

MASSACHUSETTS COASTAL NONPOINT PROGRAM NOAA/EPA DECISIONS ON CONDITIONS OF APPROVAL

FOREWORD

This document contains the basis for NOAA and EPA's decision to fully approve Massachusetts' Coastal Nonpoint Pollution Control Program (coastal nonpoint program). It discusses how the Commonwealth has met each of the conditions of approval placed on the coastal nonpoint program submitted by Massachusetts pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

The Findings for Massachusetts' coastal nonpoint program were issued on September 26, 1996. Since that time, Massachusetts has undertaken a number of actions to address conditions of approval on its coastal nonpoint program. Based on those actions and on materials the Commonwealth has provided to document how the conditions have been met, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) find that Massachusetts has satisfied all conditions of approval.

This document is organized in the same fashion as the Findings for Massachusetts' coastal nonpoint program. Where the Findings included a condition, this document repeats the condition, and discusses how the condition has been satisfied. For further understanding of terms in this document and the basis for these decisions, the reader is referred to the following: *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (EPA, January 1993); *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993); *Flexibility for State Coastal Nonpoint Programs* (NOAA and EPA, March 1995); and *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)* (NOAA and EPA, October, 1998)

FINAL APPROVAL DECISION

NOAA and EPA find that the Commonwealth of Massachusetts has satisfied all conditions placed on approval of the Massachusetts coastal nonpoint program submitted to NOAA and EPA pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990. Therefore, Massachusetts' coastal nonpoint program meets all program requirements and is hereby fully approved, constituting a final approval decision for the program.

Please note that the approval decision made for the Massachusetts coastal nonpoint program does not relieve the State of any requirements under the Endangered Species Act.

AGRICULTURE

CONDITION: Within three years, Massachusetts will demonstrate its ability to achieve implementation of the agricultural management measures using the approach described in its coastal nonpoint program strategy for agriculture (see Section III.1.3 pages 98-100 of the program submittal). Within one year, the Commonwealth will identify measurable results to be achieved during this three-year timeframe.

DECISION: Massachusetts has satisfied this condition.

RATIONALE: Under the Final Administrative Changes published on October 16, 1998, NOAA and EPA agreed to approve program elements for which states had proposed voluntary or incentive-based programs, backed by existing State enforcement authorities, if the State provided three items: a legal opinion from the State that the authority can be used to prevent nonpoint pollution and require implementation of management measures; a description of the voluntary or incentive based programs; and a description of the mechanism or process linking the implementing agency with the enforcement agency and a commitment to use the enforcement authority where necessary. Massachusetts has provided these three components, and therefore has satisfied this condition.

Massachusetts submitted a legal opinion from the Acting General Counsel of its Department of Environmental Protection (DEP) certifying that the Commonwealth has authority to implement and enforce the agriculture management measures under three sources: the Clean Waters Act (CWA) (Mass. Gen. L. c. 21, §§ 26-53); the Surface Water Quality Standards and Surface Waters Discharge Program (314 CMR 3.00 and 314 CMR 4.00); and the Wetlands Protection Act (WPA) (Mass Gen. L.c.131, § 40). The Clean Waters Act provides broad authority to protect the waters of the Commonwealth from pollution. The statute defines waters of the Commonwealth as all waters within the jurisdiction of the commonwealth, including...coastal waters, and discharges include those from any point source or major nonpoint source to waters. Additionally, the CWA gives DEP the discretion to stop discharges it determines contravene the Act's permit programs, regulations, or other policies and/or procedures adopted by DEP.

Further enforceable authority exists within the Surface Water Quality Standards set out in the Code of Massachusetts Regulations. The Standards were set to specifically implement the federal Clean Water Act and Massachusetts Clean Waters Act by restricting discharges based on the uses and pollutant levels of the waters that the sources affect. The primary tool used to limit discharges under these standards is a discharge permit; under which, for the most part, agricultural nonpoint sources are exempt. However, because "nonpoint source" is defined broadly by the State, some farms will be or have been required to obtain a discharge permit due

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to violations of the standards through nonpoint discharges such as bank erosion, and storm water runoff from a pasture that have conveyed into small gullies or channels.

