



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

Bethany A. Card
Secretary

Martin Suuberg
Commissioner

MassDEP Water Resources Management Advisory Committee Meeting Minutes

Wednesday, July 13, 2022, from 1 pm to 3 pm, held remotely

Zoom Link: <https://us06web.zoom.us/join/ztZArf-urqz4qHdOvEITV8Pf5Lu9Hi6SLdpXd>

Attendees

WMA Advisory Committee Members:

Steve Bartha, Danvers Town Manager, Mass Municipal Association representative

Wayne Castonguay, Ipswich River Watershed Assn, Public Seat

David Condrey, Milford Water Dept, Associated Industries of Massachusetts representative

Ian Cooke, NepRWA, Environmental Organization representative

Patty Gambarini, Pioneer Valley Planning Commission, Regional Planning Organization representative

Jennifer Pederson, Mass Water Works Association, Water Works Industry representative

Amy Rusiecki, Amherst Public Works, Public Seat

Brian Wick, Cape Cod Cranberry Association, Agricultural Association representative

Not in attendance: Matthew Romero, Consumer Organization (had not received meeting notices, contact information now updated), Julia Blatt, Watershed Association, Roger Skillings, Well Drilling Association

EEA and MassDEP: Kathleen Baskin, MassDEP; Julie Butler, MassDEP; Anne Carroll, DCR; Shi Chen, MassDEP; Stephanie Cooper, MassDEP; Karen Crocker, MassDEP; Lealdon Langley, MassDEP; Duane LeVangie, MassDEP; Elizabeth McCann, MassDEP; Vandana Rao, EEA; Linjun Yao, MassDEP

Public Attendees: Jeff Azano-Brown, Town of Wellesley Department of Public Works; Jaimye Bartak; Sarah Bower, Mass Rivers Alliance; Casey Ciapciak, Natick Water/Sewer; Lexi Dewey, MWRA WSCAC; Danielle Dolan, MA Rivers Alliance; Daniel Heiter, IRWA and New England Biolabs; Heather Miller, CRWA; Melissa (Simoncini) Nowitz, Concord; Michael Retzky, Needham Water Sewer & Drain Division; Amy Schofield, Boston Water & Sewer Commission

Documents used at the meeting:

Powerpoint presentation entitled "Water Resources Management Advisory Committee Meeting, July 13, 2022"

Agenda Item 1: Meeting Minutes

Minutes from the June 29, 2022, meeting will be distributed at the next Committee meeting.

Agenda Item 2: Regulation Revisions – The proposed regulations are available from the MassDEP website at: [310 CMR 36.00: Massachusetts Water Resources Management Program | Mass.gov](https://www.mass.gov/info-details/310-cmr-36-00-massachusetts-water-resources-management-program).

D Levangie presented the proposed regulations revisions in detail.

- a) **Definitions** – 36.02, adds 2 new definitions of “multi-year storage” and “nonessential outdoor water use”
- b) **Registration Conditions** – During drought declared for their MA Drought Region, registered-only withdrawers would follow requirements based on the Massachusetts Drought Management Plan (2019) in which restrictions on nonessential outdoor water use become more stringent as we get to higher drought levels.

Essential water uses would be exempt from the restrictions, including water use that is needed for the core function of a business.

Public Water Supply - For approximately 63 registered-only public water suppliers this means:

State Drought Plan	Nonessential Outdoor Water-Use Restrictions
Level 1-Mild	1 day per week watering, before 9 a.m. or after 5 p.m.
Level 2-Significant	Hand-held hoses or watering cans only, before 9 a.m. or after 5 p.m.
Level 3-Critical	Ban on all nonessential outdoor water use
Level 4- Emergency	Ban on all nonessential outdoor water use

- The proposed regulations include an alternative for registered-only PWS served entirely by reservoirs with multi-year storage if they choose to develop an individual drought management plan with restrictions tailored to their reservoir capacity.
 - Reservoirs store water during winter and spring and so have less immediate impact during the actual drought.
 - Three years of storage was chosen based on historical droughts and recent drought history.
 - Storage must be useable and active, not emergency.
 - Storage will be based on USGS reports or private analyses.
- Individual drought storage plans would need to meet criteria on drawdown, refill time, actions triggered at each drought stage, enforcement and penalties, how success will be monitored and documented.
- Ground water withdrawals generally have more immediate impact on streams during drought and so are not given the alternative option.

Golf Course Operations - For approximately 87 registered golf courses this means:

Irrigation can be reduced either by reducing irrigation times, or by irrigating fewer acres Watering allowed up to designated percent				
MA Drought Level	Tees & Greens	Fairways	Roughs	Landscape & Ornamentals
Normal	100% Essential Use	100%	100%	100%
Level 1 (Mild)		80%†	50%†	Courses whose core business includes a special event venue may continue to irrigate gardens, flowers and ornamental plants by means of hand-held hose or drip irrigation
Level 2 (Significant)		60%†	0%	
Level 3 (Critical)		40%†		
Level 4 (Emergency) **	TBD	0%		0%
† Irrigation use shall not occur between the hours of 9 a.m. and 5 p.m., except that hand-watering of hot spots may occur at any time				
** Additional actions to be determined by the Governor’s Emergency Proclamation.				

