

DRAFT
PETITIONING FOR
A CASE-SPECIFIC DESIGNATION OF A
NON-POTENTIAL DRINKING WATER SOURCE AREA

POLICY #

This policy offers guidance for submitting a petition to the Commissioner of the Department of Environmental Protection for a Case-Specific Designation of a *Non-Potential Drinking Water Source Area* [as per 310 CMR 40.0932(5)(c)].

Date

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**Petitioning for
a Case-Specific Designation of a
Non-Potential Drinking Water Source Area**

1.0 Purpose:

This policy provides guidance on the petition processes involved in the Case-Specific Designation of a Non-Potential Drinking Water Source Area described in 310 CMR 40.0932(5)(c).

2.0 Applicability:

This policy is applicable to groundwater that is categorized as a Potential Drinking Water Source Area (PDWSA) solely due to its location within a Potentially Productive Aquifer (PPA). The groundwater that the municipality or private party wishes to petition for NPDWSA status must have been a.) contaminated by at least one release of oil and/or hazardous materials to the point of exceeding MCP reporting thresholds, and b.) demonstrated that it is infeasible (pursuant to 310 CMR 40.0860) to achieve Massachusetts Drinking Water Standards for the groundwater.

The land area overlying the subject groundwater must be at a minimum of 100 acres in size and cannot meet the criteria established in the definition of *Non-Potential Drinking Water Source Area*.

Also, the municipalities overlying the subject groundwater and any public water systems with existing legal authority to develop new sources of drinking water in the area affected by the petition must have sufficient water from other sources to meet their needs for future drinking water supplies, and to fulfill any current contractual obligations for the provision of water to other parties.

This policy is **NOT APPLICABLE** to areas outside of a PPA or to groundwater categorized as a Current Drinking Water Source Area (CDWSA, see 310 CMR 40.0006). CDWSAs include all areas where the groundwater is currently being used as a drinking water supply, such as:

- a.) within the Zone II for a public water supply well;
- b.) within the Interim Wellhead Protection Area (IWPA) for a public water supply well;
- c.) within the Zone A of a Class A surface water body used as a public water supply; or
- d.) within 500 feet of a private water supply well.

3.0 Guidance on the Petition Process:

3.1 Getting Started:

The first step is to determine if the subject area is eligible for the petition process. In other words, does the subject area meet the terms stated in 310 CMR 40.0932(5)(c) and the “Applicability” section above? This determination of eligibility can easily be attained by asking a few simple questions. While it is not essential to answer the questions in the following suggested order, some of the questions are much simpler to answer and therefore are suggested be answered first in order to avoid unnecessary effort and potentially costly research.

1. **First, is the subject area in a Potentially Productive Aquifer?**

The answer to this question must be *YES* to proceed with the petition process. The Case-Specific Designation of a Non-Potential Drinking Water Source Area may only be applied to areas within a PPA.

2. **Second, is the subject area within a Current Drinking Water Source Area (CDWSA)?**

The answer to this question must be *NO* to proceed with the petition process. Areas categorized as CDWSA are not eligible for the petition process.

3. **Third, does the subject area already meet the criteria found in the definition of NPDWSA?**

The answer to this question must be *NO* to proceed with the petition process. If your answer is “yes” to this question, it is not necessary to proceed with the petition process because the area is already exempt from the MA Drinking Water Standards.

The NPDWSA definition provides an “up-front” exemption from having to meet GW-1 (MA Drinking Water) standards provided certain criteria are met. In order to determine if the area meets the NPDWSA definition, you must consult the criteria in 310 CMR 40.0006, the Definition Section of the MCP. The NPDWSA definition contains 3 major criteria components: specific land uses developed before 1/1/96; a 100 acre size minimum for the developed land; and U.S. Census Block Groups having a population density equal to or greater than 4,400 people per square mile. A DEP policy entitled *Determining Non-Potential Drinking Water Source Areas*, is available to provide guidance on how to correctly apply the NPDWSA criteria. In addition, DEP in conjunction with MassGIS has produced a map overlay which illustrates the NPDWSAs based on best available information. **These maps are only to be used as guides. Actual site specific information developed by visiting the site is the basis for determining if the area actually meets the NPDWSA definition.**

4. **Fourth, do all parties with existing legal authority to the use of the subject groundwater have sufficient water elsewhere to meet the needs for future water supplies**

and to fulfill any current contractual obligations for the provision of water to other parties [see 310 CMR 40.0932(5)(c)d.]?

