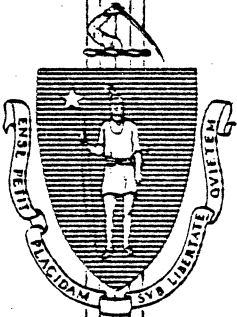


The Commonwealth of Massachusetts

OFFICE OF THE SECRETARY
STATE HOUSE, BOSTON, MASS.



*Rules and Regulations filed in this Office under the provisions of
CHAPTER 30A as amended.*

Filed by DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING
WETLANDS PROTECTION ACT

Date Filed July 28, 1978

Date Published August 3, 1978

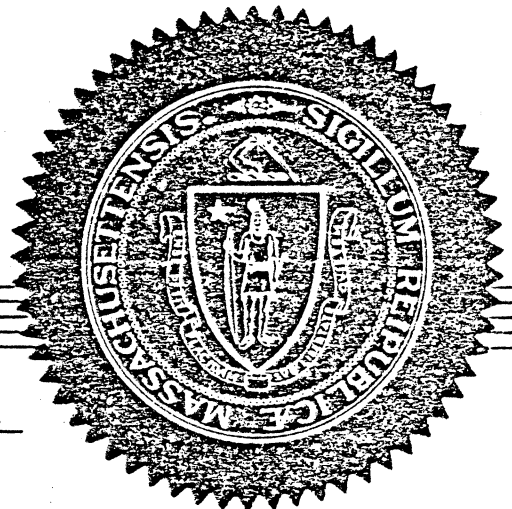
Chapter 233, sec. 75

Printed copies of rules and regulations purporting to be issued by authority of any department, commission, board or Officer of the Commonwealth or any city or town having authority to adopt them, or printed copies of any ordinances or town by-laws, shall be admitted without certification or attestations, but if this genuineness is questioned, the court may require such certifications or attestations thereof as it deems necessary.

Attested as a true copy
PAUL GUZZI

Paul Guzzi

SECRETARY OF THE COMMONWEALTH





DAVID STANDLEY
COMMISSIONER

The Commonwealth of Massachusetts

*Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
100 Cambridge Street, Boston 02202*

July 28, 1978

Honorable Paul H. Guzzi
Secretary of the Commonwealth
State House
Boston, Massachusetts 02133

RE: Regulations on the
Wetlands Protection Act

Dear Sir:

In accordance with the provisions of G.L. c.30, S37 I am enclosing regulations adopted by me as Commissioner of the Department of Environmental Quality Engineering pursuant to the authority of G.L. c.131, S40 entitled "Regulations for All Wetlands". Public hearings on these regulations were held in Danvers on June 5, 1978, in Marshfield on June 6, 1978, and in Boston on June 7, 1978. Please find enclosed one original and two attested copies. The effective date of this Regulation is August 10, 1978.

The purpose of these regulations is to amplify and clarify the Wetlands Regulations which have been in effect since 1974. It is estimated that the net fiscal effect will be zero or positive.

In taking this action I am using all feasible means and measures to minimize and avoid environmental impact, and I so find, as required by G.L.c.30, S61. No environmental assessment form is required for this project since it is exempt under the Environmental Protection Regulations of the Executive Office of Environmental Affairs, and the project has therefore been determined to cause no significant damage to the environment.

Sincerely,

David Standley
Commissioner

DS/ls

JUL 28 10 59 AM '78
SECRETARY OF STATE
REGULATIONS AND PERMITS
DIVISION

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REGULATIONS UNDER THE WETLANDS PROTECTION ACTGENERAL LAWS CHAPTER 131, SECTION 40PART 1: REGULATIONS FOR ALL WETLANDS

Section 1.

General Provisions(1) Authority

These regulations are promulgated by the Commissioner of the Massachusetts Department of Environmental Quality Engineering (hereinafter called the Commissioner) pursuant to the authority granted to him under G.L. Chapter 131, Section 40 (hereinafter called the Act).

(2) Purpose

(a) These regulations are promulgated to create uniformity of process and to help clarify the provisions of the Act by establishing standard definitions and procedures as required by the Act.

(b) The regulations shall complement the Act and have the force of law after they have been formally published by the Secretary of the Commonwealth.

Section 2.

