



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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MassDEP Water Resources Management Advisory Committee Meeting Minutes

Tuesday, October 25, 2022, from 1 p.m. to 3 p.m., held virtually

Zoom Link: <https://us06web.zoom.us/join/join?pwd=ZUlc--prDgiEtSbxi7lvP7zsjx5lVoj2idv>

Attendees

WMA Advisory Committee Members:

Steve Bartha, Danvers Town Manager, Mass Municipal Association representative (left meeting - 2:00 pm)

Julia Blatt, Massachusetts Rivers Alliance, Watershed Association representative

Wayne Castonguay, Ipswich River Watershed Association, public representative

Ian Cooke, Neponset River Watershed Association, Environmental Organization representative

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

Matthew Romero, MWRA Advisory Board, Consumer Organization representative

Amy Rusiecki, Amherst Public Works, public representative

Brian Wick, Cape Cod Cranberry Growers Association, Agricultural Association representative

Not in attendance:

David Condrey, Associated Industries of Massachusetts (due to technical difficulties)

Patty Gambarini, Regional Planning Organization

EEA and MassDEP: Kathleen Baskin, MassDEP; Julie Butler, MassDEP; Anne Carroll, MassDCR; Shi Chen, MassDEP; Stephanie Cooper, MassDEP; Karen Crocker, MassDEP; Jason Duff, MassDCR; Jennifer D'Urso, MassDEP; Lealdon Langley, MassDEP; Duane LeVangie, MassDEP; Elizabeth McCann, MassDEP; Vandana Rao, EOEEA; Linjun Yao, MassDEP

Public Attendees: Sarah Bower, Mass Rivers Alliance; Erin Bonney Casey, Ipswich River Watershed Association; Stephen Estes-Smargiassi, MWRA; Darin LaFalam, Town of Lincoln; Martha Morgan, Nashua River Watershed Assn.; Brian Pena, Town of Andover; Jen Ryan, Charles River Watershed Association

Documents Used at the meeting: Powerpoint presentation entitled "Water Management Advisory Committee Meeting October 25, 2022"

Meeting Opens:

- Attendees signed into the Zoom chat which serves as the rollcall for the meeting.
- Today's meeting agenda included reviewing the draft regulations, seeking committee input, and beginning discussion of topics that the Committee would like to delve into in the future.

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.

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Agenda Item 1: June 29, 2022, Meeting Minutes for review and approval

- Two proposed revisions to the minutes were raised:
 - Some members of the Committee recommended that MassDEP incorporate comments received during the 2021 comment period before putting the draft regulations back out for public comment, and
 - Minutes should reflect that, because permit conditions are controlling when a water user has both a registration and a permit, 50% of all water regulated by the Water Management Act is covered by permit conditions.
- After clarification to be sure the second point was fully understood and captured, both comments were incorporated into the meeting minutes.
- J Pederson made a motion to accept the minutes with the revisions discussed above, it was seconded by M Romero.
 - The minutes were adopted per a vote of 8 in favor and 2 members absent.

Agenda Item 2: July 13, 2022, Meeting Minutes for review and approval

- There were no comments, questions or revisions put forward on the July 13 draft minutes.
- J Pederson made a motion to accept the minutes, it was seconded by M Romero.
 - The minutes were adopted per a vote of 7 in favor, 1 abstention, and 2 members absent.

Agenda Item 3a: Regulation Revisions

a) Definitions –

“Multi-Year Drought Storage means a registrant’s reservoir capacity, as determined by the Department, of not less than three times the sum of a registrant’s authorized withdrawal and any required reservoir release established by statute, regulation, permit or other approval issued by a state or federal agency. Multi-Year Drought Storage does not include the volume of water below intake elevations and does not require an emergency declaration or order for use.”

Comments received at the meeting included:

General

- A Committee member felt that discussion of specific communities water use during COVID was out of place in the Department’s response to public comments received on the draft regulations.
- How long would systems have a) to apply for alternative drought management plans, and b) develop system-specific plans?
- Would there be a public review process of the system-specific plans?
- Is the definition overly conservative in assuming no inputs for a 3-year period?
- During the 60's drought, the lowest year precipitation (at the Amherst gage) was around 64% of the long-term average, and the average over the 6 years of the drought was around 70% of the long-term average. It rained during every season of every year.