- 87 registered golf courses have no restrictions now, while 62 permitted courses must implement the restrictions in their permit. These regulations will promote equity in competing for golfers among the courses.
- The proposed irrigation limits are on daily basis, for example, if a course waters 20 acres of rough per day, they would reduce to 10 acres of irrigated rough per day at Level 1
- Golf courses can propose an alternative drought plan that is at least as restrictive.

If a water withdrawer has both a registration and a permit, the permit would be controlling.

- c) **Permits Expiration Dates** – 36.17, regulatory effective dates for all Water Management permits in each of the 27 river basins have been extended by 4 years by Chapter 240 of the Acts of 2010, as amended by Chapter 238 of the Acts of 2012, collectively known as the Permit Extension Act, and 462 days by the Governor’s COVID-19 Order No. 42, “Order Resuming State Permitting Deadlines and Continuing to Extend the Validity of Certain State Permits,” July 2, 2020. The proposed revision will bring the effective dates into line with those extensions.

Effectively this means permit fall into 4 “bins.”

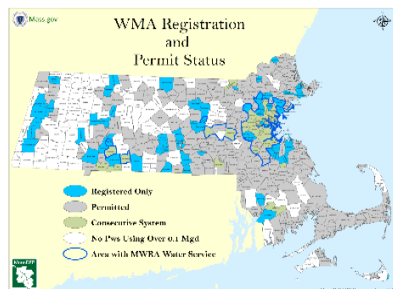
- Those renewed before 2010, i.e. before the PEA and Covid extensions – Round 2 Effective Date will be extended by +5 years
- Those in basins with all permits renewed after PEA (2010) but before the Covid Order (2020) – Round 2 Effective Date will be extended by 462 days
- Those in basins where some permits were administratively continued and some renewed when the Covid extension went into effect - Round 2 Effective Date will be extended by 462 days
- Those in basins where all permits were administratively continued when the Covid extension went into effect and none had been renewed – Round 2 Effective Date is unchanged because the permits had no relevant end date to extend when the Covid extension went in effect.

- d) **Orders, Violations, and Penalties** - 36.43, clarifies general MassDEP enforcement authority, this change is being added to all MassDEP regulations as they are amended

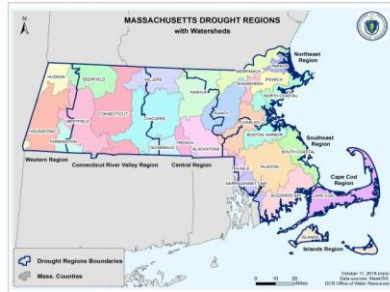
Committee Questions and Comments:

General

- The proposed regulations are a step in the right direction, need more to prevent drought and reduce demand when resources are most stressed. Conservation can save up to 50% of water use^{citation not provided}. Make regulation immediate, for permits and registrations.
- Is “useable storage” new since 2021?
 - After the 2021 comment period for the draft regulations, MassDEP subsequently revised the definition of “multi-year storage” to exclude the volume of water below the intake and that does not require an emergency declaration for use.
- Who will be impacted by the regulations?
 - Registered only PWSs, including consecutive systems, and 87 registered-only golf courses.



- The proposed regulation should consider impacts to downstream suppliers.
- Do MA Drought Regions align with basins used for low-flow triggers?
 - The MA Drought Regions do not align with the 27 major river basins. Drought regions go along county lines. A drought declaration could coincide with a river basin because the MA Drought Plan allows declaration by basin, but generally drought declarations are made by drought region. River basins cross the drought regions, i.e. Charles Basin could be in three drought levels (in 3 drought regions).



Registrations vs Permits

- If the goal is equity, how does having different requirements for permits and registrations, then an exemption for large surface water systems, promote equity? This does nothing to address different impacts and confusion over different requirements across town lines.
- Uniform requirements on all regulated parties allows for much more meaningful communication. This year the MA Drought Advisory Committee has consistently garnered much more media coverage of this drought, and there is greater awareness based on that outreach.
- Consistency and equity between registrants and permittees would be better if these requirements were integrated into registrations and permits now. Integrating these requirements over time into permits is good, but it is also a lost opportunity to do it now if we can.
- Will the registrations be stricter than the permits?
 - The restrictions required in permits begin either on May 1 for calendar-based restrictions, or at the Aquatic Baseflow Trigger (ABF) for permittees who choose the streamflow triggered option. Many permits then move to more stringent restrictions when streamflows hit the 7-day low-flow trigger. The Level 1 drought restrictions are broadly analogous to the 7-day low-flow requirements.
 - During most summers, permit restrictions will begin earlier and will be more protective during normal conditions, during a mild drought, both the registrations and permits will be roughly equal, and during times of severe drought, registrations will have more stringent requirements and be more protective.
- Are permits only more stringent if they use the gage triggers?
 - No. If permittees use the calendar trigger, they restrict outdoor use from May 1 – Sept 30 no matter what the ABF, 7-day low-flow, or drought values are, so it is frequently more stringent in non-drought years.

