

February 10, 2023

VIA ELECTRONIC MAIL ONLY

to: green.communities@mass.gov

Energy Efficiency Division
Massachusetts Department of Energy Resources
100 Cambridge Street, 9th Floor
Boston, Massachusetts 02114

Subject: MA DOER Fossil Free Demonstration Draft Regulation and
Demonstration Project Model Rule
CLF Comments

Dear Energy Efficiency Division Staff:

Conservation Law Foundation (“CLF”) offers the following comments regarding the Department of Energy Resources’ (“DOER” or “the Department”) Draft Regulations and Demonstration Project Model Rule for Municipal Fossil Fuel Free Building Programs.

CLF¹ has a long history of involvement in energy proceedings in Massachusetts, including matters relating to decarbonizing the Commonwealth’s buildings and transportation systems before agencies within the Executive Office of Energy and Environmental Affairs (“EEA”).

Comments on Draft Regulations

The proposed regulations, which will be codified at 225 C.M.R. 24.00 (hereafter “the Regulations”), provide the criteria for eligibility, priority, and assessment for municipalities to participate in the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project (“Demonstration Project”) authorized by *An Act Driving Clean Energy and Offshore Wind*.²

The authorizing statute requires DOER to consider applications for the Demonstration Project in the order filed; as a result, the Regulations prioritize the applications of ten municipalities (“Prioritized Communities”) which have already submitted materials to participate in the program.³ The Regulations allow additional communities to submit applications to be Substitute

¹ CLF was founded and incorporated in 1966 as a non-profit, member-supported organization dedicated to protecting New England’s environment for the benefit of all people. We use the law, science, and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy.

² St. 2022, c. 179, § 84.

³ 225 C.M.R. 24.03.

Communities⁴ – so long as they have met the eligibility criteria and application requirements – but these applications will not be considered unless and until a Prioritized Community withdraws its application or an application is otherwise denied or voided.⁵ None of the Prioritized Communities have significant portions of their communities made up of members of environmental justice populations; as such, these communities generally do not face the same economic burdens arising from the energy transition as those with significant environmental justice populations. Although CLF recognizes that at this stage in the process there may not be a solution for this issue, CLF urges DOER to work to ensure that any municipalities with significant environmental justice programs which demonstrate interest in participation as a Substitute Community are provided with resources to aid in their participation, including but not limited to assistance with filling out application materials, leeway with deadlines, and translation needs, since these communities often lack the funding and staffing to handle such matters.

Once the participating municipalities are selected and the Demonstration Project is underway, the Department will begin periodically reporting results to Legislative Committees on Ways and Means, Housing, and Telecommunications, Utilities, and Energy.⁶ The draft Regulations also require the Department to provide recommendations regarding whether to continue or discontinue the Demonstration Project as a part of this report. Because it is not known what the makeup of future Massachusetts administrations will be, CLF suggests that such recommendation be made not only by the Department, but rather that the Department's reporting under the regulations be submitted to a working group consisting of organizations such as CLF, Acadia Center, and HEET with substantive knowledge of the Demonstration Project for their review and comment, and that the working group submits recommendations regarding the future of the Demonstration Project, including whether it should be continued, discontinued, or expanded. With regard to reporting required of the Department, Participating Municipalities, and Gas and Electric Utilities⁷, CLF recommends that the Department establish and curate a page on its website where all such reports are readily accessible to the public, to increase awareness of the Demonstration Project and develop interest for communities who wish to expand should the program be expanded in the future.

CLF supports verbal comments provided by Senator Michael Barrett and others at the Virtual Public Comment Hearing held for this matter on Wednesday, February 8, 2023 regarding the legislative intent to roll this program out as soon as possible. DOER should work to ensure that municipalities are able to move forward with implementation and that Substitute Communities are poised to quickly begin planning and implementation in the event a Prioritized Community is not able or willing to move forward. As indicated by several commenters during the Virtual Public Comment Hearing, there is a widespread desire for this program to be expanded to include any municipalities interested in participating, especially including, but not limited to, the cities of Boston, Worcester, Somerville, and Salem. DOER and the Legislature should work to ensure that any municipalities seeking to ensure that new buildings are built to anticipated standards and eliminate the need for costly future retrofits should be able to do so.

⁴ 225 C.M.R. 24.06(1)

⁵ 225 C.M.R. 24.06(1)

⁶ 225 C.M.R. 24.07

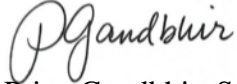
⁷ 225 C.M.R. 24.07

Comments on Model Rule and Bylaw

CLF generally agrees with Attachment A: DOER Model Rule as drafted. For the Model Bylaw, the Department has requested feedback regarding the cut-off date for applications to utilize gas or propane for domestic water heating as the only combustion equipment for multi-family buildings over 12,000 square feet. CLF notes that this date should be set as early as possible to prevent an onslaught of permit applications which would overburden municipal staff.

CLF appreciates the Department for the opportunity to provide these recommendations for improving the municipal fossil fuel free building regulations and demonstration program. We welcome any additional inquiries and collaboration on this matter. To that end, please contact Priya Gandbhir (pgandbhir@clf.org) with any questions or comments. Thank you for your time and attention to this matter.

Very truly yours,



Priya Gandbhir, Senior Attorney