The answer to this question must be *YES* in order to proceed with the petition process. To determine the answer to this question, and to provide supporting documentation in the petition package, it is recommended that you contact the affected municipalities and the public water supply systems in the surrounding area. Water supply demand projections are available from the Department of Environmental Management.

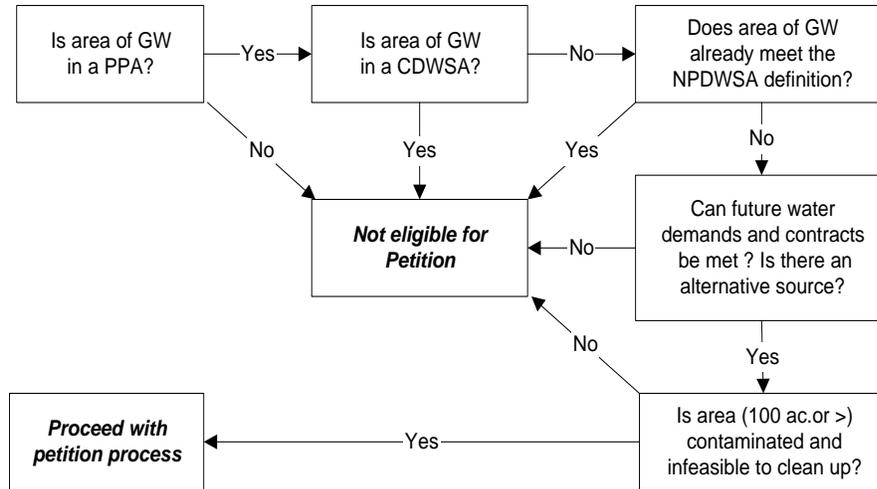
5. Finally, is the groundwater that you wish to petition for a NPDWSA designation at least 100 acres in size, contaminated with oil and/or hazardous materials exceeding reporting thresholds (RCGW-1) and to the point that it is not feasible to clean it up (pursuant to 310 CMR 40.0860) to achieve MA Drinking Water Standards?

The answer to this question must be *YES* on all three accounts to proceed with the petition process.

While this requirement precedes some of the other criteria in the regulations, it is placed last here because it is probably the most difficult of the 5 questions to answer. In order to answer this question, you must first demonstrate that the groundwater subject to petition (at least 100 acres at minimum) exceeds the reporting thresholds for the individual contaminants present as listed in Subpart P, 40.1600, of the MCP. If this is the case (i.e., an area of at least 100 acres is contaminated with one or more materials listed in 40.1600 exceeding the reporting threshold), then the appropriate second step is to determine the feasibility of meeting GW-1 (MA Drinking Water) standards for such groundwater pursuant to section 40.0860 in the MCP (*Feasibility of Permanent Solution; Feasibility of Restoration to Background*). The application of this section as part of the petition process requires that you first evaluate whether it is feasible to achieve a permanent solution (e.g., cleanup the groundwater to the GW-1 standards). If the evaluation shows that it is not feasible to cleanup the groundwater to the GW-1 standards, through a demonstration of either a technological infeasibility or a benefit-cost analysis, then you may proceed with the petition process.

If you have answered all of the above questions as indicated, you are now ready to proceed with the petition process. Documentation supporting eligibility will be required as part of the petition package when submittal is made to DEP for review and consideration.

The following flow chart summarizes the above questions and answers.



3.2 Public Notice:

3.2a The Preparation:

The MCP requires a public notice of a proposed petition and establishment of a public comment period on a proposed petition. In addition, a public hearing must be held within the comment period. Prior to beginning the public comment period, most of the petition package must be completed and available for review by the public. As stated in section 40.0932(5)(c)4., the regulations require the following information to be available during the public comment period:

- A demonstration that the area is eligible to petition as discussed above in section 3.1.
- A water resource budget including current water supplies; authorized withdrawals; water demand forecasts; available water resources to meet demands; impact statements on stream flow, wildlife and other water users; basin hydrology; land uses; existing and approved future municipal interconnections; and population trends.
- Documentation of technical and legal actions taken to protect existing and future drinking water sources (e.g., aquifer protection districts, inter-municipal contracts).
- A map of the aquifer showing the area proposed for NPDWSA designation.
- And in those cases where the petition addresses a portion of the aquifer, a description of the hydrogeology between that portion and the larger aquifer (i.e., in terms of groundwater flow direction, presence of hydrogeologic barriers).

Much of the above required information can be attained from the following offices:

- Department of Environmental Management (DEM)

- Office of Watershed Management, DEP
- U.S. Census Bureau
- Municipal Government (e.g., city/town hall)

However, some data will need to be based on on-site groundwater testing, monitoring and modeling.