Pros

- This is not an exemption that would allow certain water suppliers to by-pass instituting nonessential outdoor water use restrictions, it is an alternative plan for very large surface water supplies.
- This reflects fact that very large surface water supplies will not impact streamflow during droughts by reducing baseflow, as do groundwater sources, because they store and distribute water captured in the reservoir during times of high streamflow.

Cons

- During the 2021 comment period on these regulations, suppliers expressed a desire for water use restrictions based on individual drought plans developed by each PWS. This proposed language is a step away from individual drought plans.
- Multi-year drought storage appears to be designed to provide an alternative for MWRA.
- All systems (ground and surface water) should have the option of developing individual plans and restrictions.
 - Note: MassDEP reviewed preliminary data on Massachusetts reservoirs, and most do not have more than one year of storage. It is possible that only the MWRA would meet the bar.
- This is not scientifically based.

Nonessential Outdoor Water Use

Presentation includes a redline version of changes made in response to comments received during the 2021 comment period:

- broadened the definition at (e) 3. from “golf course venues” to all venues “used for weddings or similar special events that limit watering to hand-held hose or drip irrigation as necessary to maintain gardens, flowers and ornamental plants”.
- clarified core function by adding “those functions essential to the commercial operations”.

Comments received at the meeting included:

- How is the core function of a business defined and identified?
- Has the golf industry objected to these restrictions?

Note: Permitted courses have maintained over time that it is inequitable to restrict permitted courses and not registered. It creates an unfair business advantage for registered courses that are not required to restrict irrigation.
- D LeVangie reviewed the graduated restrictions for golf courses. Proposed regulations make no cutbacks on tees and greens, they would be destroyed without watering. At Drought Level 1 golf courses must stop watering landscaping (except for landscaping at the “event venue” portion of a golf course). Irrigation of roughs goes to 50% of normal before 9 a.m. and after 5 p.m. At Drought Levels 2 and 3 there is no irrigation of roughs. Irrigation of fairways will be cut back more gradually. At Drought Level 4 all irrigators will need to do as required by Governor’s Emergency Declaration.

MassDEP is asking for comment on proposed section (f) of the definition of Non-essential Outdoor Water Use concerning irrigation of public parks and public recreation fields¹. MassDEP recognizes the potential messaging difficulties and inherent tension in restricting homeowners’ lawn-watering during times of drought while simultaneously allowing irrigation of public parks and playing fields. However, proposed section (f) is intended to ensure public health and safety through public opportunities for outdoor recreation and cooling in hot weather, particularly in Environmental Justice communities.

Comments received at the meeting included:

Pros

- From municipal point of view, cannot stress enough how important it is, from a municipal investment and public safety perspective, to maintain urban trees.

¹ MassDEP posted the formal request for comment on this topic on its website on October 25, 2022, and extended the public comment period from November 7, 2022, to November 18, 2022, to ensure adequate time for reviewers to provide comment.

- Attendees at the Water Resources Commission meeting suggested graduated cutbacks for public parks and playing fields, along the lines of the golf course restrictions.
- “Public parks” in proposed section (f) would be publicly owned parks, not privately owned parks or clubs,
 - the parks must be open to everyone,
 - there was discussion around Environmental Justice and ensuring opportunities for public to get outdoors,
 - particularly with climate change, how do you ensure the public has opportunity to be outdoors, and to get relief from the heat.
- Municipalities put a lot of resources into parks, it is expensive for municipalities if plantings die and must be replaced.
- Communities need to maintain investment and resources.

Cons

- Watering parks and ballfields should at least be limited to before 9 a.m. and after 5 p.m.
 - municipalities prefer local discretion for irrigating public parks and ball fields, but can accept the before 9 a.m. and after 5 p.m. limitation.
- should be limited to essential items – like replantings
- this provision needs to be limited because it would be wrong for the DCR and local government to be watering parks and playing fields, while the public cannot water their lawns.

