

Board of Directors

President
Henry Walker

President Elect
Stephen L. Olson

Secretary
George R. Allen

Treasurer
Marlene E. Avraam

Past President
Blake D. Collins

First Trustee
Christopher J. Kelly

Second Trustee
Joseph P. Murphy

Third Trustee
Amy B. Spector

Executive Director
Joseph A. Pellegrini

Committee Chairs

Awards
Blake D. Collins

Education
Blake D. Collins
Douglas R. Waldman

Finance
Blake D. Collins

Historical
Walter C. Taylor

Legislative Advisory
Philip D. Corbett
Walter C. Taylor

Membership/
Public Relations
Michael J. Lee

Program
Robert D. Syme
Robert D. Syme

Scholarship
Walter C. Taylor

Technical Advisory
Walter C. Taylor
Philip D. Corbett

Sponsor
Philip D. Corbett
Walter C. Taylor

October 30, 2015

Martin Suuberg, Commissioner
MassDEP
One Winter Street, 2nd Floor
Boston, MA 02108

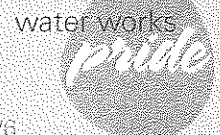
**RE: Comments on Regulatory Review under EO 562
Via Electronic Mail with Hard Copy to Follow**

Dear Commissioner Suuberg:

Massachusetts Water Works Association (MWWA) would like to offer the following comments on the Massachusetts Department of Environmental Protection's (MassDEP) proposed regulatory changes as part of Executive Order 562 (EO 562). MWWA commends the Baker/Polito administration for undertaking this process. We thank you for asking us to be a part of your EO 562 Advisory Committee.

MWWA represents over 1,100 water supply professionals throughout the Commonwealth. Our membership consists of water operators, water system managers, consulting engineers, equipment manufacturers and vendors. Our members are responsible for making sure that the Commonwealth's residents have an adequate and safe supply of drinking water. We think that it is valuable for MassDEP to look at the costs of regulatory efforts versus the benefits achieved and quantify the costs. We also believe that MassDEP needs to look closely at areas where their regulations exceed federal requirements and provide justification for why it is necessary to be more stringent than federal requirements. We applaud regulatory streamlining that will allow public water systems to concentrate on their core mission of protection of public health and safety. To that end, we offer the following comments:

Drinking Water Regulations must move forward: MassDEP has been drafting changes to the drinking water regulations, 310 CMR 22.00 and some of the changes will have positive benefits to drinking water suppliers. MWWA has been involved in a stakeholder process during the drafting of the regulations and we have provided comments to MassDEP that we believe will make for a stronger regulatory package. A major component of



this regulatory change is incorporation of the United States Environmental Protection Agency's (EPA) Revised Total Coliform Rule. MassDEP has primacy of the drinking water program in Massachusetts so they will have to adopt this federal rule into their regulations before April of 2016 to avoid EPA becoming the enforcement authority. During the 310 CMR 22.00 stakeholder process, MWWA suggested changes to 310 CMR 22.11B, Certified Operator Staffing Requirements, that we believe will be a benefit to water systems with automated operations. We were told that MassDEP may not have time to incorporate these changes before the draft regulations go out for public comment. MWWA does believe that the recommendations we have suggested complement Governor Baker's directive in EO 562 and should be incorporated into the final regulations before promulgation. Utilizing technology to streamline operations and reduce on-site staffing, while having the proper controls in place to send alarms and notify operators of issues within a plant, is the way the industry is headed and will allow water systems maximize the limited personnel they have in the most efficient manner.

We hope that MassDEP can complete the regulatory review in a timely manner so these important regulations can go out for public comment and not delay promulgation.

Water Management Act Regulations should be reviewed: We believe that the Water Management Act Regulations (310 CMR 36.00) promulgated in the final days of the Patrick Administration stand to threaten communities ability to provide water essential for public health, safety and economic development. We encourage MassDEP to include review of these regulations into their work plan and complete the EO 562-review by the March 2016 deadline.