3.2b Beginning the Public Comment Period:

The regulations require the petitioner to provide an opportunity for public comment on the proposed petition. The public comment period must be at least 30 days and include a public hearing. There are specific requirements as to whom is to be notified as well as how notification is to be posted for public information. Please see 40.0932(5)(c)2. for the specifics.

The petitioner is required to summarize all of the comments received after the close of the public comment period, and note which comments have been incorporated into the petition and provide an explanation of why others have not. A copy of this summary is to be sent to all those who commented and submitted to DEP as part of the petition package.

3.2c Certification of Concurrence Information:

The regulations require the petitioner to provide notice of the petition to the Chief Municipal Officer of the affected municipality(ies) in which the groundwater subject to the petition is located and any public water systems with existing legal authority to develop new sources of potable water in the affected area. The petitioner is directed to gain a certification of concurrence, signed by the Chief Municipal Officer and Executive Officer from the affected public water systems, stating:

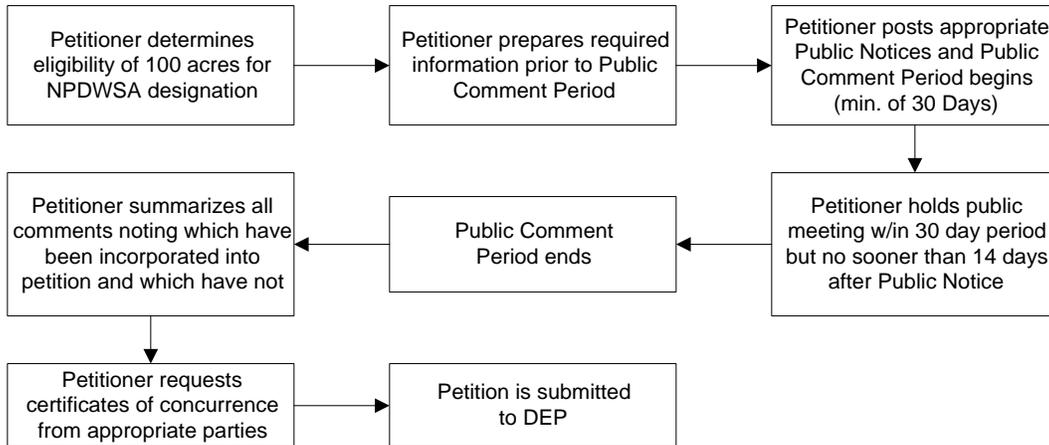
“The [municipality(ies)][public water system(s)] [has][have] sufficient water from other sources to meet [its][their] need for future drinking water supplies, including the fulfillment of any contractual obligations for the provision of water to other parties”

This certification must also include a statement that:

- a. in the event that the groundwater is ultimately needed in the future as a public drinking water supply, an assessment will be performed to determine whether additional response actions or well-head treatment are needed to achieve GW-1 (MA Drinking Water) Standards and such assessment will be submitted to DEP with an application for New Source Approval (in accordance with 310 CMR 22.00); and
- b. that any existing contractual obligations to provide water of potable quality from the groundwater subject to the petition to other parties will not be affected by the approval of the petition.

The municipality and public water suppliers must be given at least 90 days from the date of the petitioner’s written request for certifying their concurrence. In the event that the petitioner can not attain certification from all the required parties, a written statement describing the reasons for not supplying the certification must be included in the application package. In addition, a copy of the written request for the certification and evidence that such request was received by the appropriate entity(ies) is a required submittal.

The following flow chart summarizes the process thus far:



