MassDEP’s Proposed Changes to Wetlands Protection Act Regulations

Lunch & Learn Presentation
December 19, 2019
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Photo by Shilpa Sen
Purpose of Today’s Presentation

Review Proposed Changes to Wetland Protection Act (WPA) Regulations

Discuss Impacts to Conservation Commissions

Review Comment Period & Public Hearing Schedule

Q&A
PROPOSED WPA REGULATION CHANGES

- Requires submittals to DEP through eDEP or Certified Mail (Proposed changes do not allow email submissions)
- Updates Date of Issuance of Determination or Order
- Updates to Abutter Notifications
- Updates Wetland Indicator Plant List
PROPOSED WPA REGULATION CHANGES: eDEP or Certified Mail

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

• Proposed regulation 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.

• At the same time, the commission must 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.

• Email submittals are not acceptable.
PROPOSED WPA REGULATION CHANGES:
eDEP or Certified Mail

Proposed wording:

310 CMR 10.05(3)(b) Determination of Applicability.

1. Within 21 days after the date of receipt of the Request for a Determination of Applicability, the conservation commission shall issue a Determination of Applicability, Form 2...

... Said determination shall be signed by a majority of the conservation commission, and a copy thereof shall at the same time be submitted electronically to the Department through eDEP or its successor system as designated by the Department, or if submittal by such means is not possible, then a copy shall be mailed to the Department by certified mail (return receipt requested). Email submittal is not an acceptable alternative. Copies of the determination shall also be sent at the same time to the person making the request and to the owner. Delivery of the copy to the person making the request shall be by hand delivery or certified mail, return receipt requested. Said determination shall not be effective until submitted or mailed to the Department in the manner prescribed above and hand delivered or mailed to the person making the request.
PROPOSED WPA REGULATION CHANGES: eDEP or Certified Mail

310 CMR 10.05(6)(e)

*Current wording:*
“The Order or Notification of Non-significance shall be signed by a majority of the conservation commission and shall be mailed by certified mail (return receipt requested) or hand delivered to the applicant or his or her agent or attorney.”

*Additional wording:*
“At the same time, a copy shall be submitted electronically to the Department through eDEP or its successor system as designated by the Department, or if submittal by such means is not possible, then a copy shall be mailed to the Department by certified mail (return receipt requested). Email submittal is not an acceptable alternative.”
PROPOSED WPA REGULATION CHANGES: eDEP or Certified Mail

310 CMR 10.05(3)(b) Determination of Applicability.
Within 21 days after the date of receipt of the Request for a Determination of Applicability, the conservation commission shall issue a Determination of Applicability, Form 2...

Question: Can Form 2 be submitted through eDEP in December 2019?
https://www.mass.gov/service-details/what-forms-are-available-in-edep-online-filing
PROPOSED WPA REGULATION CHANGES: eDEP or Certified Mail

310 CMR (6)(e)
The Order or Notification of Non-significance is filled out on **WPA Form 6**

Can this Form (Form 6) currently be submitted via eDEP?

No.

[https://www.mass.gov/service-details/what-forms-are-available-in-edep-online-filing](https://www.mass.gov/service-details/what-forms-are-available-in-edep-online-filing)

In December 2019, only Forms 3 (Notice of Intent), Form 4A (ANRAD), Form 4B (ORAD), Form 5 (OOC) can be submitted electronically on eDEP.
PROPOSED WPA REGULATION CHANGES:

\[\text{eDEP or Certified Mail}\]

If these proposed changes are implemented – & until eDEP is updated - Conservation Commissions must use Certified Mail Return Receipt Requested to submit these forms to MassDEP.
WPA REGULATION CHANGES:
Date of Issuance

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.
WPA REGULATION CHANGES: Date of Issuance

310 CMR 10.04 Date of Issuance

*Current wording:* “Date of Issuance means the date an Order is mailed, as evidenced by a postmark, or the date it is hand delivered”.