Recent changes to the WMA regulations are premised on the assumption that reductions in water withdrawals will lead to improvements in aquatic habitat. As you are aware, MWWA has questioned the science behind this assertion and raised the fact that the theoretical models and resultant reports on which the framework was based are not compelling. At no time during the development of the Sustainable Water Management Initiative (SWMI) was there a convincing case made for further regulation of water withdrawals as an effective means to improve aquatic habitat in rivers and streams. Despite these facts and our opposition, communities will now have to invest significant time and financial resources in defending well-established water resource management practices. Systems without such resources at their disposal stand to see their long-term resiliency and reliability compromised with increased cost of service. This will ultimately stifle local economic development opportunities. The lack of any defensible and transparent cost benefit analysis further heightens our disdain and adds credibility to our belief that the entirety of SWMI is driven by a desire to regulate for the sake of regulation, clearly contrary to EO 562.

The requirement in the regulations for water suppliers to mitigate every drop of water permitted above an arbitrarily established "baseline" has no justification. Indeed, the

very concept of a public water supplier's "baseline" goes well beyond what the Water Management Act contemplated. Both the baseline concept and the years selected to determine the baseline for any particular public water supplier are without any rational basis. As a practical matter, public water suppliers will be punished for every drop of water they conserved by withdrawing less than their authorized limit. It is hard to imagine a regulatory regime that will do more to undermine efforts to achieve responsible management of water resources.

Contrary to the approach taken by the MassDEP in the regulations, mitigation should be required only where it can be clearly demonstrated that the related withdrawal is having a measurable impact on stream flow. MassDEP and the public water supplier should jointly identify that impact, and then the public water supplier should be responsible for undertaking only such mitigation as is **commensurate with the impact**. In almost all cases, there is not a direct 1:1 correlation between a change in water withdrawal volume and stream flow impacts. Rather, the proximity or distance of the withdrawal point from the stream and the hydrogeologically inevitable lag time between the withdrawal and the resulting impact mean that appropriate mitigations need to be carefully designed for each specific situation. MWWA has requested when MassDEP is reviewing the regulations that this issue be addressed so that any mitigation obligation is truly commensurate with actual impacts and NOT based on one-size-fits-all criteria that are clearly skewed against the public interest in ensuring a safe and adequate public water supply.

Addressing these new regulations is especially time sensitive as MassDEP is currently in the process of renewing Water Management Act permits and applying these new rules. The new regulatory requirements developed through SWMI include untested and potentially exhaustive studies which will lead to complex and expensive projects as directly evidenced by the projects funded under the SWMI grant program administered through MassDEP. Concepts such as water withdrawal minimization or mitigation, and water demand baselines lend themselves more favorably to theoretical approaches than municipal needs or realities. Even more concerning is the fact that drinking water supply needs are being pitted against coldwater fisheries in a way that will require consultations and system optimization plans – the scope of which have yet to be determined.

The regulations have a companion Guidance Document which lays out in more detail the substance of how MassDEP will implement the regulations. This Guidance Document includes simplistic and highly subjective environmental impact credit and scoring systems that have also not yet been vetted. The outcome of this effort will be used to direct mitigation activities that could cost municipalities millions of dollars.

Only after these regulations have been reviewed in accordance with EO 562, would it be appropriate for MassDEP to reach out to the regulated communities so that the most defensible concepts identified within SWMI can be included into a workable plan for an affordable, holistic and integrated water policy for the Commonwealth. We urge MassDEP to make review of these regulations a priority before March 2016.

Massachusetts Specific Water Quality Standards: The EPA and MassDEP are responsible for co-issuance of National Pollution Discharge Elimination System permits (NPDES). Over the past several years, more and more municipalities have seen aluminum limits being introduced into their wastewater permits. Drinking water treatment facilities are now beginning to see aluminum being introduced into draft individual permits for treatment plant discharge. A fundamental problem exists in that NPDES permits are required to be written to ensure the limit of interest achieves state water quality standards. Massachusetts does not have a standard for aluminum so, as a default, when such a limit is included in a permit, it must conform to a National Recommended Water Quality Criteria.

The National Recommended Water Quality Criteria for aluminum does not account for background levels of aluminum in Massachusetts and New England. In fact, EPA Region I and MassDEP are both well aware that this criteria may be significantly over-protective. Pristine waters across the region may have aluminum levels from natural sources that exceed the national criteria by a factor of 30 or more. The criteria document published by EPA (National Recommended Water Quality Criteria: 2002, EPA-822-R-02-47) notes that the chronic criterion for aluminum "is based on a toxicity test with the striped bass in water with pH = 6.5-6.6 and hardness < 10 mg/L. Data ... indicate that aluminum is substantially less toxic at higher pH and hardness." It has not been determined that such conditions are representative of the ambient conditions observed throughout Massachusetts.