Definitions

(1) Activity shall be any work proposed and described on the Notice of Intent and Plan submitted to the conservation commission and the Commissioner.

(2) Agricultural Use shall mean one or more of the following uses: raising, breeding or production of a specified type of animal or vegetable life, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees, fur-bearing animals and fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or green house products, forest products, and ornamental plants, shrubs, fish and shellfish.

(2) Agricultural Use (continued)

Normal maintenance or improvement of lands in agricultural use shall mean those actions on lands actively devoted to such uses as defined above which enhance the agricultural productivity of such lands. "Normal" shall not include uses of a type or extent unsuitable for the existing soil conditions; nor shall it include the building of any structure other than fences, feed cribs, pump houses and like non-occupancy structures.

(3) Alter shall be defined as including, but not limited to, any one or more of the following actions upon areas described in the Act:

- (a) The removal, excavation or dredging of soil, sand, gravel, or aggregate material of any kind.
- (b) The changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood storage retention areas.
- (c) The drainage or disturbance of the water level or water table.
- (d) The dumping, discharging or filling with any materials which could degrade the water quality.
- (e) The driving of pilings or the erection of buildings or structures of any kind.
- (f) The placing of obstructions whether or not they interfere with the flow of water.
- (g) The destruction of plant life, including the cutting of trees, which could result in harm to an area described in the Act.
- (h) The changing of water temperature, biochemical oxygen demand (BOD), and other natural characteristics of the receiving water.
- (i) Changes which may adversely affect shellfish or fisheries.

(4) Bank shall be defined as land adjoining any body of water which serves to confine said water.

- (5) Beach shall be defined as that area of land adjoining any pond, lake, stream, river, creek, ocean, sea or water subject to tidal action.
- (6) Bordering shall be defined as including any land within either of the following:
- (a) 100 feet horizontally landward from the bank of any beach, dune, flat, marsh, meadow, or swamp bordering the ocean, estuary, creek, river, stream, pond, lake, freshwater wetland, or coastal wetland.
 - (b) 100 feet horizontally landward from the water elevation of the 100-year storm, or whatever is the greater distance of (a) or (b).
- (7) Coastal Storm Flowage shall be tidal inundation caused by coastal storms, up to and including that caused by the "100 year" storm.
- (8) Conditions shall be statements included in a written Order issued by the conservation commission or the Commissioner for the purpose of regulating or prohibiting any activity.
- (9) Conservation Commission shall be defined as three or more members lawfully appointed under Chapter 40, Section 8C of the Massachusetts General Laws to represent the town or city and shall include, for the purposes of the Act and within the regulations, a Mayor or Selectmen, where no conservation commission has been established under said Chapter 40, Section 8C.
- (10) Creek shall be defined as any small stream or any intermittent tributary to any brook or river or stream.
- (11) Department shall be defined as the Department of Environmental Quality Engineering.
- (12) Determination shall be defined as follows:
- (a) A written finding by the conservation commission whether the proposed work shall or shall not require the filing of a Notice of Intent.
 - (b) A written finding by the conservation commission, after a public hearing, whether the area on which the proposed work is to be done is significant to the interests described in the Act.

- (c) A written finding by the Commissioner, upon a request made to him, whether the area on which the proposed work is to be done is significant to the interests described in the Act.
- (13) Dredge shall be defined as any cleaning, deepening, widening, or excavating, either temporarily or permanently, of any area subject to the Act.
- (14) Dune means any hill, mound, or ridge of sand landward of a coastal beach deposited by wind action or by storm overwash. Coastal dunes also mean sand deposited by artificial means and serving the purpose of storm damage prevention and flood control.
- (15) Effect on the Environment shall include the possible effect of the proposed activity upon public or private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, protection of land containing shellfish and the protection of fisheries.
- (16) Estuaries shall include any area where fresh and salt water mix, where tidal effects are evident or any partially enclosed coastal body of water where the tide meets the current of any stream or river.
- (17) Fill shall include the placing of any material that raises, either temporarily or permanently, the elevation of any area subject to the Act.
- (18) Flat shall be defined as any low-lying area, level wetland, including any swamp or marsh area and tidal flats.
- (19) Flood Control shall be the prevention or reduction of flooding.
- (20) Flooding shall be defined as a local and temporary inundation or as a rise in the surface of a body of water, such that it covers land not usually under water.
- (21) Ground Water Supply shall include all water beneath any land surface, including land beneath water bodies.
- (22) Lake shall be a body of fresh or salt water with a surface area of 10 acres or more and shall include great ponds.
- (23) Land Under Said Waters shall be defined as land below the ocean, estuary, creek, river, stream, pond or lake.
- (24) Land Subject to Tidal Action shall be defined as land subject to the periodic covering by the rise and fall of the tide.

