA an Ambient Air Monitoring Network Plan. The most recent Draft Air Monitoring Network Plan was submitted to EPA on May 20, 2016.

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
110(a)(2)(C) Program for enforcement of control measures	"…include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D…"	**M.G.L. c. 111, s. 2C**. *Pollution violations; orders of department of environmental protection*. Authorizes MassDEP to issue orders enforcing air pollution control regulations. **M.G.L. c. 111, s. 142A–O**. These laws authorize MassDEP to adopt regulations to control pollution or contamination of atmosphere, and enforce such regulations and issue penalties. **M.G.L. c. 21A, s. 16**. *Civil Administrative Penalties.* Authorizes MassDEP to assess penalties for failure to comply with laws or regulations. **310 CMR 5.00.** *Administrative Penalties*. **310 CMR 7.02**. *Plan Approval and Emission Limitations*. **310 CMR 7.03**. *Plan Approval Exemption: Construction Requirements*. **310 CMR 7.05**. *Fuels All Districts.* **310 CMR 7.08**. *Incinerators*. **310 CMR 7.26**. *Industry Performance Standards*. **310 CMR 7.52**. *Enforcement Provisions*. **310 CMR 7.00: Appendix A.** *Emission Offsets and Nonattainment Review*. Note that with this Certification MassDEP is submitting several updated sections of Appendix A to EPA for approval into the SIP. **310 CMR 7.00: Appendix C**. *Operating Permit and Compliance Program*.

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
		PSD Note: Massachusetts does not have an approved Prevention of Significant Deterioration (PSD) program, but is subject to a Federal Implementation Plan (FIP) under which MassDEP implements 40 CFR 51.52 through a delegation agreement with EPA. Since Massachusetts has not submitted PSD regulations to EPA, EPA will make a finding of failure to submit with respect to the PSD sub-element of section 110(a)(2)(C). However, there are no sanctions or new FIP obligations associated with this finding. EPA also will make a finding of failure to submit for the PSD-related portions of elements D and J.
110(a)(2)(D) Interstate transport	"…contain adequate provisions - (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to	MassDEP's programs adequately prohibit emissions from Massachusetts sources from contributing significantly to nonattainment or interfering with maintenance in other states, and meet all of the obligations mandated by CAA section 110(a)(2)(D). In addition to the authorities and programs described elsewhere in this document, this conclusion is supported by the following: 110(a)(2)(D)(i)(I): Contribute to nonattainment/interfere with maintenance of the standard (prongs 1 and 2 or "Transport SIP"). See Attachment 1. 110(a)(2)(D)(i)(II): PSD (prong 3). See PSD note and other programs above for 110(a)(2)(C). 110(a)(2)(D)(i)(II): Visibility Protection (prong 4). Massachusetts is addressing this requirement through its Regional Haze SIP that was approved by EPA on September 19, 2013.[3] 110(a)(2)(D)(ii): Interstate Pollution Abatement. See PSD note above for 110(a)(2)(C). Massachusetts relies on the federal PSD requirements for notification to meet this obligation. No source or sources within

[3] Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Regional Haze, Final Rule. 40 CFR Part 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, Subpart W—Massachusetts. FR Vol. 78, No. 182, p.57487. September 19, 2013.

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
	protect visibility, (ii) insuring compliance with the applicable; requirements of sections 126 and 115 (relating to interstate and international pollution abatement);"	Massachusetts are the subject of an active finding under section 126 of the CAA with respect to the 2012 $PM_{2.5}$ NAAQS. 110(a)(2)(D)(ii): International Pollution Abatement. There is no final finding under section 115 of the CAA against Massachusetts with respect to the 2012 $PM_{2.5}$ NAAQS.
110(a)(2)(E) Adequate resources	"…provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a	**M.G.L. c. 21A, s. 8**. *Organization of departments; powers, duties and functions.* Sets forth the powers and duties of MassDEP. Provides that in no event shall MassDEP authorize implementation of any plan, strategy, or technology less protective of the environment than required by any applicable federal statute. **M.G.L. c. 111, s. 142A-O**. Provides MassDEP with sufficient authority to carry out the implementation plan. **M.G.L. c. 111, s. 142E**. *Air Pollution, preventing and controlling.* Provides that all departments, agencies, commissions, authorities and political subdivisions shall be subject to rules and regulations adopted by the department of environmental protection. MassDEP currently has adequate personnel and funding to implement the existing SIP, and expects to have adequate personnel and funding for implementation during the 5-year period following submission of this Infrastructure SIP Certification and in future years. MassDEP is the sole authority implementing the SIP and does not rely on local or regional governments or agencies to carry out this responsibility. No State board or body approves air permits or enforcement orders. Heads of Executive Agencies with authority to approve air permits or enforcement orders are

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
	local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision…"	prohibited from involvement in matters in which their private interests conflict or appear to conflict with their public duties or responsibilities under M.G.L. c. 268A, The Conflict of Interest Law, as amended by c. 93, Acts of 2011. Note that by letter dated June 6, 2015, MassDEP submitted Sections 6 and 6A of c. 268A to EPA for approval into the SIP.
110(a)(2)(F) Stationary source emissions monitoring and reporting	"…require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection…"	**M.G.L. c. 111, s. 142A-D.** Gives MassDEP the authority to maintain and operate air sampling stations and devices and to require, for the purpose of conducting a continuing inventory of air pollution sources of emissions, any person to register with MassDEP and provide emissions information. M.G.L. c. 111, § 142B states: "Notwithstanding the provisions of any law to the contrary, any information, record, or particular part thereof, other than emission data submitted to the department pursuant to this section, shall, upon request, be kept confidential and not considered to be a public record…" **M.G.L. c. 66, s. 1.** *Public inspection and copies of records; presumption; exceptions.* **310 CMR 7.12**. *Source Registration*. **310 CMR 7.13**. *Stack Testing*. **310 CMR 7.14**. *Monitoring Devices and Reports*. **310 CMR 3.00**. *Public Records Access Regulations*.
110(a)(2)(G) Emergency	"…provide for authority comparable to that in section	**M.G.L. c.111, s. 2B-C.** *Air Pollution Emergencies*. Authorizes the Commissioner of MassDEP to determine that a condition or impending

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
power	303 and adequate contingency plans to implement such authority…"	condition of the atmosphere in the commonwealth or in any part thereof constitutes a present or reasonably imminent danger to health, and may, with the approval of the governor, declare an air pollution emergency and cause the fact to be made known to the public. **M.G.L. c. 21A, s. 8.** *Organization of departments; powers, duties, and functions***.** Authorizes MassDEP to minimize and prevent damage or threat of damage to the environment. **310 CMR 8.00**: *The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies*. Authorizes MassDEP to take actions to prevent ambient air concentrations of pollutants subject to a NAAQS from reaching levels that would constitute significant harm to public health, consistent with the significant harm levels and procedures for state emergency episode plans established by EPA in 40 CFR Part 51.150. Note that in a letter dated June 14, 2016, MassDEP committed to submit the entirety of 310 CMR 8.00 to EPA for approval into the SIP to satisfy the contingency plan requirement of this element. The requirement for a state to submit an emergency episode plan is based on a priority region classification under 40 CFR 51.150 Classification of regions for episode plans. That regulation does not provide a classification threshold for $PM_{2.5}$. EPA guidance recommends that states with a 24-hour $PM_{2.5}$ concentration above 140 $\mu g/m^3$ (based on the most recent three years of data) develop an emergency episode plan. For states where this level has not been exceeded, the state can certify that it has appropriate general emergency powers to address $PM_{2.5}$ related episodes, and that no specific emergency episode plans are needed at this time. The maximum daily $PM_{2.5}$ concentration in Massachusetts since 2012 was 72.7 $\mu g/m^3$ (7/14/2012 at Boston - Harrison Avenue, Site ID 250250042). Therefore,

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
		an emergency episode plan is not required to address $PM_{2.5}$ related episodes under the law and regulations cited above. MassDEP forecasts concentrations of $PM_{2.5}$ statewide throughout the year and issues alerts to the public when concentrations are expected to reach unhealthy levels using the EPA Air Quality Index and will continue to do so.
110(a)(2)(H) Future SIP revisions	"…provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act…"	**M.G.L. c. 111, s. 142A-O**. Allows MassDEP to amend its air pollution control regulations. Section 142A: "The department of environmental protection, referred to in this section and in sections one hundred and forty-two B through one hundred and forty-two M, inclusive, as the department may from time to time adopt regulations, pursuant to this section and sections one hundred and forty-two B through one hundred and forty-two M, inclusive, to prevent pollution or contamination of the atmosphere." Section 142D: "From time to time the department shall review the ambient air quality standards and plan for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards."

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
110(a)(2)(J) Consultation with government officials; public notification; PSD; visibility protection	"…meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection)…"	**M.G.L. c. 30A.** Requires MassDEP to provide notice and public comment and hearing prior to adoption of any regulations. **Executive Order No. 145**. Requires MassDEP to provide notice to the Local Government Advisory Committee through the Massachusetts Municipal Association to solicit input on the impact of proposed regulations on local government. This process allows for consultation with local government officials whose jurisdictions might be affected by SIP development, implementation, and enforcement activities. MassDEP is submitting this executive order to EPA for inclusion in the Massachusetts SIP (Attachment 2). **310 CMR 7.00**: Provides for public comment on permits for major stationary sources. **310 CMR 7.00 Appendix C**: provides review of draft Operating permits for major stationary sources by the public, EPA and affected states. MassDEP maintains a public website (MassAir) that includes: a daily air quality forecast to inform the public about concentrations of fine particulate matter and ozone, real-time air quality data for NAAQS pollutants, air quality trends, information on health implications, information on the causes of air pollution, and links to MassDEP's annual air quality reports and other air quality topics. The MassDEP website maintains pages on the SIP, SIP Steering Committee, proposed air regulations, NAAQS, MassDEP's air quality control programs, and an online form for subscribing to regulation updates and related notifications. MassDEP also contributes to EPA's AIRNOW which notifies the public of air quality through its website, alerts, and press releases. The visibility sub-element of Element J does not need to be addressed pursuant to EPA's SIP guidance, which states that there are no new visibility protection

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
		requirements as a result of a revised NAAQS. **Consultation with Federal Land Managers (FLMs):** Massachusetts relies on the requirement for consultation with FLMs contained in the PSD FIP to meet this obligation.
110(a)(2)(K) Air quality modeling/data	"…provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator…"	**M.G.L. c. 111, s. 142B-D**. Gives MassDEP the authority to maintain and operate air sampling stations and devices and to require any person to register with MassDEP and provide emissions information. **M.G..L. c. 66, s. 1**. Public inspection and copies of records; presumption; exceptions. **310 CMR 7.02**. *Plan Approval and Emission Limitations*; 7.02(7), *Mitigation of Air Pollution*. Authorizes MassDEP to require air dispersion modeling analyses. **310 CMR 7.12**. *Source Registration*. Requires facilities that have the potential to emit pollutants at prescribed thresholds to report emissions to MassDEP. **310 CMR 7.13**. *Stack Testing*. **310 CMR 7.14**. *Monitoring Devices and Reports.* **310 CMR 7.00: Appendix A -** *Emissions Offsets and Nonattainment Review*. Requires the submittal of air quality modeling to demonstrate the impacts of new and modified major sources. Note that with this Certification MassDEP is submitting several updated sections of Appendix A to EPA for approval into the SIP. **310 CMR 3.00**. *Access to and Confidentiality of Department Records and Files*. Assures public access to MassDEP's reports to the extent allowed by statute.

