

**Dear Conservation Commission members:**

**Regulatory Alert: MassDEP's Proposed Changes to Wetlands Protection Act Regulations (310 CMR 10.00)**

MassDEP's proposed Wetlands Protection Act regulation changes will impact all Conservation Commissions.

Reasons for the Changes:

MassDEP states that these changes were prompted by legal decisions associated with submittal of Orders of Conditions and Determinations of Applicability to MassDEP. MassDEP has a few other changes not related to the legal decisions: there is a new clarification about abutter notices, and an update to the wetland plant species list.

MassDEP has summarized these changes on their website: <https://www.mass.gov/regulations/310-CMR-1000-wetlands-protection-act-regulations#proposed-amendments-public-comment> and <https://www.mass.gov/doc/310-cmr-1000-summary-of-proposed-revisions/download> MassDEP has provided a Red Line/Strike Out version of the changes on their website: <https://www.mass.gov/doc/310-cmr-1000-proposed-revisions-redlinestrikeout/download> Here is a quick summary of the changes that will impact every Conservation Commission.

**310 CMR 10.05(3)(b) and (6)(e).**

There has been a recurring problem for MassDEP when conservation commissions send copies of their decisions to MassDEP by mail, because regular mail does not provide proof that Orders and Determinations have been received by MassDEP. This can put DEP in the position of learning about an Order after its deadline to appeal the Order has passed, which effectively denies MassDEP its opportunity to appeal.

These changes will require conservation commissions to submit Orders and Determinations to the Department ***through eDEP, or if submittal through eDEP is not possible, by certified mail, return receipt requested.*** The proposed regulation change will also require the conservation commission – at the same time - to issue the Orders or Determinations ***to the applicant by certified mail, return receipt requested*** to ensure proof of delivery ***or to deliver the Order or Determination by hand.***

MassDEP's summary states that email submittals are not acceptable.

**310 CMR 10.04**

Date of Issuance definitions will be amended to align it with these new submittal requirements, and to clarify issuance of MassDEP's superseding orders and determinations.

**310 CMR 10.05(4)(a)**

MassDEP plans to clarify that receiving a notice of an NOI as an abutter, does not automatically confer standing on that person to appeal orders pertaining to the project. DEP believes that this clarification has no impact on the implementation of the Wetlands Protection Act (WPA) regulations and does not change the status quo for municipalities or for the public.

### **310 CMR 10.55(2)(c)**

MassDEP is amending an outdated reference to the National Wetland Plant List (published in 1988). [http://wetland-plants.usace.army.mil/nwpl\\_static/data/DOC/lists\\_2016/States/pdf/MA\\_2016v1.pdf](http://wetland-plants.usace.army.mil/nwpl_static/data/DOC/lists_2016/States/pdf/MA_2016v1.pdf)

This list has been amended several times since 1988, and the most recent plant list was published in 2016 by the US Army Corps of Engineers. The list includes regional specific information.

As stated by MassDEP in their *Summary of Proposed Amendments 310 CMR 10.00: Massachusetts Wetlands Protection Regulations (November 2019)*: “Adoption of the 2016 national plant list will align the wetland regulations with current science, create consistent application of wetland regulations, remove confusion among local conservation commissions, state and federal agencies, the regulated community, and the public, while maintaining the plant species referenced in the Act”.

### **Public Hearings and Comment Deadline:**

**January 8, 2020**, 10 am – 12 pm, Public Hearing in MassDEP’s Central Regional Office, 8 New Bond Street, Worcester, MA.

**January 9, 2020**, 10 am – 12 pm, Public Hearing in MassDEP’s Headquarters, One Winter Street, Boston, MA. <https://www.mass.gov/doc/notice-of-public-hearing-310-cmr-1000/download>

**January 30, 2020**, written comments due before 5 pm on Thursday, January 30<sup>th</sup>. Submit via email to [lisa.rhodes@mass.gov](mailto:lisa.rhodes@mass.gov) or via U.S. Mail to Lisa Rhodes, MassDEP, Wetlands Program, One Winter Street, 5<sup>th</sup> Floor, Boston, MA 02108.

### **What is MACC doing?**

MACC is preparing comments about the regulation changes. We are concerned about the cost and additional work required by submitting documents to MassDEP using certified mail. We want to hear from you: Do you use and like eDEP? What do you think of these regulation changes?

### **Webinar for more information:**

MACC held an informative webinar on the proposed regulation changes for Conservation Commission Members and Agents on Thursday, December 19, 2019 at 12 pm [https://www.maccweb.org/events/event\\_list.asp](https://www.maccweb.org/events/event_list.asp)

### **What can you do?**

Please review the draft regulations and give some thought about what it might mean to you and your commission.

**Certified Mail:** Will these proposed changes mean additional costs to you in order to submit documents using certified mail?

**eDEP:** Do you currently use eDEP to submit documents to MassDEP? If not, why not? If so, does it work well?

Please help MACC understand any issues you might have with eDEP and/or the certified mail options.

Email: Although an email option is not included in MassDEP’s regulation changes, do you think using email would be a good alternative to submit documents to MassDEP?

**Comments/Questions:** If you have specific comments on the regulations, we would like to hear from you! Please send your comments/questions via email to MACC at [Staff@maccweb.org](mailto:Staff@maccweb.org) and use “2019 Wetland regulation changes” in the subject line.

Thank you for all that you do to protect the environment. -Dot McGlincy

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*Protecting wetlands, open space, and biological diversity through education and advocacy*