- (25) Majority shall be defined as the number of signatures necessary for a valid Order of Conditions and shall consist of more than half of the duly appointed members of the conservation commission.
- (26) Notice of Intent shall be a written description of any activity proposed to be performed, to be submitted to the conservation commission with copies to the Commissioner in the form annexed hereto, as Form 3, including a completed Environmental Data form.
- (27) Ocean shall be defined as that body of water known as the Atlantic Ocean and all contiguous saline bays, inlets and harbors.
- (28) Order shall be a document issued by the conservation commission or the Commissioner, stating conditions which shall regulate or prohibit the activity and shall be in the form annexed hereto as Form 4.
- (29) Owner of Land Abutting the Activity shall be the owner of record of land directly beside the property limits of the site of the proposed activity in any direction, including lands located across a street, way, or waterway.
- (30) Party shall include a person, applicant, conservation commission, any lawful intervenor(s), abutter, ten residents of the city or town where the land is located, or any ten persons under General Laws Chapter 30A, Section 10A.
- (31) Person Aggrieved shall be a person who may be affected by the conservation commission's Order or failure to act, and such person aggrieved must specify the reasons and facts as to how they may be affected by the said Order or failure to act.
- (32) Plans shall be any engineering drawings and data deemed necessary for regulating the proposed activity and for determining whether the Act is applicable.
- (33) Pond shall be a body of water with a surface area up to ten acres, either artificial or natural.
- (34) Prevention of Pollution shall be the prevention or reduction of contamination of the areas described in the Act as the result of the proposed activity.
- (35) Private Water Supply shall be any source or volume of water available for private use.

- 4
- (36) Protection of Fisheries shall be the prevention or reduction of contamination or damage to fisheries. 18
- (37) Protection of Land Containing Shellfish shall be the prevention or reduction of contamination or damage to land containing shellfish.
- (38) Public Water Supply shall be defined as any source or volume of water available for public use as a designated water supply.
- (39) Remove shall be the act or process of taking away any type of material that changes the elevation, either temporarily or permanently, of any area subject to the Act.
- (40) River shall be a natural stream of water that empties to any ocean, lake or other river and has a continuous or intermittent flow.
- (41) Stream shall be defined as any body of running water including brooks, continuous or intermittent flowing, moving in a definite channel in the surface of the ground.
- (42) Significant shall be that standard to be used by the conservation commission or the Department in determining whether an area subject to the jurisdiction of the Act plays a role in the provision or protection of an interest of the Act. Following a determination of significance, the issuing authority shall determine what conditions it deems necessary to protect the public interest under the Act. The standard that shall be considered to establish significance in order to protect the said public interest shall include one or more of the following factors:
- (a) Any actual or potential contamination to public, private or ground water supply including aquifers or recharge areas, land containing shellfish and fisheries including the biological life necessary to support either a freshwater or coastal wetland ecosystem.
 - (b) Any reduction of the flood storage capacity of a freshwater wetland, river, stream or creek.
 - (c) Any alteration of a river, stream or creek that results in any increase in the volume or velocity of water which may cause flooding.
 - (d) Any actions which shall remove, fill, dredge or alter any area subject to the Act and will result in any threat to the health, welfare and safety of the individual or the community.
 - (e) An area consisting of "very poorly drained soil" as described by the National Cooperative Soils Survey of the U.S. Department of Agriculture, Soil Conservation Service.

- (f) An area which would be flooded as a result of a 100-year storm as that storm is defined in the U.S. Department of Commerce Technical Paper No. 40 or has been designated in a town by-law as part of a 100-year flood plain.
- (g) An area which is designated a wetland or flood plain on a restrictive map approved by the conservation commission.

- (43) Storm Damage Prevention shall be the elimination or reduction of any damage caused by storm.