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
110(a)(2)(L) Permitting fees	"…require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V…"	**M.G.L. c.21A, s.18**. Authorizes MassDEP to promulgate regulations establishing fees. **310 CMR 4.00**. *Timely Action Schedule and Fee Provisions*. Sets permit and compliance fees, including fees for Operating Permits (Title V).
110(a)(2)(M) Consultation/ Participation by affected local entities	"…provide for consultation and participation by local political subdivisions affected by the plan…"	**M.G.L. c. 111, s. 142E**. *Cooperation by and Authority of Department over, other Agencies, Commissioners, Authorities, or Political Subdivisions with Respect to Air Pollution*. Provides that all departments, agencies, commissions, authorities and political subdivisions shall cooperate with MassDEP in preventing and controlling pollution of the air and be subject to rules and regulations adopted by MassDEP.

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall…)	Massachusetts Program
		M.G.L. c. 30A. *Massachusetts Administrative Procedures Act*. Requires MassDEP to provide notice and public comment and hearing prior to adoption, amendment, or repeal of any regulations. Leaders of political subdivisions have the opportunity to review such notices and to participate in the public process required by Chapter 30A. MassDEP also must comply with EPA requirements related to public notice of SIP revisions, which puts local political subdivisions on notice of changes that may affect them. **Executive Order No. 145**. Requires MassDEP to provide notice to the Local Government Advisory Committee, through the Massachusetts Municipal Association, to solicit input on the impact of proposed regulations on local government. **SIP Steering Committee**. MassDEP consults with local political subdivisions through the SIP Steering Committee, which was created pursuant to the 1990 Clean Air Amendments. The following constituencies are represented on the Massachusetts SIP Steering Committee: local and regional governmental entities, business and industry, and environmental groups and academia. The Committee provides a forum for consultation and participation by affected local entities in the development of the SIP and air quality regulations. **Stakeholder Outreach**. As a matter of policy when adopting air regulations, MassDEP conducts stakeholder outreach, including meetings to elicit stakeholder feedback before proposing regulations for formal public review and comment. Local entities affected by regulations or SIP revisions are provided opportunities to consult with MassDEP through the stakeholder outreach process.

Attachments

MassDEP is submitting the attachments below for inclusion in the Massachusetts SIP.

Attachment 1
Certification of Massachusetts' Obligation Good Neighbor Obligation to Other States Under CAA section 110(a)(2)(D)(i)(I) for the 2012 and 2006 $PM_{2.5}$ NAAQS

Attachment 2
Executive Order 145: Consultation by State Agencies with Local Governments re Administrative Mandates of Such Agencies Imposing Financial Burdens on Such Local Governments. November 20, 1978

Attachment 3
M.G.L. c. 21A, s.18

Attachment 1

Certification of Massachusetts' Good Neighbor Obligation to Other States Under CAA section 110(a)(2)(D)(i)(I) for the 2012 and 2006 $PM_{2.5}$ NAAQS

Summary. The federal Clean Air Act (CAA) section110(a)(2)(D)(i)(I) requires each state implementation plan (SIP) to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any National Ambient Air Quality Standard (NAAQS). MassDEP examined the relevant data and based on the weight of this evidence has determined that Massachusetts has met the "Good Neighbor" requirements for the 2012 and 2006 fine particle ($PM_{2.5}$) NAAQS (both the 24-hour and annual standards). The supporting evidence on which this conclusion is based is summarized in this attachment and addresses the transport requirements for the 2006 $PM_{2.5}$ NAAQS as well as the 2012 $PM_{2.5}$ NAAQS revisions.

EPA Guidance. On March 17, 2016 EPA issued a guidance memo for addressing the Interstate Transport Good Neighbor provision for the 2012 $PM_{2.5}$ NAAQS.[1] The memo describes the framework EPA has used to address the Good Neighbor provision and reviews modeling data and air quality projections relevant to the 2012 $PM_{2.5}$ standards. Attachment 1 to that memo presents photochemical modeling used to project future design values and the criteria for determining potential nonattainment and maintenance concerns. In Attachment 2, EPA provides projected design values for 2017 and 2025.

The EPA memo identifies the following four steps for addressing interstate transport:

1. Identify downwind receptors that are expected to have problems attaining or maintaining the NAAQS.
2. Identify which upwind states contribute to these problems in amounts sufficient to warrant further analysis.
3. For states contributing to downwind air quality problems, identify emission reductions necessary to prevent the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS, and.

[1] Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I). Memorandum from Stephen D. Page, Directory EPA Office of Air Quality Planning and Standards. March 17, 2016. http://4cleanair.org/sites/default/files/resources/Transport-EPA_Memo_on_GNSIP_Provisions_2012_PM25-031716.pdf, Attachments: http://4cleanair.org/sites/default/files/resources/Transport-EPA_Modeling-2017&2025-031716.pdf , http://4cleanair.org/sites/default/files/resources/Transport-EPA_Modeling_Results-State_by_State-031716.pdf

4. For states contributing to downwind air quality problems, reduce any identified upwind emissions through permanent and enforceable measures.

Nearby PM2.5 Nonattainment Areas. EPA finalized designations for the 2012 $PM_{2.5}$ annual NAAQS on December 18, 2014 (with technical revisions on March 31, 2015). EPA designated all of Massachusetts and adjacent states as "unclassifiable/attainment." There are no nonattainment areas located anywhere in the states generally downwind of Massachusetts. The closest nonattainment areas are in Pennsylvania and Ohio, all located generally upwind of Massachusetts more than 100 miles from the Massachusetts border (see Figure 1).

EPA finalized initial designations for the 2006 $PM_{2.5}$ 24-hour NAAQS on November 13, 2009.[2] EPA designated all of Massachusetts and adjacent areas as "unclassifiable/ attainment." There were no nonattainment areas in the states generally downwind of Massachusetts. However, there were several non-attainment areas in Connecticut and the New York City area as well as in New Jersey and Pennsylvania. EPA later redesignated most of these areas to attainment (see Figure 2).

The downwind nonattainment areas remaining for the 2006 standard are shown in Figure 1. The closest nonattainment areas are in central and southern Pennsylvania.

[2] Federal Register / Vol. 74, No. 218 / Friday, November 13, 2009. Air Quality Designations for the 2006 24-Hour Fine Particle (PM-2.5) National Ambient Air Quality Standards; Final Rule (November 13, 2009). https://www.gpo.gov/fdsys/pkg/FR-2009-11-13/pdf/E9-25711.pdf#page=2