Anti-degradation provisions can limit or control existing discharges of pollutants if they are affecting waters of certain quality levels, such as High Quality Resource Waters and Outstanding Resource Waters. In the least, the discharge will be provided with the highest and best practical method of waste treatment determined by DEP as necessary to protect and maintain the resource (314 CMR 4.04(3)(a)). Since almost all of the waters in the coastal areas are classified as Outstanding or High Quality Resource Waters, farm planning and the implementation of BMPs set out in the State's coastal nonpoint program will be used as the highest and best practical method to prevent discharges to these waters.

Finally, the Wetlands Protection Act also provides broad authority to protect waters and wetlands from agricultural pollution in the Commonwealth. The purpose of the WPA is to protect wetlands and associated resources, which contribute to and provide for the protection of: public and private surface water supplies, groundwater supplies, shellfish and fisheries and wildlife habitat. The Wetlands Protection Regulations (310 CMR 10.00) implement the WPA through a process of public review and approval for activities that are proposed for certain protected resources areas or within the 100-foot buffer zone of these resources (The Massachusetts Rivers Protection Act [St. 1996, c. 258] created another resource area called the riverfront area that extends 200 feet on each side of perennial rivers and streams.). Agriculture operations may receive an exemption from the WPA for activities performed on land in agricultural use if operation activities are undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands. These activities include: crop management practices; use of fertilizers, manure, compost materials, pesticides, herbicides, and traps; repair of existing access roads and livestock crossings; maintenance of existing windbreaks and hedgerows; and the management of existing field edges.

The focus of MCZM's and Department of Food and Agriculture's implementation strategy for the agricultural component of the State's coastal nonpoint program is to promote agricultural best management practices that help control the runoff and seepage of agricultural pollutants into coastal waters. The CWA gives DEP the authority to implement this strategy with the adequate back-up enforcement described above. Massachusetts is implementing voluntary or incentive-based programs and has described how it will use these programs to achieve management measure implementation in its original program submittal and in the State's 5 Year Implementation Plan and 15 Year Program Strategy. In general, Massachusetts, through various efforts and initiatives will work to get the majority of all farms (targeting those near water resources) to develop Conservation Farm Plans and implement best management practices. Likewise, there are efforts to target and develop nutrient management plans for dairy farms with proximity to receiving waters.

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As described in the State's original coastal nonpoint program submittal, technical compliance is ensured for the management measures through several Memoranda of Understanding (MOU), including a MOU between Massachusetts Coastal Zone Management and Department of Environmental Protection to implement the coastal nonpoint program and integrate the statewide Nonpoint Pollution Management Plan (section 319 plan) and the Coastal Nonpoint Pollution Control Program; a MOU between MCZM and the Department of Food and Agriculture to implement the CNPCP and develop a farm planning program with education and outreach components with MCZM's commitment to technical and administrative assistance to develop and promote the program. Also, there is a MOU between the Department of Environmental Protection and the Natural Resources Conservation Service outlining their coordination for enforcement of the wetland protection provisions of the Wetlands Protection Act.

NEW DEVELOPMENT

CONDITION: Within two years, Massachusetts will finalize the proposed Stormwater Management Performance Standards. Within three years, Massachusetts will demonstrate its ability to achieve implementation of the new development management measure using the approach described in its coastal nonpoint program strategy for the Stormwater Initiative (see Section III.3.4 pages 173-176 of the program submittal). Within one year, the Commonwealth will identify measurable results to be achieved during this three-year timeframe.

FINDING: Massachusetts has satisfied this condition.

RATIONALE: The Massachusetts Department of Environmental Protection, in coordination with the Massachusetts Coastal Zone Management office, finalized its Stormwater Management Policy in 1997 and implementing authorities in the Commonwealth have been applying the Stormwater Management Performance Standards that meet the requirements of this management measure. The nine performance standards of the Stormwater Policy are implemented primarily through the Wetlands Protection Program (WPP) as well as other regulatory authorities. Comprehensive workshops have been run statewide to facilitate implementation by training local officials, local public works staff, and private consultants and engineers who are charged with primary implementation responsibilities. Results of a policy review by MCZM in early 1998 clearly indicated that the stormwater program was being implemented effectively throughout the State.

