

A Few Small Steps For Regulatory Reform In Massachusetts: MassDEP Releases Its Final Action Plan

March 6, 2012 by [Seth Jaffe](#)

Yesterday, MassDEP released its [Final Action Plan for Regulatory Reform](#). It pretty consistent with the draft package [I summarized](#) last October. There is some good stuff in the package, but it really is baby steps. MassDEP's own ground rules precluded the adoption of any changes that could not be described as [Pareto improvements](#)— If any stakeholder would be made worse off, it just wasn't going to happen. Thus, MassDEP imposed the following limitations to ensure that the changes would not:

- Cost MassDEP money
- Impose burdens on municipalities
- Reduce public process
- Require statutory change to implement



Given these restrictions, the nature and scope of the proposed changes are not surprising. Many of the changes would relate to the Wetlands Protection Act, and related programs such as Chapter 91 and water quality certifications. Potentially, the most significant of these changes would be creation of a permit by rule in the outer 50' of the buffer zone. As the Plan acknowledges, however, MassDEP already went down this path once – and was tripped up by the goal of trying to please everybody. Environmental groups would not agree to the change without adding burdensome requirements that made it effectively useless, MassDEP gave in to the NGOs, and the option was never utilized. Keep your fingers crossed this time. I have heard some of the same concerns raised again about negotiations to date on actually implementing this recommendation.

There are also some significant changes to the solid waste regulations and to procedures for permit renewals, but here too there is evidence of opportunity lost. MassDEP wants to make permit **renewals** subject to a simple requirement that the permittee certify that there have been no changes to the project or to relevant standards. However, MassDEP did not propose to subject permit **modifications** to the same requirement. Doing so would have had a more significant impact on both the regulated community and MassDEP and – by definition if the permittee is willing to so certify – with no impact on environmental protection.

Given the limits on what MassDEP was willing to entertain this go-round, the most tantalizing part of the Plan remains MassDEP's one paragraph at the end regarding the "Need for Additional Reform." Policy options such as a privatized wetlands program or use of third party inspections broadly across MassDEP programs could make a big difference. However, they are not happening

any time soon, so let's thank MassDEP for these small steps and keep the pressure on to be bolder going forward.

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