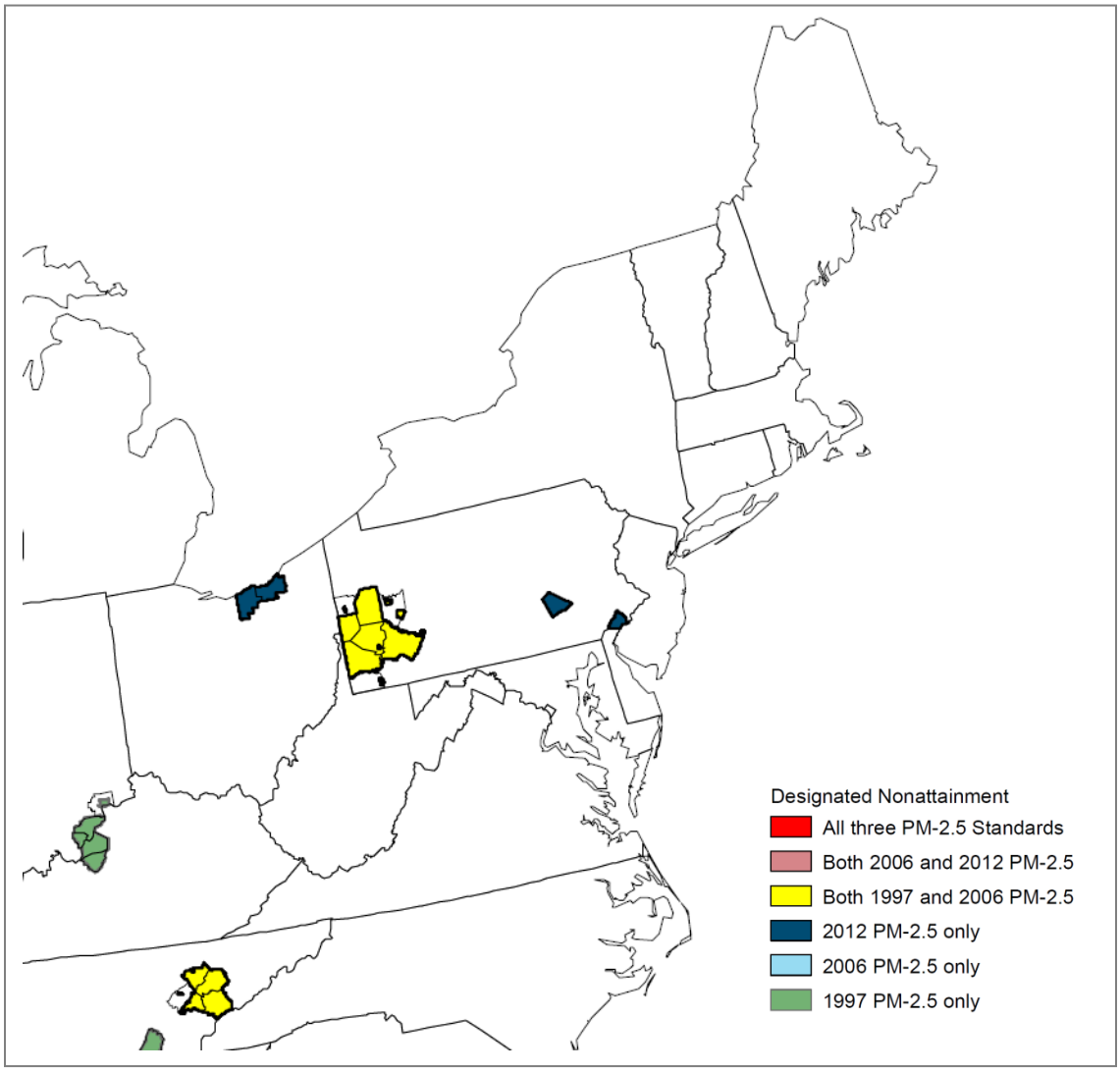

Figure 1: Current EPA Designations for $PM_{2.5}$

Source: EPA Greenbook website (https://www.epa.gov/green-book/green-book-pm-25-2006-area-information) $PM_{2.5}$ (2006 Standard) Area Information, Area Maps, Counties Designated Nonattainment for the 1997, 2006 and/or 2012 $PM_{2.5}$ Standards - U.S. Map (excerpt) http://www3.epa.gov/airquality/greenbook/map/mappm25both.pdf Updated 10/1/2015.

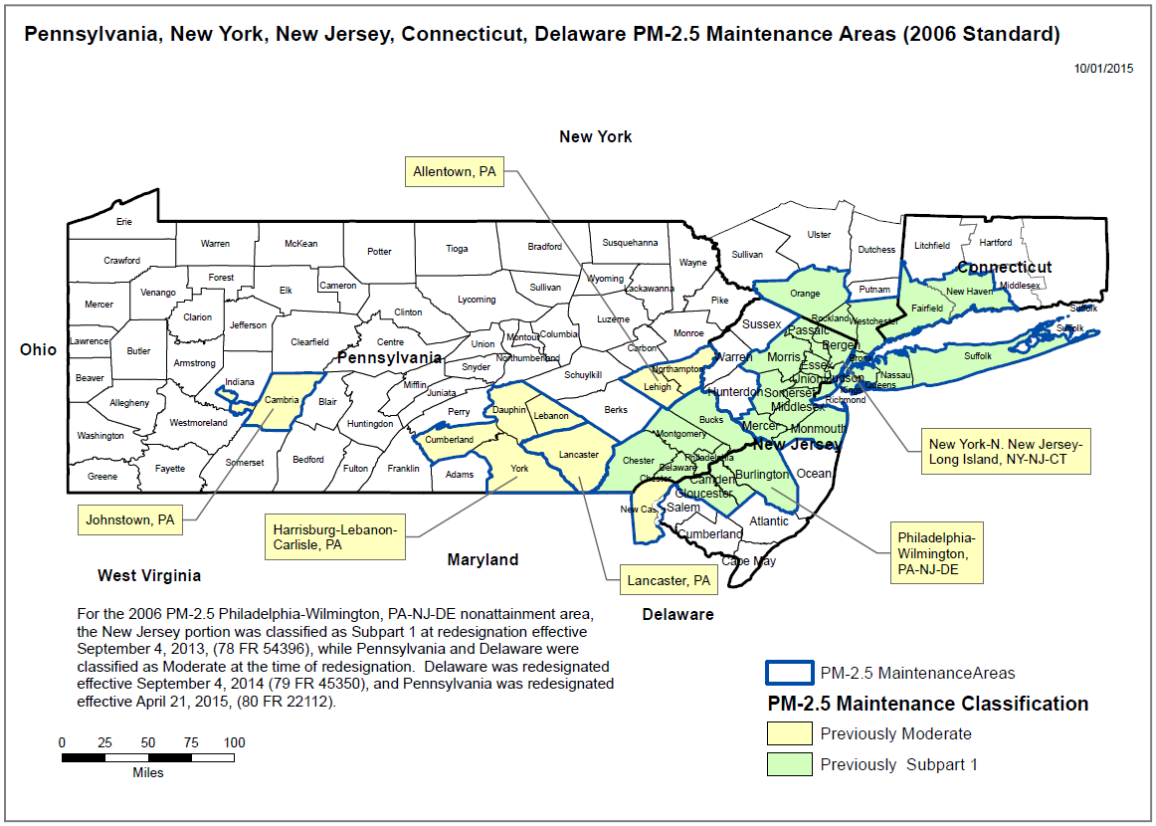

Figure 2: $PM_{2.5}$ Maintenance Areas for the 2006 Standard

Source: EP Greenbook website. http://www3.epa.gov/airquality/greenbook/panynjctde25_2006m.html

Nearby Areas Continue to Monitor Attainment and Downward Trends. Figure 3 and Figure 4 present the trends in the maximum $PM_{2.5}$ design values for nearby states over the past 11 years.[3] They show that all nearby states continue to regularly monitor attainment at their highest monitors and the trends are consistently downward over time.

[3] EPA Air Quality Design Values web site, 2015 Design Value Reports. pm25_designvalues_20132015_final_07_29_16.xlsx https://www.epa.gov/air-trends/air-quality-design-values Note: Values for Groton, CT monitor removed for 2012-2015 due to closure of that monitor in early 2014.

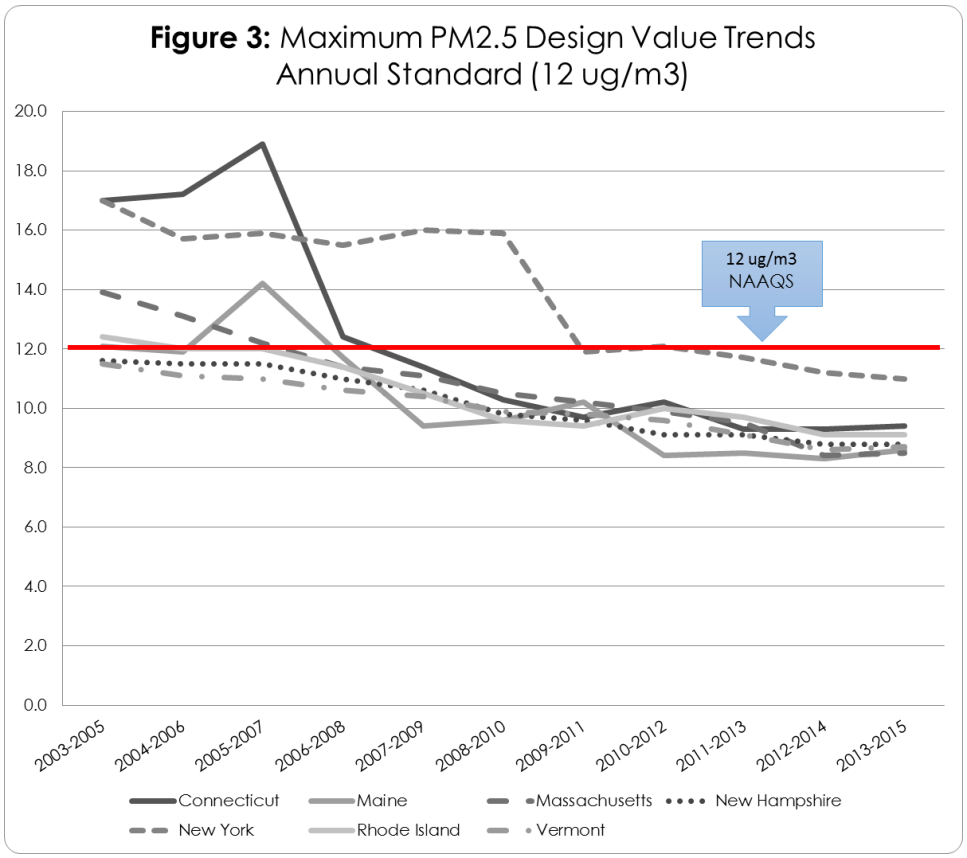
Figure 3: Maximum PM2.5 Design Value Trends
Annual Standard (12 ug/m3)
20.0
18.0
16.0
14.0
12.0
10.0
8.0
6.0
4.0
2.0
0.0
12 ug/m3
NAAQS
2003-2005
2004-2006
2005-2007
2006-2008
2007-2009
2008-2010
2009-2011
2010-2012
2011-2013
2012-2014
2013-2015
Connecticut
Maine
Massachusetts
New Hampshire
New York
Rhode Island
Vermont

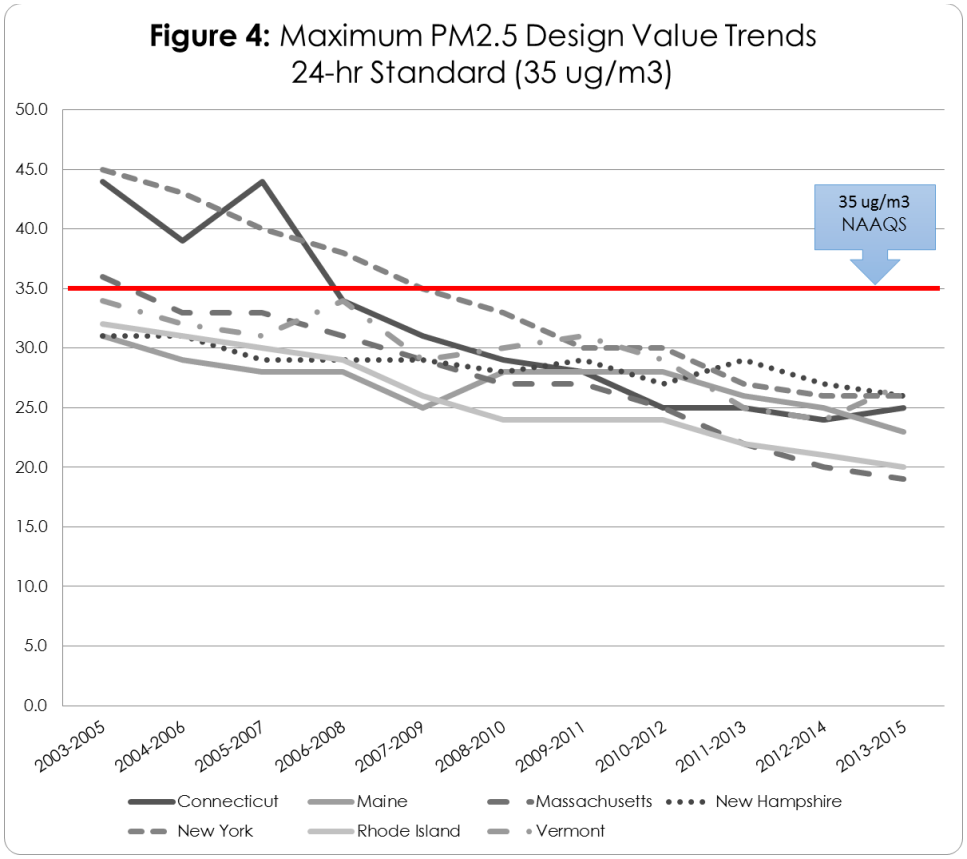
Figure 4: Maximum PM2.5 Design Value Trends
24-hr Standard (35 ug/m3)
50.0
45.0
40.0
35.0
30.0
25.0
20.0
15.0
10.0
5.0
0.0
35 ug/m3
NAAQS
2003-2005
2004-2006
2005-2007
2006-2008
2007-2009
2008-2010
2009-2011
2010-2012
2011-2013
2012-2014
2013-2015
Connecticut
Maine
Massachusetts
New Hampshire
New York
Rhode Island
Vermont

