



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Division of Water Pollution Control

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401 Water Quality Certification Regulations: Revised Notice of Extension of Comment Period

A Public Hearing Notice was published in the Massachusetts Register by the Massachusetts Secretary of State on December 22, 2023. Through this revised Notice, MassDEP is providing an extension of the comment period until 5 p.m. on April 30, 2024

This Revised Notice of Public Hearings with Extension of Written Comment Period is available in alternative languages (Español -- Tiếng Việt -- Chinese -- Kreyòl Ayisyen -- Português -- Khmer) on MassDEP's website at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>

Notice is hereby given that the Department of Environmental Protection (MassDEP), under its authority pursuant to M.G.L. c. 21, §§ 26 – 53, Division of Water Pollution Control, is proposing amendments to its regulations at 314 CMR 9.00: *401 Water Quality Certification for Discharges of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth*. MassDEP is proposing these amendments to accomplish key climate resilience and environmental goals including updates related to precipitation estimates and stormwater management, and new provisions for Land Subject to Coastal Storm Flowage (LSCSF).

The proposed regulatory text and a notice to reviewers are available with a copy of this Public Hearing Notice on MassDEP's website at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>

Public Comments and Hearings

MassDEP conducted three public information sessions and three public hearings in January-February 2024. The presentation materials and recordings are available on MassDEP's website and YouTube channel at <https://www.mass.gov/regulations/310-CMR-1000-wetlands-protection-act-regulations#proposed-amendments-public-comment>

Extension of Comment Period and Additional Office Hours Sessions:

The comment period has been extended until 5:00 p.m. on April 30, 2024.

MassDEP will conduct three additional Office Hours Sessions:

These sessions are an opportunity for question and answer on the proposed regulations; stakeholders are encouraged to submit questions in advance. For additional information about the Office Hours

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

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Sessions, please visit: <https://www.mass.gov/regulations/310-CMR-1000-wetlands-protection-act-regulations#proposed-amendments-public-comment>

- Monday February 26, 2024 at 1:00 p.m. (remote only) Please use this link to register in advance: <https://us06web.zoom.us/meeting/register/tZluduiprjliEt1XdE4l7BoTioyGljDeNuyy>
- Thursday March 14, 2024 at 1:30 p.m. (remote only) Please use this link to register in advance: <https://us06web.zoom.us/meeting/register/tZYkcuutqTlpHN17Mi2IDNlkh5m0e18NGZiR>
- Wednesday April 3, 2024 at 1:30 p.m. (remote only) Please use this link to register in advance: <https://us06web.zoom.us/meeting/register/tZwtf-urrTgsh9R7AbCjaHaVDDate53XGEg6>

Written comments will be accepted through 5:00pm on **April 30, 2024**. The Department encourages electronic submission by email to dep.wetlands@mass.gov and must include *Wetlands-401 Resilience Comments* in the subject line. In lieu of electronic submittal, paper comments may be mailed to Lisa Rhodes, Attn: *Wetlands-401 Resilience Comments*, MassDEP – BWR, 100 Cambridge Street, Suite 900, Boston, MA 02114.

For special accommodations for these hearings, please call the MassDEP Diversity Office at 617-292-5751. TTY# MassRelay Service 1-800-439-2370. This information is available in alternate format upon request. MassDEP provides language access interpreter/translation services to limited English proficient individuals free of charge. If you need an interpreter to participate in this meeting, translation services can be found at the following link: <https://www.mass.gov/info-details/massdep-language-translation-assistance>.

By Order of the Department of Environmental Protection
Bonnie Heiple, Commissioner

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 314 CMR 9.00

Estimate of the Number of Small Businesses Impacted by the Regulation: 500 (estimated number of businesses proposing work in resource areas annually).

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No, the proposed amendments do not increase the number of reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No, the proposed amendments do not require additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No, the proposed amendments do not require additional administrative oversight.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No, the proposed amendments will not require hiring additional employees.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? The hiring of additional professionals to ensure compliance is not expected.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No, the proposed amendments do not require the purchase of products or specific capital investments.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) Yes, the performance standards are more appropriate.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No. The stormwater standards of the wetlands and 401 water quality certification regulations are proposed to align with the EPA MS4 General Permit to the extent possible.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? The proposed regulations do not add any new requirements in this regard. MassDEP has always had the ability to perform inspections to ensure compliance with permit conditions and may conduct enforcement as needed.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No. The proposed regulations do not require provision of educational services.

Yes <input type="checkbox"/>	<u>No</u> <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No. The proposed regulations are not likely to deter the formation of small businesses.
Yes <input type="checkbox"/>	<u>No</u> <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? No. The proposed regulations are not likely to encourage the formation of small businesses.
Yes <input type="checkbox"/>	<u>No</u> <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No, the proposed regulations do not provide less stringent compliance and reporting requirements for small businesses.
Yes <input type="checkbox"/>	<u>No</u> <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No, the proposed regulations do not establish less stringent schedules or deadlines for small businesses.
Yes <input type="checkbox"/>	<u>No</u> <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No, the proposed regulations do not consolidate or simplify requirements for small businesses.
Yes <input checked="" type="checkbox"/>	<u>No</u> <input type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? The regulations are written as performance standards. For projects proposed in wetland resource areas, the use of performance standards has proven to work best for applicants, including small businesses. Conservation commissions and MassDEP have found the use of performance standards to be efficient and effective for program implementation.
Yes <input type="checkbox"/>	<u>No</u> <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? MassDEP's proposal does not include alternative methods to minimize impacts to small businesses. However, all affected businesses could benefit from the potential cost-savings achieved through the implementation of environmentally sensitive site design. Also, businesses will benefit from reduced costs due to reduction in costs associated with water pollution, flooding, and storm damage.