*Proposed wording:* Date of Issuance of a Determination or Order means the date on which the Conservation Commission submits the Determination or Order to the Department electronically through eDEP or its successor system as designated by the Department, or mails to the Department by certified mail, as evidenced by a postmark, and mails the Determination or Order to the Applicant by certified mail, as evidenced by the postmark, or delivers the Determination or Order to the Applicant by hand, in accordance with 310 CMR 10.05(3)(b) or 310 CMR 10.05(6)(e). If the date the Determination or Order is submitted or mailed to the Department differs from the date it is mailed or delivered to the Applicant, the Date of Issuance shall be the later of those dates.

Date of issuance of a Superseding Order or Superseding Determination from the Department means the date mailed by certified mail, as evidenced by the postmark, or the date issued by an electronic system designated by the Department.
WPA REGULATION CHANGES

310 CMR 10.04 Date of Issuance

Some early comments from members note that the new wording seems unclear.
WPA REGULATION CHANGES: Abutter Notifications

In 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.

MassDEP 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 10.05(4)(a)

Current wording:
...”The applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor. Notification shall be at the applicant's expense. The notification shall state where within the municipality copies of the Notice of Intent may be examined or obtained and where information on the date, time, and location of the public hearing may be obtained.”

New additional wording:
“Notification provided pursuant to this provision does not automatically confer standing to the recipient to request Department action for the underlying matter, see 310 CMR 10.05(7)(a)4.”
WPA REGULATION CHANGES:
National Plant List

Photo by Patrick Garner

Photo by Allison Bell
WPA REGULATION CHANGES:
National Plant List

310 CMR 10.55(2)(c)

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”. 
WPA REGULATION CHANGES

Great words from MassDEP to keep in mind for all current and future wetland regulations changes:

“...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...”.
Public Hearings & Comment Period

PUBLIC HEARINGS

10 am – 12 pm. MassDEP’s Central Regional Office.

10 am – 12 pm. MassDEP’s Headquarters, One Winter Street, Boston, MA.  https://www.mass.gov/doc/notice-of-public-hearing-310-cmr-1000/download

PUBLIC COMMENT PERIOD

January 30, 2020, written comments due before 5 pm. Email lisa.rhodes@mass.gov or submit comments via U.S. Mail.
What is MACC Doing?

MACC is preparing comments about the regulation changes.
  • Comments will be available to members by January 6, 2020.

Concerns:
  • **Costs.** These regulations will increase costs and work by Conservation Commissions.
  • **eDEP Functionality.** eDEP does not appear ready for Prime Time (Forms 2 & 6 cannot be submitted via eDEP). Therefore, only certified mail is an option at this time, increasing costs to municipalities.
What is MACC Doing?

Concerns (continued):

• **Learning Curve for eDEP.** Less than 1/3 of all MA Towns/Cities are using eDEP for Wetland Submittals (based on conversations with Boston Wetlands Staff).

• **Training.** There is need for training Conservation Commissions on how to use eDEP. MACC is offering to work with MassDEP to provide eDEP training.

• **Email.** It is not clear why emails are prohibited for submittals to MassDEP.
What Can You Do?

- **Prepare Comments for MassDEP.** Be specific on how much money these changes might mean for your municipality. How much additional work will these proposed changes require?

- **Document problems with eDEP.** Have you had problems using eDEP? If so, be specific about examples of your problems.

- **Participate.** Please attend one of the Public Hearings. The more people in attendance, the better.

- **Comment.** Send MassDEP your comments before the end of January. Email MACC with questions and comments – we are here to help.
This webinar is only partly interactive.

Type your questions today during our webinar.

MACC staff will read out your questions, and we will try to answer them in the webinar, or will post responses to members at a later date.

Be sure to send MACC future questions to Staff@maccweb.org
Thank you and
Happy Holidays!

Photo by Jeremy Schaub

Photo by Dot McGlincy