EPA Projections. EPA modeling for the Cross-State Air Pollution Rule (CSAPR) in 2011 projected design values for the 1997 and 2006 $PM_{2.5}$ NAAQS.[4] This effort also identified receptors with nonattainment problems based on projected average design values and maintenance problems based on projected maximum future design values. In proposing an update to CSAPR in 2015, EPA refined the definition of nonattainment receptor to include both projected and currently monitored nonattainment.

Using modeling from the 2015 CSAPR update and 2015 ozone NAAQS, EPA projected 2017 and 2025 average and maximum design values for all monitors and presented these results in the 2016 guidance memo. Attachment 1 to the 2016 guidance memo describes the modeling and projection methodology.

The results showed that all but one of the non-attainment areas mentioned above will attain the standard in 2017 and continue to maintain the standard in 2025. The exception is a monitor in Allegheny County, Pennsylvania. The projections for that monitor are shown below.

Table 1: EPA Current and Projected Design Values for Nonattaining Allegheny County Monitor

Monitor ID	State	County	5-year Weighted Average Design Value 2009-2013	Max Design Value 2009-2013	Average Design Value 2017	Max Design Value 2025	Average Design Value 2025	Max Design Value 2025
420030064	PA	Allegheny	14.4	15.02	11.67	12.16	11.18	11.65

Source: Attachment 2 to the March 17, 2016 EPA guidance memo on PM2.5 Transport.
All values in ug/m^3

EPA guidance observes that this monitor is a projected potential maintenance receptor for 2017, but is below the NAAQS in 2025. EPA concludes that "more analysis of this site may be necessary to determine if it should be considered a potential nonattainment or maintenance receptor for 2013 $PM_{2.5}$ transport analysis." EPA suggests that linear interpolation of the design value at the 2021 attainment deadline for this monitor may be appropriate. Further, EPA observes that such interpolation indicates the maximum design value would be 11.91 µg/m^3, which is below the NAAQS. EPA's guidance does not reach a final conclusion regarding this monitor, but indicates that further information about emissions trends may be needed to support that conclusion.

[4] Technical Support Documents for the Final Cross-State Air Pollution Rule (CSAPR) and the Supplemental Notice of Proposed Rulemaking (SNPR): Average and maximum design values by monitoring site for 8-hour ozone, annual PM2.5, and 24-hour PM2.5 for the 2003-2007 base period, the 2012 base case, and the 2014 base and CSAPR control scenario (Excel)(369 K, June 2011) https://www.epa.gov/sites/production/files/2016-06/csapr_ozone_and_pm2.5_design_values.xls on https://www.epa.gov/csapr/cross-state-air-pollution-final-and-proposed-rules

Contributions from Massachusetts to Neighboring Monitors. EPA modeling for CSAPR also assessed states' contributions to out-of-state monitors for the 1997 and 2006 $PM_{2.5}$ NAAQS.[5] While not intended to address the 2012 annual $PM_{2.5}$ NAAQS, these results are helpful for determining Massachusetts impacts on nearby/downwind areas.

Tables 2 and 3 identify all out-of-state monitors where Massachusetts emissions contributed 1% or more of the 24-hour and annual NAAQS (i.e., at least 0.12 µg/m3 for the annual standard and 0.25 µg/m3 for the 24-hour standard).

The modeling indicates that Massachusetts contributes 1% or more to the 2006 24-hour standard at 28 monitors. Of these, 8 monitors were designated nonattainment for that standard in the past. All of these 8 monitors are now monitoring attainment for the 2011-2013 and 2012-2014 design values as shown in Table 2. All 8 monitors also are in areas that are typically upwind of Massachusetts (Pennsylvania, New York, Connecticut, Delaware), are over 100 miles distant, and the Massachusetts contribution levels are all less than 2%.

Of the 8 monitors, only one monitor continues to have design values higher than 75% of the NAAQS, which is in Dauphine, Pennsylvania. However, that monitor is over 250 miles upwind of Massachusetts.

The Cheshire County, New Hampshire monitor also has a design value over 75% of the standard and it is on the Massachusetts border. The Massachusetts contribution, however, is also very small (less than 2%) and that monitor has historically maintained attainment.

The modeling also indicates that Massachusetts contributes 1% or more of the 2012 annual standard at 23 monitors (see Table 3). However, the current design values for all of these monitors continue to indicate attainment with nearly all values less than 75% of the standard. One monitor in Connecticut has a design value of 11.5, but this monitor was shut down in the early part of 2014 leading to an invalid high average annual value that caused the elevated design value.

The modeling also indicates that the Massachusetts contribution to the Alleghany County monitor identified in the 2016 guidance memo as a potential maintenance concern is 0.8%. This is an insignificant contribution based on EPA's 1% screening threshold. The CSAPR rule established a screening threshold of 1% of the NAAQS to determine which upwind states significantly contribute to nonattainment or interfere with maintenance for

[5] Technical Support Documents for the Final Cross-State Air Pollution Rule (CSAPR) and the Supplemental Notice of Proposed Rulemaking (SNPR): https://www.epa.gov/csapr/cross-state-air-pollution-final-and-proposed-rules Air Quality Modeling Final Rule Technical Support Document, June 2011; Contributions of 8-hour ozone, annual PM2.5, and 24-hour PM2.5 from each state to each monitoring site. (CSAPR_Ozone and PM2.5_Contributions.xls)

the ozone and $PM_{2.5}$ NAAQS.[6] In other words, EPA determined that a state that contributed more than 1% of the level of the NAAQS at a given monitor was making a significant contribution to any nonattainment or maintenance problem at that monitor. In its 2016 guidance on interstate transport, EPA identified nonattainment and/or maintenance receptors and reaffirmed the use of a screening threshold for determining whether states require further evaluation of actions to address transported emissions.

EPA made projections of annual $PM_{2.5}$ design values for 2020 by county as part of its December 14, 2012 revision to the PM standards.[7] These projected design values are included in Table 3. All 23 monitors for which Massachusetts contributes 1% or more to the annual standard are projected to be in attainment in 2020. EPA further concluded that there would be no nonattainment areas for the annual $PM_{2.5}$ standard in the eastern half of the U.S. in 2020 as shown in Figure 4.

In EPA's 2016 guidance memo, projections are given for annual design values in Attachment 2. These show that all 23 of the monitors where Massachusetts contributes more than 1% to the annual NAAQS are projected to remain in attainment for 2017 and 2025.

Therefore, MassDEP concludes that Massachusetts is not expected to pose maintenance or attainment problems for other states for the foreseeable future.

[6] 40 CFR Parts 51, 52, 72 et al. Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule. Federal Register /Vol. 76, No. 152 /Monday, August 8, 2011 p. 48237 https://www.gpo.gov/fdsys/pkg/FR-2011-08-08/pdf/2011-17600.pdf For a discussion of the 1% threshold, see section V.D of the preamble.

[7] EPA Regulatory Actions website for Particulate Matter . EPA Revises the National Ambient Air Quality Standards for Particle Pollution, December 14, 2012, Tables and Maps: Projected Fine Particle Concentrations in 2020 for Counties with Monitors (PDF) (13pp, 99k) 2020table.pdf *This map shows projections for 2020 used in the Regulatory Impact Analysis (RIA) to estimate the costs and benefits of attaining the revised NAAQS. These projections reflect 2020 based on 2007 emissions for those counties with monitoring data within the contiguous 48 states . . . These 2020 projections account for emissions reductions from "on-the-books" federal and state rules, and an estimate of emissions reductions needed to attain the PM 2.5 standards of 15/ 35 µg/m 3 . . . NAAQS RIA* *https://www3.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_ria.html*

Table 2: EPA Design Values for PM2.5 24-hour Standard

Receptor Monitoring Site ID	State	County	Non-attainment Area: 2006 Daily Standard	DV2013	DV2014	2020 County Projection	MA Contribution to 24-hr DV	MA % of NAAQS
440070028	Rhode Island	Providence		19.00	20.0		1.543	4%
440070026	Rhode Island	Providence		22.00	21.0		1.271	4%
330110020	New Hampshire	Hillsborough					1.167	3%
330111015	New Hampshire	Hillsborough		18.00	17.0		1.112	3%
440070022	Rhode Island	Providence		22.00	19.0		1.044	3%
330150014	New Hampshire	Rockingham		21.00	19.0		0.916	3%
440071010	Rhode Island	Providence		21.00	19.0		0.778	2%
330115001	New Hampshire	Hillsborough		14.00	13.0		0.632	2%
90031003	Connecticut	Hartford		22.00	20.0		0.624	2%
230010011	Maine	Androscoggin		21.00	20.0		0.557	2%
230110016	Maine	Kennebec		19.00	20.0		0.543	2%
330190003	New Hampshire	Sullivan					0.540	2%
360610062	New York	New York	Yes				0.529	2%
330050007	New Hampshire	Cheshire		29.00	27.0		0.513	1%
330131006	New Hampshire	Merrimack		20.00	18.0		0.491	1%
90092123	Connecticut	New Haven	Yes	23.00	24.0		0.467	1%
230050027	Maine	Cumberland					0.456	1%
330012004	New Hampshire	Belknap		15.00	13.0		0.455	1%
90010010	Connecticut	Fairfield	Yes	23.00	23.0		0.437	1%
420430401	Pennsylvania	Dauphin	Yes	31.00	31.0		0.430	1%
330090010	New Hampshire	Grafton		18.00	16.0		0.417	1%
230050015	Maine	Cumberland		20.00	19.0		0.413	1%
360610128	New York	New York	Yes	26.00	26.0		0.401	1%
360050110	New York	Bronx	Yes	25.00	22.0		0.385	1%
90091123	Connecticut	New Haven	Yes	24.00	22.0		0.370	1%
240030014	Maryland	Anne Arundel					0.361	1%
100032004	Delaware	New Castle	Yes	25.00	25.0		0.358	1%
230090103	Maine	Hancock	Yes	13.00	12.0		0.358	1%