WATERSHED PROTECTION AND EXISTING DEVELOPMENT

CONDITION: Within two years, Massachusetts will complete development of the *Soil and Water Conservation in Urbanizing Areas of Massachusetts* guidance document.

DECISION: Massachusetts has satisfied this condition.

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RATIONALE: In March 1997, Massachusetts finalized and distributed its *Erosion and Sediment Control Guidelines for Urban and Suburban Areas*, which serves as the technical basis for implementing watershed and site-specific resource protection. It is integrated into both and local level planning and regulatory programs through several mechanisms, including the Wetlands Protection Act, local by-laws and regulations, and the State's Watershed Initiative, led by 27 established watershed teams. The Watershed Initiative is a major success in providing a planning and implementation framework for protecting and preserving important resources on a watershed basis and it has been heralded as a national model in watershed protection.

SITE DEVELOPMENT, CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL, and CONSTRUCTION SITE CHEMICAL CONTROL

CONDITION: Within two years, Massachusetts will finalize and adopt the proposed revisions to its State Building Code (780 CMR) as outlined in the program submittal (see Section II.C.). Subsequent to Massachusetts' conditional approval on 9/26/97, MCZM, NOAA and EPA agreed to amend the above condition. MCZM determined that to address these management measures it would submit to NOAA and EPA information outlining how the Wetlands Protection Program and the Rivers Protection Act will be used to implement the standards found in the State's *Erosion and Sediment Control Guidelines for Urban and Suburban Areas*.

FINDING: Massachusetts has satisfied the amended condition.

RATIONALE: Massachusetts Coastal Zone Management has submitted adequate justification, detailing how the Massachusetts Wetlands Protection Program (WPP), the Rivers Protection Act, and the State Stormwater Policy satisfy this management measure.

The WPP, through integration of the Stormwater Policy, is a comprehensive resource protection tool as described above in the New Development Management Measure. As with that measure, the State uses the regulatory review processes of the Wetlands Protection Act and its regulations as the primary means to ensure implementation of the performance standards for the three management measures included here. The scope of jurisdiction for the WPA and its regulations are set forth in 310 CMR 10.02. Any activity within an area subject to protection under the Act (which covers all resource areas of concern to the coastal nonpoint program) is covered by regulation. In addition, activities within 100 feet of a resource area (buffer zone) may be subject to regulation if the activity will result in an alteration of the area. In March 1999, the DEP issued a Buffer Zone Policy that prescribes explicit criteria for projects within the buffer zone that includes erosion and sedimentation controls at the limit of work to protect resource areas.

The WPA also contains explicit language that expands jurisdiction to any activity beyond 100 feet of a resource area that results in alteration. Permit conditions issued under WPA regulations must contain erosion and sedimentation controls even outside of jurisdictional areas when site development and construction activities are found to cause water quality and other problems.

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Finally, the Stormwater Policy, as implemented through the WPA, directs projects to address site development, and construction site erosion and sediment control management measures through standards contained in the *Erosion and Sediment Control Guidelines for Urban and Suburban Areas*. Chemical control plans are also standard requirements.

The Massachusetts Rivers Protection Act (St. 1996, c. 258) created another resource area called the Riverfront Area that extends 200 feet (25 feet in municipalities with large populations and in densely developed areas) on each side of perennial rivers and streams. Within these areas, development projects must also meet the Stormwater Policy and incorporate erosion and sedimentation controls to demonstrate no significant adverse impact to the resource area.

ROADS, HIGHWAYS, AND BRIDGES

CONDITION: Within two years, Massachusetts will complete and implement the strategy for roads, highways, and bridges described in items 1-6 on pages 201 and 202 of the program submittal.

DECISION: Massachusetts has satisfied this condition.

RATIONALE: Massachusetts Coastal Zone Management has submitted adequate justification to show that all aspects of the strategy for controlling nonpoint source runoff from roads highways and bridges have been met. As with other Urban Management Measures, the State's Stormwater Policy is the foundation for ensuring substantial implementation.