4.0 Submitting Petition to DEP for Commissioner review and determination:

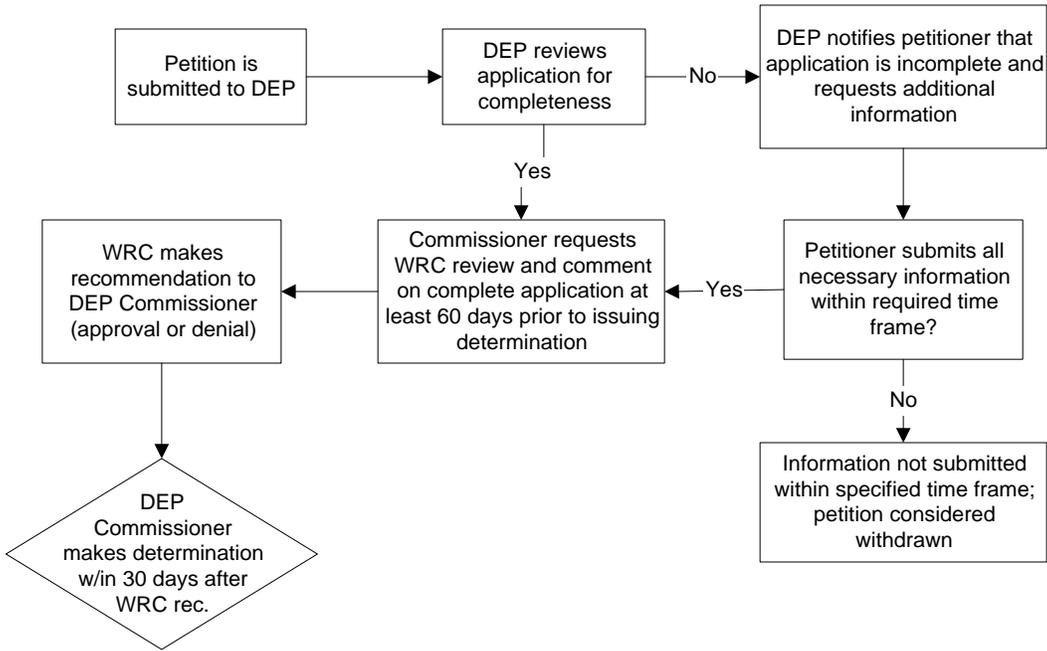
Once the petition application has been compiled, it may then be submitted to the Department. All petitions should be submitted to the Bureau of Waste Site Cleanup Policy Branch (DEP, One Winter Street, Boston, MA 02108) where it will then be distributed to appropriate Bureau of Waste Site Cleanup and Bureau of Resource Protection staff to commence the review process.

BWSC and BRP staff will conduct an initial review of the petition application to determine its completeness. In the event that the application is incomplete and additional information is needed, the staff reviewers will return the application to the petitioner with a request for submittal of necessary information within a specified time period. If the requested information is not supplied to the Department within the specified time period, the Department will consider the application to be withdrawn by the petitioner.

Once all of the necessary information is submitted to DEP (within the specified time period), staff will resume the review of the application and develop a recommendation to the Commissioner of DEP. The petition package will then be forwarded to the Massachusetts Water Resources Commission (WRC) for its review and development of a recommendation to the DEP Commissioner.

The Commissioner shall issue a determination within 30 days following the receipt of a recommendation from the WRC as to the disposition of the petition. The Commissioner may approve, deny or request further review and/or public comment on the petition. If the Commissioner requests further review and/or public comment on the petition, a specified time period will be established for such review and comment.

This flow chart summarizes the steps of the petition process after it is submitted to DEP:



5.0 Disposition of Petition and Resulting Outcome:

Upon approval or disapproval of the petition by the Commissioner, the petitioner will be notified. If the petition is approved, the information will then be forwarded to DEP GIS to be incorporated into the BWSC Priority Resource Maps to identify the area of the case specific determination of a Non-Potential Drinking Water Source Area. While this designation will have the same effect on cleanup requirements as other NPDWSAs, the case specific NPDWSAs will be identified on the maps using a separate mapping designation.

If the petition is denied, a petitioner wishing to appeal the decision of the Commissioner, should use DEP's adjudicatory hearing process (30A).

6.0 For more information:

(Note: this section revised on 5/10/2000)

The MCP is available at the State House Bookstore in Boston and the Western Office of the Secretary of State in Springfield. To order, please call either 617-727-2834 in Boston or 413-784-1378 in Springfield for exact prices and postage charges.

Electronic copies of the MCP, this document, and many other DEP publications are available on the World Wide Web at <http://www.state.ma.us/dep>.

If you have questions regarding the MCP, call the "MCP Help Line" during regular business hours on Monday, Tuesday, Wednesday, and Thursday (voice mail messages left on Friday will be returned on the following Monday). Help Line staff are available to answer your questions and provide you with information on current policies, guidance, and fact sheets and will return voice mail messages within one business day. From area code 617 and outside of Massachusetts, call (617)338-2255. From area codes 413 and 508 call (800)462-0444.

Copies of the Bureau of Waste Site Cleanup Resource Maps, which contain the guidance overlay illustrating Non-Potential Drinking Water Source Areas can be purchased from MassGIS at 20 Somerset Street, Boston, MA 02108. If you have questions regarding the guidance maps or other MassGIS programs please call (617)727-5227 ext. 323. A copy of the MassGIS order form is included as an Attachment for your convenience.