Table 3: EPA Design Values for PM2.5 Annual Standard

Receptor Monitoring Site ID	State	County	Non-attainment Area: 2012 Annual Standard	DV2013	DV2014	2020 County Projection	MA Contribution to Annual DV	MA % of NAAQS
440070028	Rhode Island	Providence		7.8	7.8	8.6	0.389	3%
440070022	Rhode Island	Providence		7.1	7.1	8.6	0.378	3%
440070026	Rhode Island	Providence		9.1	9.1	8.6	0.372	3%
440071010	Rhode Island	Providence		7.4	7.4	8.6	0.363	3%
330111015	New Hampshire	Hillsborough		7.2	7.2	7.6	0.319	3%
330110020	New Hampshire	Hillsborough				7.6	0.255	2%
330150014	New Hampshire	Rockingham		7.0	7.0	7.0	0.223	2%
90113002	Connecticut	New London		11.5	11.5	7.3	0.221	2%
330131006	New Hampshire	Merrimack		7.5	7.5	7.6	0.202	2%
90031003	Connecticut	Hartford		7.4	7.4	7.4	0.194	2%
90091123	Connecticut	New Haven		8.9	8.9	8.7	0.193	2%
90090027	Connecticut	New Haven		8.4	8.4	8.7	0.177	1%
90090026	Connecticut	New Haven				8.7	0.176	1%
90092008	Connecticut	New Haven				8.7	0.174	1%
330050007	New Hampshire	Cheshire		8.8	8.8	9.4	0.155	1%
90092123	Connecticut	New Haven		8.5	8.5	8.7	0.150	1%
90010010	Connecticut	Fairfield		9.3	9.3	8.5	0.146	1%
90013005	Connecticut	Fairfield		8.6	8.6	8.5	0.133	1%
90019003	Connecticut	Fairfield		7.7	7.7	8.5	0.127	1%
230050015	Maine	Cumberland		8.3	8.3	8.4	0.125	1%
230050027	Maine	Cumberland				8.4	0.125	1%
330115001	New Hampshire	Hillsborough		5.4	5.4	7.6	0.118	1%
90011123	Connecticut	Fairfield		8.1	8.1	8.5	0.117	1%

Note: DV = design value. Not all design values are available due to data completeness/quality issues.

Sources:

EPA Design Values web site, 2014 Design Value Reports. PM25_DesignValues_20122014_FINAL_08_19_15.xlsx http://www3.epa.gov/airtrends/values.html

Technical Support Documents for the Final Cross-State Air Pollution Rule (CSAPR) and the Supplemental Notice of Proposed Rulemaking (SNPR): http://www3.epa.gov/airtransport/CSAPR/techinfo.html

EPA Regulatory Actions website for Particulate Matter (http://www3.epa.gov/pm/actions.html). EPA Revises the National Ambient Air Quality Standards for Particle Pollution December 14, 2012, Tables and Maps: http://www3.epa.gov/airquality/particlepollution/2012/2020table.pdf

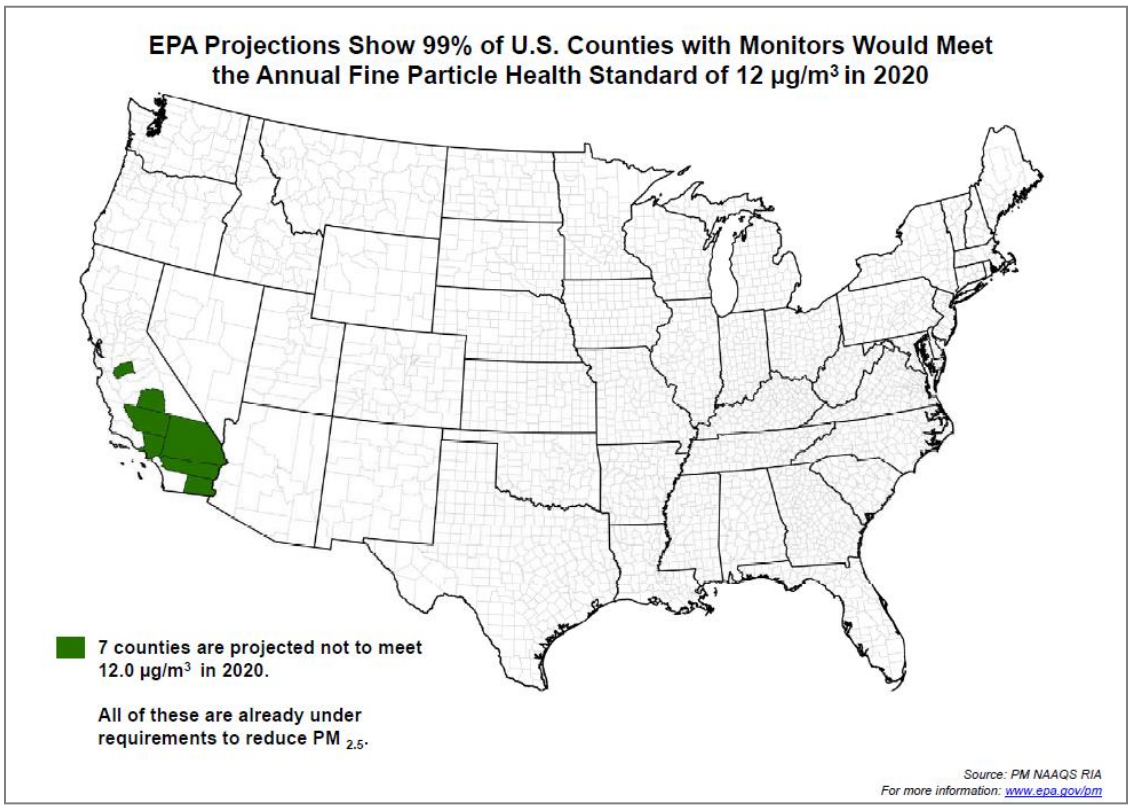

Figure 4: $PM_{2.5}$ Nonattainment Areas in 2020

Source: EPA Regulatory Actions website for Particulate Matter. EPA Revises the National Ambient Air Quality Standards for Particle Pollution, December 14, 2012, Tables and Maps: 2020map.pdf . Also in: Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter, EPA-452/R-12-005, December 2012. Figure 4-3. Counties Projected to Exceed the 12 ug/m3 Revised Standard in the Analytical Baseline (https://www3.epa.gov/ttn/ecas/regdata/RIAs/finalria.pdf)

MassCAIR NO_x Reductions Will Be Maintained. In 2009 MassDEP submitted an infrastructure SIP for the 2006 PM2.5 NAAQS. That submittal made the following statements regarding transport.

> **Revision to the Massachusetts State Implementation Plan** – The Massachusetts SIP revision addressing the Interstate Air Pollution Transport Requirements of Clean Air Act Section 110(a)(2)(D)(i) relating to the 1997 PM2.5 and ozone standards, was submitted to EPA on January 31, 2008. In that SIP revision, MassDEP relied upon its adoption of 310 CMR 7.32, the Massachusetts Clean Air Interstate Rule (MassCAIR), to address its contribution to downwind nonattainment areas, as required by EPA's Clean Air Interstate Rule. MassDEP continues to implement the MassCAIR program.

EPA has not issued new regulations or guidance regarding how states should address transport in connection with the 2006 $PM_{2.5}$ standard. MassDEP will submit a separate transport SIP to EPA to address this issue once EPA has provided the necessary guidance.

In August 2016, MassDEP proposed to replace 310 CMR 7.32: *Massachusetts Clean Air Interstate Rule* (MassCAIR) with 310 CMR 7.34: *Ozone Season Nitrogen Oxides Control* (MassNO_x) to maintain a budget for summertime emissions of oxides of nitrogen (NO_x) from large fossil-fuel-fired electric power and steam-generating units located in Massachusetts beginning in 2017.

The existing MassCAIR regulations required affected facilities to participate in the U.S. Environmental Protection Agency's (EPA's) multi-state Clean Air Interstate Rule (CAIR) cap-and-trade program, which ended in 2015. MassDEP promulgated the MassCAIR regulations in 2007 to comply with CAIR. EPA approved the MassCAIR regulations into the Massachusetts State Implementation Plan (SIP) on December 3, 2007 (72 FR 67854). In 2011, EPA replaced CAIR with the Cross State Air Pollution Rule (CSAPR). However, Massachusetts was not included in CSAPR because, based on EPA's technical analysis, sources in Massachusetts were found not to significantly contribute to nonattainment or interference with maintenance of the ozone NAAQS in other states. While Massachusetts is not subject to CSAPR, MassDEP must maintain the NO_x reductions established under MassCAIR to avoid "backsliding" under section 110(l) of the Clean Air Act. MassDEP will maintain the NO_x reductions cited in the 2009 Infrastructure SIP submittal by promulgating final MassNO_x Budget regulations, which MassDEP will submit to EPA for inclusion in the Massachusetts SIP.

