



MASSACHUSETTS MARINE TRADES ASSOCIATION

MMTA Government Relations and Legal ENEWS - October 5, 2015

From the Desk of Jamy Buchanan Madeja, Esq, MMTA Gov't Relations & Legal Counsel

Early fall greetings from Beacon Hill. We suspect you are quite busy hauling and winterizing boats. This ENEWS is an update and can be saved for later review, if necessary.

On behalf of MMTA, Buchanan & Associates attended the Boston session of the **Massachusetts Department of Environmental Protection's** (DEP) public meetings on Executive Order 562 (EO 562), Governor Baker's order that all state agencies undertake a review of each and every regulation and to "sunset" all regulations on or before March 31, 2016, unless they are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents. All other agencies will be hosting similar public meetings on their regulatory programs, including the Department of Public Safety (hoisting licenses), but at this time most review under EO 562 has been internal so we cannot say which regulations these agencies are considering for amendment.

It is important to remember that this is a lengthy process for all agencies. The entirety of the agency's review under EO 562 is compiled in a report submitted to the Governor's office for their approval, after which any proposed regulatory revision is subject to the usual public comment process. We can assure you that there will be ample opportunity to review and comment on the specifics of any proposed regulatory change before the changes become law. **However, NOW IS THE TIME TO IDENTIFY REGULATORY CHANGES YOU WANT.**

DEP has completed an initial assessment of their regulatory portfolio of more than 95 regulations and has identified only 18 regulatory programs to be amended, and 10 regulations to be rescinded. DEP regulations cover a wide spectrum of issues for laboratory certification to the Chapter 91 and Wetlands programs. At this time, all of the programs proposed to be *rescinded* are either grant programs or regulations of little to no interest to MMTA members. DEP will continue to review its programs beyond the EO 562 deadline of March 2016, so there may be additional revisions proposed after that date. **NOW IS THE TIME TO TELL MMTA OF REGULATIONS YOU WANT CHANGED.**

DEP has internally and with the aid of regulatory "working groups" identified revisions to the Chapter 91 program (310 CMR 9.00) dealing with Designated Port Areas (DPAs) and Facilities of Public Accommodation (FPAs) as well as the inclusion of performance standards for "Areas Subject to Coastal Storm Flowage" within the Wetlands program (310 CMR 10.00). None of these changes will be seismic for MMTA members, and some may present new opportunities for some smaller scale recreational boating in DPA areas.

Particularly for the DPA and FPA regulations, these internal and working group discussions have been taking place since long before the Baker administration issued EO 562. There are often requests from the regulated community to address what is frequently perceived as dysfunction within the DPA and FPA requirements, manifesting as less-than optimal utilization of those regulated areas. The specifics of the proposed regulatory changes have not yet been made public, but DEP officials have indicated

the following: DPA regulations will be amended to add greater flexibility for uses compatible within a DPA, including what is termed, accessory uses, and to allow municipalities' greater control over DPAs within their borders. MMTA has urged DEP to consider expansion of recreational boating opportunities and more practical uses associated with recreational boating within DPAs and we hope those changes will be reflected in any forthcoming proposed regulatory amendments. We have also urged DEP to issue clear, concise guidance and a predictable process for the regulated community to follow where there may be greater flexibility of uses and municipal control in DPAs, same for FPAs. We hope to avoid the type of "case-by-case" review that would lead to continued confusion with the DPA program.

As for FPAs, the proposed revisions include the expansion of uses that meet FPA requirements, termed Facilities of Limited Public Accommodation, which would include businesses open to the public but which one would likely need to be invited to make use of; daycare facilities, doctors' offices, etc. To be eligible for such use it is likely a fee of some sort would be mandated. Said fee would be applied to public access to the water in some commensurate way. Whether that is on-site or off-site has yet to be determined.

Within the Wetlands program (310 CMR 10.00), DEP is developing performance standards for work within Land Subject to Coastal Storm Flowage. This is already a regulated area, meaning you would need to file a Notice of Intent with your local Conservation Commission for any work proposed in that area (often concurrent with FEMA's flood plain designation). Currently there are no performance standards so Conservation Commissions are unlikely to create conditions for projects with respect to coastal storm flowage (storm surge/flooding) unless there is a local bylaw permitting such conditions. MMTA has commented to DEP that any performance standard should respect the capacity of marinas and boatyards to safely operate in these areas. In fact, marinas and boatyards have shown a tremendous capacity to adapt to increasing coastal storm activity and should be a preferred operator in these coastal areas.

We will, of course, continue to monitor the EO 562 process at the various agencies for proposed regulatory changes of interest to MMTA membership. Please let us know if you have comments or concerns on specific regulatory programs so that we can help monitor those programs. Once the regulatory revisions are made available for public consumption, we will again provide you with a more concise update of what to expect. At DEP there is much more work to be done and we do not anticipate any regulatory changes to be finalized for many months, perhaps next fall. Stay tuned, we'll keep you up to date on this process. **KEEP TELLING US ABOUT ANY DESIRED REGULATORY CHANGES!**

That's most of the news fit to print! Best wishes for the remains of a busy, safe and successful boating season in 2015.

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