The most significant accomplishment is completion of the final draft of the *Mass Highway Stormwater Handbook, Stormwater Management for Highways and Bridges*. The handbook provides explicit guidance on the applicability of the State's Stormwater Policy. It links technical and engineering designs with a framework for integration into project development, design and permitting. In the context of road, highway and bridge projects, the guidance contains clear narrative clarifying the jurisdiction and applicability of the stormwater standards within the various regulatory programs.

Municipal conservation commissions through their fundamental responsibility under the Wetland Protection Program administer local implementation of this management measure. The commissions use the DEP Stormwater Handbook and the Mass Highway Stormwater Handbook in tandem to ensure that they adequately review and permit all road, highway and bridge projects within their jurisdiction. The DEP retains oversight of local WPP decisions and may utilize additional regulatory authorities as applicable.

Finally, new thresholds were established under the Massachusetts Environmental Policy Act for reviewing projects based strictly on the extent of impervious surface area created. Now, creation

of five or more acres of impervious area requires filing of an Environmental Notification Form. Creation of ten or more acres requires a full Environmental Impact Report.

MARINAS AND RECREATIONAL BOATING

CONDITION: Within two years, Massachusetts will finalize the development of technical guidance to provide agency staff with information necessary to make consistent and effective permit and enforcement decisions.

FINDING: Massachusetts has satisfied this condition.

RATIONALE: Massachusetts Coastal Zone Management has developed a Clean Marinas Program that includes practices in conformity with all of the marina management measures. *The Massachusetts Marina Environmental Guidebook* was developed for marina, yacht club, and boatyard operators; harbor masters; boaters and others in the marina industry and provides specific best management practices to meet the measures and reduce impacts from marina activities. The State also designed and held workshops with the users to introduce them to the goals and structure of the program and to help ensure understanding and implementation of the program. The workshops also provided assistance in ensuring compliance with existing laws (Chapter 91, Wetlands Protection Program, Stormwater Policy and Management Standards). The State will continue to hold workshops throughout Massachusetts to publicize and teach the use of the guidance document. The State will develop a marina technical assistance team of staff from MCZM and the State's Office of Technical Assistance who will be educated and prepared to provide expertise in the siting, design, construction and operation of marine facilities. A pilot technical assistance effort is planned for marinas in two Areas of Critical Environmental Concern to help the marinas develop Marine Environmental Plans as outlined by the guidebook, and help CZM staff better understand the needs and expected questions for which they will provide assistance.

Massachusetts CZM staff will also work with the Department of Environmental Protection to make sure all new and expanding marinas which will receive licenses under Chapter 91 and/or permits under the Wetland Protection Program are designed and sited to minimize impacts on water quality and that the measures in the guidebook are implemented. As stated in the Massachusetts 15 Year Program Strategy, the marina technical assistance team will also work towards providing planning and implementation assistance to all new marine facilities prior or during CZM federal consistency or Massachusetts Environmental Policy Act review.

Should the assistance-based approach of the Clean Marina Program encounter resistance, Massachusetts can draw upon existing laws and regulations to ensure implementation of the management measures. The Chapter 91 Waterways Program (Massachusetts General Law, Chapter 91) and regulations (310 CMR 9.00), along with the Wetlands Protection Act (Mass Gen. L.c.131, § 40) can be used to ensure implementation of the management measures.

MONITORING

CONDITION: Within two years, Massachusetts will develop a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

DECISION: Massachusetts has satisfied this condition.

RATIONALE: Massachusetts has developed a plan that will use MCZM as the agency that will coordinate and support data that is provided by a wide array of agencies and organizations involved in coastal monitoring. The strategy will establish a framework for using data together with land use information, management measure tracking efforts, and supplemental monitoring initiatives, to evaluate the effectiveness of nonpoint source controls in coastal watersheds.

A pilot project in the Parker River watershed will develop, implement and evaluate a GIS-based methodology for compiling and examining existing data and information. Guidance materials will then be developed to transfer this approach to other coastal watersheds. A long-term strategy will integrate MCZM's database with the Massachusetts Watershed Initiative. This will reinforce data gathering and assessment by monitoring efforts coordinated with the watershed teams and help to target and address water quality impairments.