PM, Sulfur, and NO_x Emissions Are Being Reduced by Controls and Retirements. MassDEP's low sulfur fuel rule (310 CMR 7.05(1)(a)) establishes a phase in of reductions in the sulfur content of distillate oil used in stationary sources. The first phase went into effect on July 1, 2014 and reduced sulfur content to 500 ppm. The next phase will take effect on July 1, 2018 and further reduce sulfur to 15 ppm. In addition, sulfur in residual oil dropped to 0.5% in 2014 for large electric generating units and will drop to 0.5% in 2018 (except for Berkshire APCD) for all other uses. Thus sulfur emissions from stationary sources will decrease over time based on existing rules.

In addition, emissions from coal-fired units in Massachusetts are being reduced as older plants retire or repower. In 2015, the largest industrial coal-fired unit in Massachusetts (the Solutia plant in Springfield) was permanently switched to natural gas along with the other large oil burning units at that facility.[8] Also in 2015, the Mt. Tom coal-fired power plant in Holyoke relinquished its permit following an extended idle period. In 2014,

[8] AIR QUALITY PLAN APPROVAL for Solutia Inc. – Transmittal No.: X261407 Application No.: WE-14-013 AQID: 0420086 FMF No.: 298974. February 4, 2015.

Salem Harbor Station ceased operations and is being replaced by gas-fired turbines. Furthermore, the largest source of coal-fired emissions in Massachusetts – Brayton Point in Somerset – retired in May 2017. These closures are lowering SO_2 and PM emissions now and will result in lower emissions in the future.

In August 2016, MassDEP proposed tighter NO_x emissions requirements for certain units at major sources in compliance with the CAA requirements to meet Reasonably Available Control Technology (RACT) standards, which are expected to reduce NO_x, which is a $PM_{2.5}$ precursor.

$PM_{2.5}$ Emissions Are Projected to Decline. EPA projected $PM_{2.5}$ emissions as part of the modeling effort for the CSAPR rule.[9] Those projections indicate that emissions of $PM_{2.5}$ will decline over the next decade. Figure 5 illustrates this decline in Massachusetts and nearby/downwind states. These consistent reductions provide evidence that maintenance of the 2012 and 2006 $PM_{2.5}$ NAAQS in Massachusetts and nearby states will continue.

Conclusion and Certification. Based on the evidence presented here, MassDEP concludes that Massachusetts does not significantly contribute to nonattainment or maintenance problems in any other state for both the annual and 24-hour $PM_{2.5}$ standards and will not do so in the future. Therefore, MassDEP certifies that Massachusetts has met its Good Neighbor obligations to other states under CAA section 110(a)(2)(D)(i)(I) for the 2012 and 2006 $PM_{2.5}$ NAAQS.

[9] EPA 2011-Based Modeling Platform (2011v6.2), July 23, 2015 NODA: 2011 and 2017 Emissions Modeling Platform Data Files and Summaries Specific files at http://www.epa.gov/airmarkets/proposed-cross-state-air-pollution-update-rule and ftp://ftp.epa.gov/EmisInventory/2011v6/v2platform/reports/ files: 2011ed_2018ed_2011eh_2017eh_county_annual_totals.xlsx and 2025eh_cb6_v6_11g_state_sector_totals.xlsx

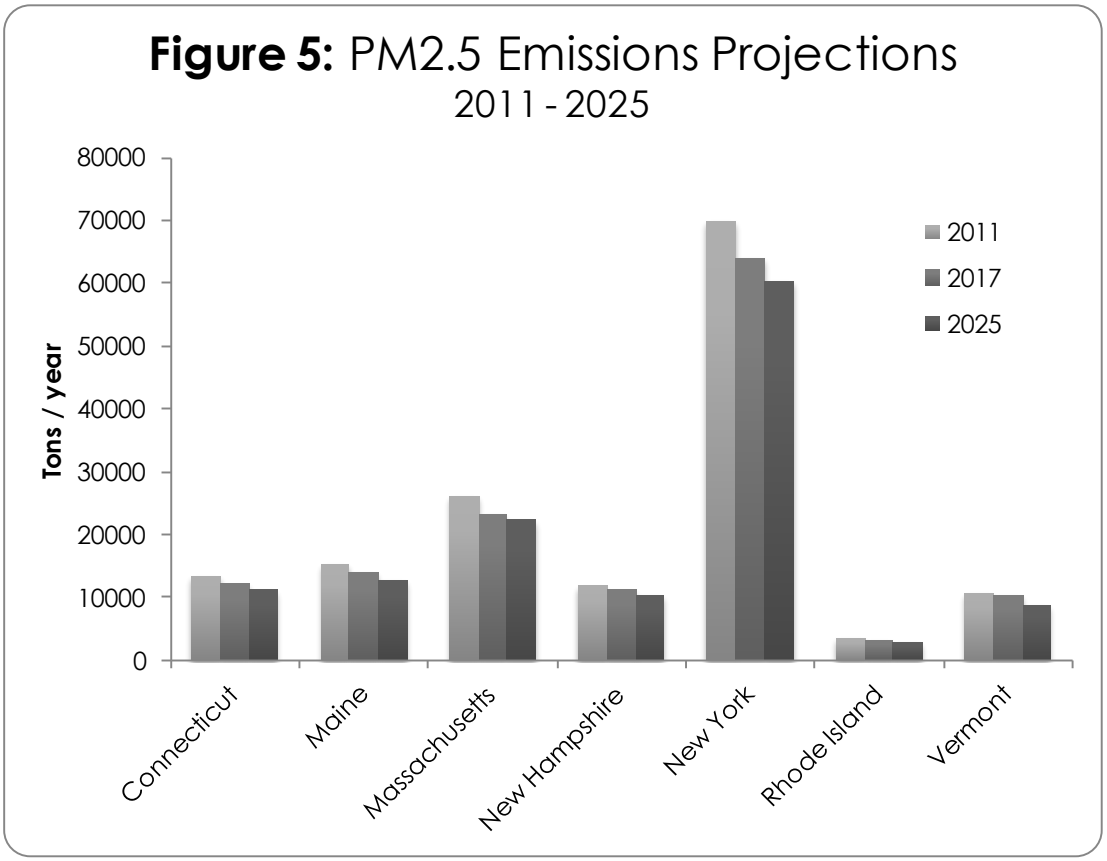
Figure 5: PM2.5 Emissions Projections
2011 - 2025
Tons / year
80000
70000
60000
50000
40000
30000
20000
10000
0
2011
2017
2025
Connecticut
Maine
Massachusetts
New Hampshire
New York
Rhode Island
Vermont

Attachment 2

Executive Order 145: Consultation by State Agencies with Local Governments re Administrative Mandates of Such Agencies Imposing Financial Burdens on Such Local Governments. November 20, 1978

http://www.mass.gov/courts/docs/lawlib/eo100-199/eo145.txt

COMMONWEALTH OF MASSACHUSETTS

Michael S. Dukakis

Governor

EXECUTIVE ORDER NO. 145

CONSULTATION WITH CITIES & TOWNS
ON ADMINISTRATIVE MANDATES

WHEREAS, municipal officials must be able to consider statewide agency policy and regulatory actions which have significant financial, procedural, or organizational impact on local governments in order to effectively provide services to their citizens; and

WHEREAS, state agencies ought to consider the impact on local governments of policy and regulatory mandates which include significant financial, procedural, or organizational obligations in order to make informed, credible decisions regarding the application of such policies and regulations; and

WHEREAS, the Governor recognizes that state-local cooperation in the formulation of the Commonwealth's administrative policies and regulations affecting local qovernments is essential to the successful implementation of viable policies and regulations; and

WHEREAS, affirmative steps are necessary to ensure that municipal officials are fully informed of proposed agency policies and regulations which affect local governments, prior to their promulgation; and

WHEREAS, state administrative mandates may place significant additional financial burdens on municipalities;

NOW, THEREFORE, I, Michael S. Dukakis, Governor of the Commonwealth by virtue of the authority vested in me as supreme executive magistrate, do hereby order as follows.

SECTION I: DECLARATION OF POLICY

Agencies shall take no action (as defined in Section II) without having followed the consultation procedures as set forth in Section III to inform and thereafter receive advice from local governments of the potential impact on local governments of the proposed action.

SECTION II: DEFINITION

Agency is defined as any agency, department, board, commission, authority or other instrumentality of the Commonwealth.

Action is defined as (a) the adoption, repeal or amendment of any rule or regulation subject to the Mass. Administrative Procedure Act (hereinafter called A.P.A.), M.G.L. Chapter 30A; (b) any administrative action that either places additional expenditure, procedural, or organizational requirements on local governments or limits the discretionary powers of local officials or agencies on a statewide basis. Enforcement of duly enacted laws and regulations is not within the scope of this executive order.

The Local Government Acdvisory Committee established pursuant to Executive Order No. 123 (1976) is hereinafter called L.G.A.C. The Department of Community Affairs is hereinafter called D.C.A.

SECTION III: PROCEDURES

1. In the case of action subject to the A.P.A., at least 14 calendar days prior to the initiation of compliance with the A.P.A., agencies shall initiate the procedures set forth below. In the case of actions not subject to the A.P.A., agencies shall initiate said procedures at least 45 calendar days prior to the proposed implementation of said action.

2. Agencies shall provide L.G.A.C. and D.C.A. with a brief statement describing the proposed action which emphasizes the responsible agency officials' best judgement of those elements which might impact on local governments including, when feasible, preliminary cost estimates.

3. Within 21 calendar days of receipt of said notice, either L.G.A.C. or D.C.A. shall notify the originating agency as to whether or not it

believes the proposed action presents potential for significant impact. Failure to so notify within 21 calendar days shall be deemed to constitute a judgement of no significant impact.

4. Any such notice shall set forth the aspects of the proposed action which the L.G.A.C. or the D.C.A., as the case may be, believes present potential for significent impact.

5. Within 14 calendar days of the receipt of a notice under Section III 3,4, the originating agency shall convene a meeting of representatives of the agency, L.G.A.C., and D.C.A. to review and discuss the potentially significant impact of the proposed action.

SECTION IV: EMERGENCY ACTION

Agencies may initiate emergency actions under relevant sections of the Administrative Procedure Act without prior compliance with this order, provided that compliance shall be initiated as soon as practicable following the emergency action and in any event to making any emergency action permanent.

SECTION V: DETERMINATION OF SIGNIFICANT IMPACT

In determining whether the proposed action may present potential for significant impact, agencies, L.G.A.C., and the D.C.A. shall consider the extent to which the proposed action might require municipalities:

a) to significantly expand existing services;

b) to employ additional personnel;

c) to significantly alter administrative and work procedures;

d) to realign organizational structures;

e) to increase disbursements which are not reimbursed by the federal or state government; or

f) to limit the discretion exercised by local officials.

