Office of the
TOWN MANAGER

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TOWN OF SHREWSBURY

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November 2, 2015

Ms. Kristen Lepore, Secretary
Executive Office for Administration & Finance
State House, Room 373
Boston MA, 02133

Re: Listening Tour on Commonwealth Regulations – Executive Order 562

Dear Secretary Lepore:

Thank you for the opportunity to comment on the matter of the regulations of the Commonwealth pursuant to the directive issued by Governor Baker in the form of Executive Order 562.

Ideally, my preference would be to see the reform of a host of regulations across the board and I will take a moment to highlight those I find today as most pressing. Failing any reform due to the impregnable nature of regulation, my immediate proposal would be for the Baker Administration to place a permanent moratorium on the promulgation of any new regulations that affect the bottom line of the cities and towns of the Commonwealth. In effect, first do no harm.

Since time and space is limited, my thoughts of those areas requiring immediate attention are:

Water Management Act Regulations – These regulations issued in haste in the final days of Governor Patrick's term of office greatly burden water suppliers whose sole purpose is to provide clean, adequate and affordable amounts of water for residential and commercial purposes. Shrewsbury is among the first communities to have a permit issued using these regulations as a guideline and our rate payers will suffer the consequences of such. For specifics, I refer you to the attached letter dated October 30, 2015, from the Massachusetts Water Works Association to DEP Commissioner Suuberg, which outlines several regulatory concerns including the Water Management Act regulations.

Civil Service Reform – For many years there has been a call to reform the Civil Service system either by funding the administration of the system correctly, or eliminating Chapter 31, at least for non-public safety employees. Many communities including Shrewsbury have adopted Home Rule Petitions that have been enacted to exempt entire classes of employees from the constraints of this system.

On January 25, 2015, the annual meeting of the Massachusetts Municipal Association adopted a wide ranging resolution (attached) dealing with personnel issues and proposed a local option whereby communities could opt out of Civil Service and not have to rely on the adoption of a Home Rule Petition and subsequent impact bargaining.

I ask that this matter be studied to ascertain if any regulatory changes can be effected.

Other Post-Employment Benefits (OPEB) – I served as a member of the Special Commission to Study Retiree Healthcare and Other Non-Pension Benefits (a/k/a OPEB Commission) which filed its final report on January 11, 2013. I am sure that your office is well acquainted with this report.

As a Commission we found that the current retiree health insurance benefit is not sustainable and immediate reform was required in order to save the benefit for future retirees.

This report lead to the filing of House Bill 59 by Governor Patrick on February 12, 2013. Nearly three years have passed and still no reform has been effected but yet the hole we are digging gets deeper each day.

I ask that this matter be studied to ascertain if any regulatory changes can be effected.

You will note that I have concentrated on three very large ticket matters leaving the daily inefficiencies and obstacles to smart government caused by the Commonwealth's regulatory environment for others to document to you.

I wanted to use my time and opportunity on the very pressing matters that have a profound long term impact on the daily lives of current and future taxpayers and residents of this Commonwealth.

A sustainable Commonwealth requires adequate and affordable water supplies, a competent and effective workforce and an employee benefit structure that does not cannibalize essential services for future generations.

Thank you for this opportunity.

Truly yours,

Danial J. Morgado
Town Manager

Cc Board of Selectmen

enclosures

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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

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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,

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

Resolution Ensuring a Modern and Sustainable Personnel Management and Benefit System to Attract and Retain Public Employees, Provide Excellent Municipal Services, and Ensure Prudent Use of Taxpayer Dollars (2015)

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As adopted by the members on January 24, 2015.

Whereas, cities and towns are committed to a modern personnel management and benefit system that attracts and retains valuable employees, allows for the delivery of high-quality municipal services, and ensures the equitable and prudent use of taxpayer dollars; and

Whereas, the municipal personnel management system includes many components that are highly regulated by state law, which includes civil service, collective bargaining, unemployment benefits, health insurance for active employees, and pensions and Other Post Employment Benefits [OPEBs] for retired employees; and

Whereas, collectively, cities and towns are among the largest employers in the Commonwealth, and the salaries and benefits for public employees consume, on average, 70 percent or more of local budgets; and

Whereas, cities and towns have an obligation to their residents, taxpayers, employees and retirees to effectively and efficiently manage personnel decisions and make certain that wages and benefits are sustainable, because this is necessary to ensure that communities can continue to deliver essential services to their residents and businesses, and prevent reductions in the municipal workforce caused by costs that grow faster than incoming revenues; and

Whereas, the Commonwealth must assist cities and towns in this endeavor by providing local officials with the flexibility and ability to effectively manage at the local level, and must oppose any proposals that would erode existing municipal decision-making authority; and

Whereas, several personnel management and benefit laws have been updated in recent years, yet important work remains to ensure that municipal officials have access to modern tools to recruit and retain employees and offer wages and benefits that are both competitive and sustainable;

Therefore, in order to ensure a modern personnel system that attracts and retains public employees, provides for excellent municipal services, and efficiently uses taxpayer dollars, it is hereby resolved by the members of the Massachusetts Municipal Association as follows:

The cities and towns of the Commonwealth respectfully call on the Legislature and Administration to take the following actions:

• Allow the civil service system to be rescinded by cities and towns on a local-option basis, without the obligation to impact bargain and without the approval from the Legislature, with a provision that cities and towns still have the option to retain aspects of the system, such as for the initial hiring of public safety

personnel;

• Pass legislation that includes significant and meaningful municipal unemployment insurance reform, so that municipal employees who work on behalf of the schools cannot collect unemployment benefits during school vacations if they have a reasonable assurance of returning to their jobs, and to provide an offset in UI benefits to address the issue of retirees who collect a pension from the municipality also collecting unemployment benefits if they return to work for the municipality and reach the statutory 960-hour employment cap;

• Collaborate with local officials to ensure greater accountability for local and regional pension boards, many of which operate independently and make decisions with significant financial impact on local taxpayers and community budgets;

• Safeguard the Municipal Health Insurance Reform Act of 2011, continue to offer local officials effective tools to manage growing health care costs, and ensure that all communities equally share the local option flexibility to implement a variety of contribution percentages for retired employees;

• Oppose any proposal to reestablish compulsory binding arbitration, a system that was eliminated by the citizens as part of Proposition 2½ in 1980, which would cripple local budgets by preventing local legislative bodies from determining whether arbitration awards are affordable and sustainable;

• Ensure a well-managed, appropriately funded Joint Labor-Management Committee for Police and Fire (JLMC) in order to execute timely, fair resolution of management-public safety collective bargaining disputes, and adoption of measures at the JLMC and the Department of Labor Relations to ensure balanced arbitration decisions that give full consideration to municipal and taxpayer interests;

• Recognize that OPEB reform is necessary to guarantee that cities and towns can continue to offer high-quality insurance benefits to municipal retirees and to protect essential municipal and school services from being reduced because of growing OPEB costs that consume a larger and larger share of local budgets, by enacting a comprehensive and meaningful OPEB reform bill to ensure that retiree health insurance costs are affordable and sustainable now and in the future, including increasing the years of service needed to qualify and prorating benefits based on years worked, with no new unfunded mandates imposed on communities, and ensuring that all municipalities maintain and equally share the local authority to establish contribution percentages for current and future retirees; and

• Oppose the imposition of any new unfunded mandates, preemption of local authority, or reduction in the existing local decision-making authority that cities and towns now use to control personnel costs; and

It is further resolved that a copy of this resolution shall be provided to the Governor and members of the General Court of the Commonwealth.