We believe the introduction of aluminum limits to any discharge permit is inconsistent with state and federal "sustainability" initiatives and that such inclusion is premature and unreasonable. We are equally concerned that once a permittee is issued a NPDES permit with an aluminum limit, it is unlikely that once set, it can be removed from a permit, no matter what the science may inform us at a later date. The inclusion of an aluminum limit in NPDES permits will not only result in increased and needless operating cost, it will require the water and wastewater treatment facilities to use more chemicals, produce more sludge, utilize more electricity and increase their "carbon footprint" all for the purpose of meeting a flawed water quality criteria value. It could also lead to changes in drinking water treatment practices that produce potable water of a lower quality than is presently achieved using aluminum-based treatment chemicals.

We very much agree with MassDEP's proposal to immediately change the standard for aluminum to the acid-soluble concentration during this regulatory process. For many years, MassDEP and managers of wastewater treatment facilities have discussed the need and benefit in having the state perform an independent and scientifically defensible evaluation of aluminum concentrations within the waters of Massachusetts. We urge MassDEP to continue to move forward with this evaluation as soon as possible. Only once such an evaluation is complete, would it be appropriate to evaluate the merits of including such limits within the joint NPDES permits.

MassDEP has the ability to help communities with EPA permits by using its authority to craft appropriate, science based water quality standards and then defending these standards should EPA and others challenge them. Other states have done so to the benefit of their communities and businesses and without harm to the environment. We would urge you to make this evaluation a top priority as there are draft permits pending with these very strict limits.

Asbestos Regulations need further revision: In June of 2014, MassDEP amended their asbestos regulations (310 CMR 7.00 and 310 CMR 7.15) and in doing so created some onerous requirements for municipalities with Asbestos Cement pipes (AC Pipe). AC Pipe work has been governed by a MassDEP guidance document since 2011, which stipulates the proper work practices and disposal requirements. In response to this guidance document, MWWA had to develop a course for water system workers and utility contractors and get it approved by the Department of Labor Standards (MA DLS) so that workers could be trained on these proper work practices. When done properly these work practices render the asbestos material non-friable, which essentially means that there are no fibers that become airborne and therefore a hazard is not created during the work. When MassDEP revised their regulations last year, they instituted requirements for pre-work surveys and post work visual inspections that would have been very costly for communities to adhere to. MassDEP acknowledged that these requirements were not as practical to AC Pipe work and worked with MWWA to revise the existing guidance document to allow for enforcement forbearance. MWWA agrees with MassDEP's proposal to codify the work practices in regulation and we look forward to reviewing the regulatory language when it is available. However, we also believe that it is vitally important for MassDEP to go beyond this agreed upon change and look at the definitions of friable and non-friable asbestos and the definition for asbestos containing waste material. We believe that MassDEP has interpreted these definitions stricter than the federal government and that should be rectified in the proposed regulatory changes. EO 562 provides an excellent opportunity for MassDEP and for MA DLS to promptly revise their regulations and reduce the burden to municipalities who have to engage in repair and removal of AC Pipe. MassDEP and MA DLS should engage in a joint regulatory process to make repair and removal of AC Pipe an exempted work practice. We hope that you can work with Commissioner McKinney at the Department of Labor Standards on this issue.

Office of Research and Standards Guidelines: Massachusetts water suppliers have been frustrated by the development of some Office of Research and Standards Drinking Water Guidelines (ORSG) that essentially have the effect of creating a "Maximum Contaminant Level" (MCL) without going through the formal regulatory process that is established for MCL development. EPA has a well-established process to regulate new contaminants of concern and MWWA believes that Massachusetts should follow that process and implement standards only after the scientific and public health merits of doing so have been methodically determined.

We appreciate the opportunity to provide you with these comments and would be happy to meet with you and staff to discuss any of our comments in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Pederson', with a long horizontal flourish extending to the right.

Jennifer A. Pederson
Executive Director

cc: Kristen Lepore, Secretary of Administration and Finance
Matthew Beaton, Secretary of Energy and Environmental Affairs
William McKinney, Department of Labor Standards
Timothy Wilkerson, Executive Office of Housing & Economic Development