Each agency head, or a designee of the agency head, shall have responsibility within that agency for reviewing proposed administrative policies and regulations to ensure compliance with this order.

SECTION VI: EFFECTIVE DATE

This order shall take effect on November 20, 1978, provided, however, that it shall not apply to any action subject to the A.P.A. for which compliance with the A.P.A. is initiated prior to November 20, 1978.

SECTION VII

This order shall continue in effect until amended, superseded or terminated by subsequent Executive Order.

Given at the Executive Chamber
in Boston this twenty-first
day of October, in the year of
Our Lord one thousand nine hundred
and seventy eight and of the indepen-
dence of the United States of
America, two hundred and second.

MICHAEL S. DUKAKIS
GOVERNOR
Commonwealth of Massachusetts

Paul Guzzi
Secretary of the Commonwealth

Attachment 3

M.G.L. c. 21A, s.18: Permit application and compliance assurance fees; timely action schedules; regulations

https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21A/Section18

General Laws
PART I ADMINISTRATION OF THE GOVERNMENT
TITLE II EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 21A EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
Section 18 Permit application and compliance assurance fees; timely action schedules; regulations

Section 18. As used in this section, the following words shall, unless the context otherwise requires, have the following meanings:--

"Advisory committee", the advisory committee on fees and program improvements appointed by the commissioner pursuant to this section.

"Commissioner", the commissioner of the department of environmental protection.

"Department", the department of environmental protection.

"Permit", any permit, license, certificate, formal determination, registration, plan approval, variance, or other approval issued by or required by the department or any of its divisions, pursuant to any statute or regulation. "Permit" shall not include approvals issued by the department solely pursuant to regulations governing the assessment, containment, or removal of oil or hazardous materials under the authority of chapter twenty-one E.

"Permit application", any application, filing, or other submission of materials to the department to initiate a permit.

"Person", any individual, trust, firm, public or private corporation or authority, partnership, association or other entity or any group thereof or any officer, employee, or agent thereof, including the commonwealth and the federal government and any agency or authority thereof, but not including any city, town, county, or district of the commonwealth or any municipal housing authority or any tribal housing authority of a federally recognized Indian tribe when constructing housing.

Notwithstanding any general or special law to the contrary, the department may establish fees applicable to the regulatory programs administered by the department, in the manner set forth

in this section. All such fees shall be established by regulations promulgated by the department pursuant to chapter thirty A, after making findings in the administrative record as required in this section, and after consultation with an advisory committee on fees and program improvements appointed by the commissioner. The advisory committee shall at a minimum consist of representatives of industrial, commercial, and small business organizations, municipalities, and environmental organizations. The advisory committee shall meet at least four times each fiscal year. The members of the advisory committee shall serve without compensation.

(a) Annual compliance assurance fee. For permits valid for one year or more, the department may establish an annual compliance assurance fee, based on the department's costs for monitoring, discharge sampling and analysis, inspection, technical assistance, and enforcement activities necessary to ensure compliance by persons holding such permits. Such fees may be based on a scale that accounts for the extent of such enforcement and compliance activity that is appropriate for different categories of permits. Such fees shall be applicable to all persons, excluding agencies of the commonwealth, holding such permits, including without limitation those persons, excluding agencies of the commonwealth holding permits at the time the fees are established. At least forty-five days before the date such fee is due, the department shall notify each person holding such a permit of the amount of the fee due and the date by which payment is due. In instances of severe financial hardship, the commissioner or his designee may grant a timely request to extend the time for making payment. Failure by any person to pay any annual compliance assurance fee when due shall result in suspension of or, if such failure continues for sixty days or more, may result in revocation of the permit; and shall be grounds for denial of any pending permit application filed by such person. In the event of untimely payment, interest on the amount due shall be assessed at the rate determined by the secretary of administration and finance pursuant to section twenty-nine C of chapter twenty-nine. Such interest shall be in addition to any other penalty for violation of any permit condition or applicable statutory or regulatory requirement. A permit suspended under this section shall be reinstated upon payment of the fee that is owed together with the interest due.

(b) Permit application fee. The department may establish by regulation a permit application fee payable by all persons filing applications for a permit, based on the department's costs for providing technical assistance, performing and analyzing such environmental monitoring as is necessary to act on such applications, processing such applications and issuing decisions and, where no annual assurance registration fee is established, on the department's costs for monitoring, inspection, technical assistance, and enforcement activities necessary to ensure compliance by persons holding such permits. Such fees may be based on a scale that accounts for the department's costs appropriate for different categories of permit applications and permits. Permit application fees shall be payable upon filing the permit application. In instances of severe financial hardship, the commissioner or his designee may grant a timely request to extend the time for making payment. The department may require that persons applying for permits as a result of enforcement action by the department or another agency of the commonwealth or its subdivisions pay double the otherwise applicable application fee.

In establishing appropriate categories of permit applications for the purposes of this subsection, the department shall consider the administrative expense associated with transfer of funds between state agencies and the department and shall exempt state agencies from payment of

a permit application fee whenever such costs would represent a substantial proportion of the fee. Nothing in this section shall be construed to diminish the authority provided by section seventeen of chapter two hundred thirty-six of the acts of nineteen hundred and eighty-eight.

(c) Schedules for timely action. For each permitting program for which a fee is established pursuant to subsection (b), the department shall concurrently establish by regulation a schedule for timely action by the department on such permits. Such schedules may be based on the lengths of time appropriate for different categories of permit applications and permits, and may make provision for situations when more than one permit is required for the project or activity. Each such schedule shall contain the following:--

(1) the schedule shall begin when an application is received by the department and the application fee paid;

(2) one or more periods of reasonable length, based on the nature and complexity of the review required of the department, at the end of which time the department shall issue a decision to grant or deny the permit, or an identification of deficiencies in the application; provided, that the schedule may also reasonably limit the amount of time in which the applicant may remedy such deficiencies;

(3) a period of reasonable length, based on the nature and complexity of the review required of the department, beginning with receipt of materials submitted by the applicant in response to the department's identification of deficiencies, at the end of which time the department shall issue a decision to grant or deny the permit;

(4) allowance for applicable state or federal public participation requirements;

(5) a provision extending the time periods set forth in clauses (2) and (3) when action by another federal, state, or municipal governmental agency is required before the department may act, when judicial proceedings affect the ability of the department or the applicant to proceed with the application, when the department has commenced enforcement proceedings which could result in revocation of an existing permit for that facility or activity and denial of the application, or when the applicant provides written assent extending any applicable time period; and

(6) a provision indicating whether the schedule shall be applied to all such permit applications pending before the department at the time the regulation is adopted upon payment of the fee, or whether the schedule shall apply to persons with pending applications for such permits who elect to pay the fee.

Should the department fail to take timely action on a permit application within a period set forth in the applicable schedule pursuant to clause (2), one day shall be subtracted from the number of days allowed for the department's next action in the appropriate schedule pursuant to clause (2) or clause (3) for each day that the department's action is tardy, unless the period has been extended pursuant to clause (5). Should the department fail to take timely action on a permit application within the time period set forth in the applicable schedule pursuant to clause (3), subject to any adjustment required by the preceding sentence, the department shall refund

without further appropriation the permit application fee paid by the applicant unless the period has been extended pursuant to clause (5), and shall continue to process the permit application. The requirements of this subsection (c) shall not apply to adjudicatory hearings conducted by the department.

(d)(1) In establishing permit application fees pursuant to subsection (b) and schedules for timely action pursuant to subsection (c), the department may by regulation define certain categories of projects for which appropriate fees and schedules pursuant to such subsections cannot be established by general rule, based on the size, novelty, complexity, or technical difficulty of such projects. Projects within categories so defined shall be called individual rule projects. The department shall establish an alternative permit application fee, schedule for timely action, and annual compliance registration fee as appropriate for each individual rule project in accordance with clause (3) of subsection (d).

(2) When the department determines, based on the size, novelty, complexity, or technical difficulty of a project for which a permit application is filed, other than an individual rule project, that the amount of work required by the department in processing such permit application will exceed by a factor of two or more the amount of work assumed as the basis in establishing a permit application fee pursuant to subsection (b), and cannot be completed within the schedule for timely action applicable to such permit applications pursuant to subsection (c), the department shall notify the applicant of such determination within thirty days of receiving the permit application, and shall within forty-five days of providing such notice establish an alternative permit application fee, schedule for timely action, and an annual compliance assurance fee as appropriate to clause (3) of subsection (d).

(3) Within forty-five days of receipt of an application for an individual rule project, or of making a determination pursuant to clause (2), or within such other period as agreed to by the applicant, the department shall establish, following negotiation with the applicant, an appropriate permit application fee and alternative schedule for timely action, based on the costs and time of the extraordinary work required to process such permit application. In no such case shall the applicable fee be lower than fees established by regulation for that class of permit, nor shall the schedule for timely action require action more rapid than the time for comparable action allowed in the schedule established by regulation for that class of permit. The department shall establish an annual compliance assurance fee as a condition of a permit issued for such projects, based on the costs of the department reasonably necessary to ensure compliance with the permit. The permittee may request the department to adjust any such compliance assurance fee whenever the department reviews fees pursuant to subsection (j), or may request such an adjustment as a permit modification. The department may by regulation establish an average daily or hourly rate, expressed as a loaded rate per day or hour of technical staff time, based on the department's average costs, to be used as a reference point in establishing such fees. The department may by regulation establish a maximum permit application fee to serve as an upper bound on the fee that may be established under this subsection (d) for any particular permit application or category of permit applications.

(4) A permit applicant aggrieved by the department's action in establishing a permit application fee or schedule for timely action pursuant to this subsection (d) may within ten days take either or both of the following actions:

(i) The applicant may notify the department that it wishes to proceed on a true cost basis. Upon receipt of payment of one half of the fee amount established by the department as a deposit, the department shall diligently and in good faith process the permit application, taking all reasonable measures to achieve compliance with the timely action schedule established by the department; provided that, failure to meet such schedule shall not result in a refund of the fee paid. The department shall provide a monthly cost statement to the applicant based on the average daily or hourly rate and the days or hours of work performed by technical staff. Whenever the department's costs as reflected in the cost statement exceed the balance already paid by the applicant, the applicant shall promptly pay all outstanding amounts. Failure by the applicant to make such payments shall be grounds for the department to discontinue work on the application. The department shall withhold its decision on the permit application until the applicant has made full payment. Nothing in this section shall prevent the department from denying a permit request where it finds the application inadequate.

