

October 30, 2015

Martin J. Suuberg  
Commissioner  
Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

Dear Commissioner Suuberg:

Thank you for this opportunity to provide comments on Governor Baker's Executive Order 562 (EO 562) and the MassDEP Executive Order 562 Summary and Preliminary Regulatory Recommendations. I submit these comments on behalf of the Conservation Law Foundation (CLF). Founded in 1966, CLF protects 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.

In general, CLF supports regulatory efficiency. We believe that periodic regulatory reviews can refine and strengthen Massachusetts' regulatory framework and bolster the Commonwealth's position in the global marketplace, while protecting the health and vitality of its environment, which is held in trust for the public who enjoys it. At the same time, we caution that Massachusetts' regulations play a special role in shaping not only what happens within our borders, but what happens in New England and our nation as a whole. Any refinement of our regulatory framework should be nuanced and tailored to achieve efficiency without weakening environmental protections. We are particularly concerned about EO 562's requirement that no regulation exceed federal requirements. As you know, our nation's regulatory system is based on federal requirements serving as a baseline and not a ceiling. This premise has secured Massachusetts' position as a national leader on environmental reform. Let's not forget that it was *Massachusetts v. EPA* that laid the groundwork for this summer's game-changing Clean Power Plan, which will shape discussions at the upcoming global climate talks in Paris, France. In its current state, our regulatory system protects the environment and public health while nurturing the innovative and entrepreneurial spirit we have come to appreciate here in Massachusetts.

And while EO 562 cites a need to avoid regulatory overburdening that can inhibit business growth and job creation, it's worth noting that just today, the *Boston Globe* reported that economic growth in the Commonwealth continues to out-pace the US economy and job growth remains stronger here than in the nation as a whole, according to a report by the University of Massachusetts and the Federal Reserve Bank of Boston<sup>1</sup>. This demonstrates that strong environmental regulations and a robust economy can co-exist and perhaps even nurture each other. CLF's brief comments are set out below.

---

<sup>1</sup> See Woolhouse, Megan, "Massachusetts Economy Slows, But Still Tops US Rate," <http://www.bostonglobe.com/business/2015/10/29/economy-slows-third->

#### Waterways – DPA/FPA, 310 CMR 9.00

We are concerned that the proposed streamlining and flexibility will loosen DPA and FPA restrictions and may undermine the effective stewardship of trust lands. With greater “flexibility,” these changes may expand the use of tidelands beyond water-dependent uses and the public interest. DEP must be especially vigilant to avoid promotion of commercial uses that undermine the public trust doctrine and the clearly stated purposes of 310 CMR 9.00. (See 310 CMR 9.01(2).)

#### Underground Injection Control, 310 CMR 27.00

We understand that DEP lacks data on private wells, which are proliferating in parts of the state and may be causing stream depletion. The revisions to the UIC regulations may be an opportunity to expand well registrations to remedy this problem.

#### Land Application of Sludge and Septage, 310 CMR 32.00

As you know, sludge in pelletized form is used as a fertilizer on farms and public lands. Raising the molybdenum limit can be a problem where there are repeated applications of sludge, as this can cause an excessive concentration of molybdenum, well above the proposed limit of 40, in soil, runoff, streams and groundwater. If the limit is increased, DEP should ensure that farmers and other sludge users implement best practices to avoid these problematic concentrations.

#### Environmental Results Program – Certification

Massachusetts has a unique and leading-edge program in the Environmental Results Program. While the proposal to exclude digital processors makes sense, we remain concerned about lowering standards, and we believe that moving to a one-time certification for photoprocessors and printers is misguided. Circumstances change and technology changes. We feel strongly that there is a need for an ongoing regulatory role for DEP. We hope that DEP will reconsider and require re-certification on at least five-year intervals and when there is a deployment of technologies that are substantially different from the technologies used in the original certification.

#### Groundwater Discharge Permits Program, 310 CMR 5.00

CLF is concerned about the proposal to allow self-certification by owners of private wastewater treatment facilities. If there is a need to provide greater flexibility, there is a role for DEP in providing an initial inspection that could go hand-in-hand with the self-certification. We also urge caution in providing exemptions for the application of plant nutrients to the extent that the application is near surface water and could lead to the proliferation of cyanobacteria.

#### Wetlands, 310 CMR 10.00

We believe it is wise to seek guidance from a stakeholder group. DEP should very carefully consider changes to these regulations. In particular, we have observed anecdotally coastal homeowners who, in

---

[quarter/y6GDgzKBE72fH0dQXPrYEI/story.html](http://www.donahue.umassp.edu/documents/MassBenchmarks_Bulletin_-_October_2015.pdf); see also,  
[http://www.donahue.umassp.edu/documents/MassBenchmarks\\_Bulletin\\_-\\_October\\_2015.pdf](http://www.donahue.umassp.edu/documents/MassBenchmarks_Bulletin_-_October_2015.pdf)

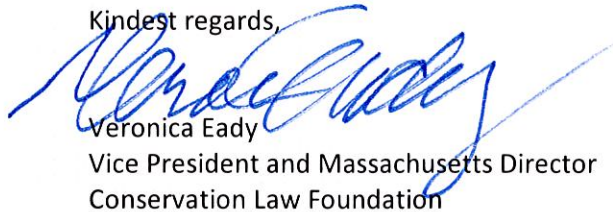




seeking to protect their homes from coastal erosion, erect rock walls. DEP should strenuously avoid any changes that might result in an engineered coastline, as this could cause highly deleterious impacts to the coastal environment.

In conclusion, I'd like to express my deep appreciation for the well-organized and transparent process that DEP has run thus far with respect to EO 562. Transparency is critical in this process, and we look forward to providing comments on DEP's revised regulations as they make their way through the rulemaking process. Again, thank you for this opportunity to provide input on Governor Baker's Executive Order 562 and the MassDEP Executive Order 562 Summary and Preliminary Regulatory Recommendations. Should you have any questions or comments, please feel free to contact me at (617) 850-1730 or by email at [veady@clf.org](mailto:veady@clf.org).

Kindest regards,



Veronica Eady  
Vice President and Massachusetts Director  
Conservation Law Foundation



Rec'd  
11.5.15

00602  
10002  
02 NOV 55  
PMS 1  
1944

neopost  
11/02/2015  
FIRST-CLASS MAIL  
US POSTAGE \$000.485

1000

ZIP 02110  
041L11250752

EO 562 Input  
40 Devere Simpson  
MASSDEP  
One Winter St.  
Boston, MA 02108

1035-2688

[illegible]

