

STATUS OF MASSDEP REGULATORY REVIEW UNDER EO 562

Shortly after his inauguration, Governor Baker ordered all state agencies to review “each and every regulation” against an ambitious set of criteria to “reduce the number, length, and complexity of regulations, leaving only those that are essential to the public good.” [Executive Order: 562 "To Reduce Regulatory Burden"](#) required that each Agency shall sunset all its regulations on or before March 31, 2016.

Despite this opportunity, the regulated community submitted only a handful of written [requests](#) for regulatory changes to the EOEEA (which administers over 125 environmental regulations). Thus, it is not surprising that the MassDEP’s [Preliminary Regulatory Recommendations](#) apply to only 19 of the 64 [regulations](#) it administers.

I doubt you will find your regulatory pet peeve among the MassDEP’s Recommendations. They barely scratch the surface. Of the 19 regulations under review, only 5 are for “streamlining,” 7 are “new initiatives/improvements” (3 of which also include “streamlining”) and all of the rest are to “conform with state [or federal] law.” (MassDEP also proposes to rescind 10 outdated regulations.

Specifically, MassDEP intends to “streamline” its regulations governing (1) waterways at 310 CMR 9.00 to “provide flexibility in the Designated Port Area and Facilities of Public Accommodation requirements;” (2) laboratory certification at 310 CMR 42; (3) groundwater discharge at 314 CMR 5.00; (4) asbestos at 310 CMR 7.15; and (5) air permitting at 310 CMR 7.00. It also proposes to “improve” or add a “new initiative” to regulations governing (1) land application of sludge at 310 CMR 32.00; (2) industrial wastewater holding tanks at 314 CMR 18.00; (3) requirements for photo processors, small printers, and dentists under 310 CMR 70.00, 71.00, and 73.00; (4) wetlands performance standards for work in Land Subject to Coastal Storm Flowage at 301 CMR 10.00; (5) establishing set-aside allowances for facilities that provide steam in addition to electricity under RGGI at 310 CMR 7.70.

Although the MassDEP’s general intention appears to be consistent with the Governor’s instructions, we are aware of a few areas where the proposed changes may actually add new impediments to major projects. If you would like to discuss any of these observations, please do not hesitate to contact us.

January 28, 2016

For questions, call or email [Tom Mackie](#)