(ii) The applicant may request an adjudicatory hearing pursuant to chapter thirty A. No permit application fee shall be due, and no schedule for timely action shall be in effect, pending resolution of such a hearing request, except as provided in the preceding paragraph if the applicant elects to proceed on a true cost basis. In any such hearing, or any hearing concerning an annual compliance assurance fee established as a permit condition, the average daily or hourly rate established by regulation shall be used as the basis of the fee determination, and the fee and the schedule for timely action established by the department shall be revised only where the applicant demonstrates by a preponderance of the evidence that the department's position was unreasonable, arbitrary, or capricious.

(5) The commissioner shall annually file a report outlining all fees and schedules established pursuant to this subsection (d) and setting forth the basis on which the determination to establish such fees and schedules was made with the advisory committee, the secretary of environmental affairs, the secretary of administration and finance, the joint committee on natural resources and agriculture, and the house and senate committees on ways and means.

(6) Notwithstanding the requirements of clauses (1) to (4), inclusive, the department and a permit applicant may agree upon appropriate fees, related funding and schedules for projects meeting the criteria in clauses (1) and (2) or for projects determined by the commissioner to be of significant environmental interest to the commonwealth or that are consistent with sustainable development principles. With input from the advisory committee the department shall establish guidelines for the implementation of this subsection, including ensuring consideration of the allocation of department permitting resources and whether the project serves a significant public interest, and offers opportunities to restore, protect, conserve or enhance natural resource. All amounts received by the department for these projects shall be deposited in the fund established in clause (7) and may be expended by the department in accordance with the requirements of clause (7).

(7) There shall be established and set up on the books of the commonwealth a separate trust to be known as the Special Projects Permitting and Oversight Fund. There shall be credited to the fund all amounts received by the department from permit applicants for projects identified in clause (6). All amounts credited to the fund may be expended by the department without further appropriation for the purpose of permitting, technical assistance, compliance, other related activities associated with said projects, including all direct and indirect costs of department personnel or contractors. With agreement of the project applicants, any amount credited to the fund in excess of the amount expended to complete the department's permitting, technical assistance, compliance, or other related activities associated with said projects, may be retained in the fund. The funds may be expended by the department to support projects in economically distressed areas. An economically distressed area is an area or municipality that has been designated as an economic target area, or that would otherwise meet the criteria for such designation under section 3D of chapter 23A. The department's expenditure of the funds shall be in accordance with relevant state law applicable to the expenditure and record keeping of state funds and shall be subject to audit by the state auditor.

(e) The department shall establish by regulation a reasonable filing fee to be payable by all persons requesting adjudicatory hearings before the department; provided, that the fee may be waived by the department upon a showing of undue financial hardship. Such fee shall not be disproportionately large compared to fees required to file an action in the superior court.

(f) The department may establish by regulation fees for performing laboratory or other technical analyses, based on the department's costs for performing such analyses. Such fees shall be payable by any person, city, town, county, district, authority, agency, or tribal housing authority thereof who requests such services.

(g) The department may establish and collect reasonable fees for providing public record information to persons or cities, towns, counties, districts, authorities, agencies or tribal housing authorities thereof who request such information, including costs of searching for, and costs of, copying such records, pursuant to section ten of chapter sixty-six.

(h) The department may establish and collect reasonable fees for conducting, producing, or providing specifically targeted seminars, training sessions, written materials, or other forms of technical assistance pertaining to its permitting, compliance, and enforcement activities, where participation in such technical assistance programs is voluntary. Fees for providing such technical assistance shall be based on the department's cost for developing, producing, and making available such technical assistance. The department may conduct or produce such technical assistance programs jointly in cooperation with any person.

The department may, in compliance with applicable law governing procurement services by state agencies, contract with qualified third parties to provide such technical assistance to persons, cities, towns, counties, districts, authorities, agencies or tribal housing authorities requesting it; provided, that before entering such a contract, the commissioner shall determine that the cost of providing such technical assistance through a third party shall not exceed the cost of providing such technical assistance directly by the department. In no case shall the fee

for such technical assistance provided by a third party exceed the fee established by the department for the same or comparable services when provided by the department.

(i) As a precondition to the department's authority to establish annual compliance registration fees pursuant to subsection (a) and permit application fees pursuant to subsection (b), and prior to the first establishment of such fees, the commissioner shall make findings in the administrative record that:

(1) the department has completed promulgation of revisions to its regulations governing Plan Approval and Emission Limitations, codified at 310 CMR 7.02, as in effect on January first, nineteen hundred and ninety;

(2) the department has made publicly available a first year report on its compliance pilot project in the Blackstone river basin;

(3) the commissioner has appointed members of the advisory committee on fees and program improvements; and

(4) the department has begun work, together with the advisory committee or with one or more work groups, each of which shall include one or more members of the advisory committee as well as department personnel and other interested persons, to produce a report with recommendations on each of the following issues: (i) the advantages, disadvantages, and opportunities for increased reliance on work by parties other than the applicant and the department in the department's permitting and compliance programs; (ii) development of a strategy or strategies the goal of which is to eliminate permitting backlogs within six to twenty-four months of enactment of this section; (iii) development of a strategy or strategies the goal of which is to eliminate compliance and enforcement backlogs within six to twenty-four months of the enactment of this section; (iv) evaluation of potential revisions in the sewer connection permitting program and potential federal delegation of the surface water discharge permitting program; and (v) administration and collection of fees established pursuant to this section.

(5) A copy of such findings shall be provided to the advisory committee, the secretary of environmental affairs, the secretary of administration and finance, the joint committee on natural resources and agriculture, and to the house and senate committees on ways and means. This subsection shall not affect the validity of fees in existence prior to enactment of this section.

(j) On or before July first, nineteen hundred and ninety-two and on or before July first of every second year thereafter, the department shall review all fees and schedules established pursuant to this section, and shall by regulation adjust fees and schedules as necessary to reflect changes in regulatory requirements, technologies, the nature and cost of the department's permitting and compliance activities, and improvements in the department's practices and procedures. Prior to proposing such regulations in nineteen hundred and ninety-two, as a precondition to continued authority to establish and collect annual compliance assurance fees pursuant to subsection (a) and permit application fees pursuant to subsection (b), the commissioner shall make findings in the administrative record that:

(1) each of the reports required by clause (5) of subsection (d) has been completed, and that the department has considered the recommendations of those reports in its proposed regulations adjusting the fees and schedules;

(2) the department has begun work, together with the advisory committee or one or more work groups, each of which shall include one or more members of the advisory committee, as well as department personnel and other interested persons, to produce a report with recommendations on each of the following issues: (i) the potential for consolidating reporting requirements in permits or regulations; and (ii) training and outreach, including identification of improvements in training for department staff and in outreach efforts to educate persons requiring permits. The recommendations of such reports shall be included in the report submitted in nineteen hundred and ninety-two by the commissioner pursuant to subsection (k). A copy of such findings together with proposed regulations shall be provided to the advisory committee, to the secretary of environmental affairs and the secretary of administration and finance at least forty-five days prior to promulgation of such regulations.

Notwithstanding any other provision thereof to the contrary, no fee or other charge and no increase of any existing fee or charge shall be imposed pursuant to this section unless a copy of the proposed regulations establishing said fees shall be submitted to the joint committee on natural resources and agriculture and the house and senate committees on ways and means for their review and recommendations at least forty-five days prior to the promulgation of such regulations.

(k) Annual permitting and compliance report. On or before October first, nineteen hundred and ninety-one, and on or before October first of each year thereafter, the department shall submit to the advisory committee on fees and program improvements, the secretary of environmental affairs, the secretary of administration and finance, the joint committee on natural resources and agriculture, and the house and senate committees on ways and means an annual report on compliance and permitting efforts in the preceding fiscal year. Such report shall include, without limitation: an identification of the revenues received pursuant to this section and the department's appropriation from the General Fund; a statement identifying all expenditures from the Environmental Permitting and Compliance Assurance Fund established pursuant to section two M of chapter twenty-nine; a statement outlining the costs of performing permitting and compliance assurance activities; the number and amount of permit application fees refunded; the number of permit applications received; the number of permit decisions issued; a statement identifying the department's accomplishments with respect to compliance and enforcement compared to the department's goals; the department's goals for compliance and enforcement activities for the following fiscal year; the information with respect to alternative fees and schedules required by subsection (d); and a summary of the significant improvements the department has made in its permitting and compliance programs. For any year in which the department did not meet its goals for compliance and enforcement activities, the report shall include a plan demonstrating how the department will meet its compliance and enforcement goals for the following year. In nineteen hundred and ninety-one and nineteen hundred and ninety-two, the report shall also include a description of the department's progress in eliminating permitting backlogs, including identification of successes or problems.

(l) All moneys received by the department pursuant to this section, and not refunded to permit applicants pursuant to subsection (c), shall be deposited in the Environmental Permitting and Compliance Assurance Fund established pursuant to section two P of chapter twenty-nine, and used, subject to appropriation, solely for the purposes set forth therein; provided, however, that moneys received from annual compliance assurance fees, permit applications, and technical assistance fees shall be used solely for those purposes.

(m) Regulations establishing fees pursuant to subsection (a) or (b), and schedules for timely action pursuant to subsection (c), shall not be in effect in any fiscal year in which appropriations for ordinary maintenance of the department from state funds other than the environmental challenge fund and the environmental permitting and compliance assurance fund do not exceed the baseline figure set forth herein. The baseline figure for fiscal year nineteen hundred and ninety-one shall be eighteen million two hundred and ninety-eight thousand four hundred and fifty-three dollars. The baseline figure in subsequent fiscal years shall be a comparable amount, as determined by the legislature, based on inflation, the department's demonstrated program improvements and efficiencies in areas other than those supported by such fees, and added or reduced programmatic responsibilities of the department.

(n) In the event that the requirements of this section conflict with applicable federal requirements pertaining to the establishment and collection of permit application or compliance assurance fees by the department, such federal requirements shall take precedence over the conflicting requirements of subsections (a) to (f), inclusive, and the department shall have the authority to establish by regulation and to collect such fees in accordance with the applicable federal requirements.