Agenda Item 3b: Registration Conditions

Presentation shows a sample map entitled “CURRENT MUNICIPAL WATER USE RESTRICTIONS Nonessential Outdoor Water Use Restrictions”, showing all municipalities that have reported implementing outdoor water use restrictions as of the publication date. MassDEP publishes the map frequently (sometimes as often as every two weeks) during declared droughts. The map also shows details (days per week, mandatory/voluntary) of restrictions implemented.

Currently only WMA Permit holders are required to implement Nonessential Outdoor Water Use Restrictions. Permit restrictions may be in place from May 1-Sept 30, or may be implemented when streamflows fall below average for the time of year. Permit restrictions do not increase as droughts become more severe.

The proposed regulations will promote more uniform nonessential outdoor water use restrictions during drought by restricting the entire regulated community during drought when water resources are most stressed.

Comments received at the meeting included:

- These restrictions are a small step in protecting water resources.
- These proposed restrictions infringe on water suppliers registered water rights.

Agenda Item 3c: Permits Expiration Dates

These are “housekeeping” changes to reflect permit expiration dates 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 extended by 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.

There was no Committee discussion of these changes.

Agenda Item 3d: Orders, Violations, and Penalties

These are “housekeeping” changes to bring WMA regulations up to date with other agency regulations.

There was no Committee discussion of these changes.

Item 4: Next Steps/Future Meeting Topics

The next Committee meeting will be after the first of the year.

D LeVangie asks the Committee for input on topics to focus on at upcoming meetings. Permitting, registrations, grants, mitigation are suggested topics.

Mitigation -

Committee would like presentations on the impacts/benefits of specific types of mitigation. Focus could be a science-based presentation on mitigation benefits to streamflow - a deep dive on different types of mitigation by MassDEP and agency staff.

- The Nov 2014 guidance on mitigation is on the MassDEP website, but the mitigation credits details are vague. Since November 2014, the program has added specific detail, and the guidance is distributed to permit applicants.
- The Committee suggests formally reviewing the guidance and then officially posting it on the MassDEP website.
- Would like to review “direct mitigation” first.
 - Infiltration/Inflow and stormwater would be the most technical, so might be the place to start.
 - Must consider PFAS, returning stormwater might not be a good idea as PFAS becomes more ubiquitous.
- For those who did not go through SWMI (Sustainable Water Management Initiative) – the basic idea of direct mitigation is to get water returned to the groundwater of the watershed where it was withdrawn.
- When direct mitigation available to a permit applicant is insufficient to mitigate the withdrawal volume, indirect mitigation, which provides environmental benefits other than returning water to local groundwater, is an alternative option.
- MassDEP will present on its ongoing experience with:
 - implementation of direct vs indirect mitigation in permitting,
 - obstacles to implementing mitigation,
 - success stories in mitigation implementation to date.

Follow-up studies on the impact of WMA permit conditions

- Committee could talk more about scope of studies to assess whether what we are doing is having an impact.
- SWMI was set up at a point in time, 2000-2004, and we continue to issue permits based on data documenting conditions during a time that has passed. How can the SWMI framework be updated?

Public Education/Public Service Announcements

- From a planning point of view, perhaps education could be used to make the public more aware of water use – there is not enough outreach from Public Service Announcement (PSA) point of view
- PSA discussions could be something to be taken up by larger EEA initiative

- DCR Office of Water Resources would be interested in participating in such a discussion/initiative

Presentation for the Committee on WMA Grants

The WMA has two types of grant funding

1. **M36 Audits** - The WMA issues an annual Request for Proposal (RFP) for suppliers to apply for funding for system water loss audits conducted according to AWWA guidance (M36 audits). The 2022 RFP had closed just before this Advisory Committee meeting.
 - MassDEP received 12 applications for communities that will work with consultant to do state of the art water audits to document Unaccounted for Water (UAW)
2. **Grants for PWS (with a permit or registration) to fund activities that will minimize or mitigate withdrawal impacts**, such as drought planning, conservation, mitigation and minimization activities, habitat improvement, rebate programs, and dam removal;
MassDEP encourages group applications, 2022 application deadline is November 24.