Clarification

The 7-day low-flow as a trigger for more stringent restrictions in WMA permitting was introduced in 2014 during SWMI discussion in response to concerns that localized impacts were not recognized by the drought declaration process, and a belief that the drought triggers were slow to trigger. The 7-day low-flow trigger was thought to be more reflective of the here and now.

The updated MA Drought Management Plan (2019, post-SWMI) drought plan reflects more recent consideration of drought parameters by the state's Drought Management Task Force, is more responsive in reflecting on-the-

ground drought conditions, was adopted by the MA Water Resources Commission, and is appropriate to use in determining when and where a drought has occurred and the severity of that drought.

Reservoir Storage

- It was noted that surface storage has less impact on resources during drought. Therefore, the alternative for a site-specific drought plan should be open to all surface water storage systems, and groundwater as well.
- If this is to ensure resiliency and flexibility in climate change, you lose the basis for that argument if you give an exemption to large systems.
- The reservoir alternative requires 3 times a registrant's registered volume + required releases in useable storage, how many reservoirs have release requirements?
 - There are very few reservoirs with required releases.
 - And the alternative requires a conservation plan with restrictions tailored to the surface water system that is reviewed and approved by MassDEP.

Costs, Rates and Budgeting

- Would like to see fiscal notes in the proposal and actions and data collection outlined to measure impacts and success of the new restrictions.
- As a society we do not talk effectively about water use and conservation, has not been enough effort put into education on water use. Industrial developments should be encouraged NOT to have lawns.
- DEP and DCR should put out cost data and best practices for dealing with water rates. There are state laws requiring that all costs be covered by rates, there are many parties out there who are willing to help. Particularly smaller suppliers might not have time or capacity to review cost strategies. This Committee should put that information out.
 - Rate information at: <https://www.mass.gov/service-details/water-rates>.
 - Another resource on rates: <https://www.mass.gov/guides/water-rates-and-data-management>
- Many systems have increasing block rates. However, some customers who want to use water will do so, regardless of restrictions. Some customers pre-pay their fines in advance of a violation, and there is very little judicial support for enforcement.
- Rates should be based on amount of water individuals use.
- This will disproportionately impact disadvantaged communities whose water use is subsidized by those who pay a lot to water their lawns.
- Suppliers should be able to structure rates so those who want to water are the only ones who pay. If we can count on "people who are going to use what they want to use regardless," then providers should be able to build that into their finance structures so they will be less impacted by lower water sales during drought restrictions.
- Fiscal impacts of the proposed regulation will be disproportionate on some tiny systems where use has not increased in 30 years.
- In wet years, you raise less income, but suppliers use dry year income to cover wet years.
- Adding new layers of constraint and unpredictability to systems makes running a system much harder. Issues of system maintenance are very difficult

Comments received when a previous draft of these regulations went out for public comment in 2021:

The proposed regulations will be released for a 30-day public comment period and public hearing(s) in the fall.

DEP committed to posting all comments received during the 2021 public comment on the previous iteration of these regulations on the MassDEP Water Management Program webpage.

- All comments previously filed in July 2021 are available at [310 CMR 36.00: Massachusetts Water Resources Management Program | Mass.gov](#) at the [310 CMR 36.00 Public Comments - 2021](#) link. While anyone is encouraged to submit comment on the proposed regulations, comments submitted in 2021 do not need to be resubmitted.
- In 2021, 373 comments were submitted: 21 PWSs, 13 environmental organizations, 6 industry organizations, 1 Legislator, 11 residents, and 317 nearly identical emails
- Comments opposed included: impact to registered water rights; change not needed, use not only not going up but in some cases decreasing; potential health impacts; costs and budget issues; implementation timeline is too quick (24 months); improper to link to the MA Drought Management Plan & climate change
- Comments in support included: good first step; should be expanded to include < threshold withdrawals, private wells and permittees; would not impact registered water rights; implementation should be immediate, not 24 Months; linking drought restrictions to the MA Drought Management Plan & climate change is appropriate and important

MassDEP will prepare a complete response to comments document that will include last year's comments and new comments.

Agenda Item 3: Next Steps/Future Meeting Topics

- D LeVangie asked Committee members to submit their Open Meeting Law certifications.
- Mitigation has been raised as a future meeting topic.
- K Baskin thanked everyone for their participation. Next Committee meeting will be scheduled for the fall.
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