Section 3. Jurisdiction

- (1) Any person who shall remove, fill, dredge, or alter any bank, freshwater wetland, coastal wetland, beach, dune, flat, marsh, meadow, or swamp bordering on the ocean, estuary, creek, river, stream, pond or lake, or land under said waters, or any land subject to tidal action, coastal storm flowage, or flooding, shall file a written Notice of Intent, including plans describing the activity and its effect on the environment with the conservation commission, Massachusetts Department of Environmental Quality Engineering together with a \$25.00 filing fee payable to the city or town in which the area is located.
- (2) A Notice of Intent shall be submitted in the form shown in the form annexed hereto as Form 3. The date of filing the said Notice of Intent shall be deemed the date of receipt by the conservation commission and all time periods set forth in the Act shall commence from this date, except any time periods pertaining to the Determination of Applicability.
- (3) Any person who desires a determination as to whether the Act applies to an area, or work to be performed on said area, shall submit a written request to the conservation commission together with plans showing the existing characteristics of the area or the nature and extent of the work to be performed on the area for such a determination. The request for a determination shall be in the form annexed hereto as Form 1. The request for a determination shall include certification that all abutters to the area, subject to the determination, and the owner(s), if the person making the request is other than the owner, have received actual notice that a determination is being requested under the Act.

- (4) A written determination as to applicability shall be issued in the form annexed hereto as Form 2, shall be valid when signed by a majority of the conservation commission, shall be rendered within twenty-one days after the date of receipt and shall state whether or not a filing under the Act is necessary. A copy of the determination shall be sent to the Department by the conservation commission.
- (5) A determination of the conservation commission that the Act is applicable to any land or work thereon shall not be appealable under Section 6(2) of these regulations until after the conservation commission issues an Order or fails to act on a Notice of Intent.
- (6) A determination of the conservation commission that the Act is not applicable to any land or work thereon may be appealed under Section 6(2) of these regulations.
- (7) If the conservation commission fails to render a determination within the 21 day time period, the person requesting said determination may, by certified mail and within ten days from the commission's failure to act, request the Department to make the said determination.

Section 4. Plans

- (1) Plans shall describe the proposed activity and its effect on the environment and may include the following recommended items:
 - (a) Locus Map
 - (b) An 8 1/2 x 11 cut-out of a U.S. Geological Survey Quadrangle Sheet showing the location of the proposed activity.
 - (c) All the names of the nearest roads and streets.
 - (d) Outline of the watershed areas related to the proposed activity.
 - (e) Water quality classifications (General Laws Chapter 21, the Clean Waters Act).
- (2) Engineering Drawings may include the following:
 - (a) All drawings should be drawn, with the title designating the name of the project location, and the name(s) of the persons preparing the drawings, and the date prepared, including all the latest revision dates. Drawings, whenever possible, should be stamped by a Registered Professional Engineer, Architect, Landscape Architect, or Registered Land Surveyor of the Commonwealth of Massachusetts.

- (b) Present and proposed contours of the entire site and affected adjacent areas. Generally, 2-foot contours will be satisfactory.
- (c) All brooks, creeks, rivers, streams, ponds, lakes and wetlands (or any bank, flat, marsh, meadow or swamp bordering such area), whether continuous or intermittent, natural or man-made, should be delineated, if they affect the site or will be affected by the proposed changes in the site.
- (d) Present and proposed location of waterways or other alterations.
- (e) Present and proposed location, elevation and invert of all drains, ditches, culverts and other water conductors immediately upstream and downstream of the site.
- (f) Location, extent and area of all present and proposed structures and paved areas.
- (g) Location of proposed water retention areas.
- (h) Location of areas to be removed, dredged, filled or otherwise altered in any way, and areas to be left untouched.
- (i) Location of any underground utilities, rights-of-way, or easements.
- (j) Locations and elevations of cellars or floors and bottoms of septic systems and leaching fields, and the alternate sites.
- (k) Cross sections showing slope, bank and bottom treatment of each watercourse to be altered. Locations of cross sections shall be specified.
- (l) Soil characteristics in representative portions of the site, including depth of peat and muck in wetlands. Sampling sites shall be specified.
- (m) The maximum ground water elevation at the period of the year when the ground water table is at its highest elevation, including calendar dates of measurements, samplings, and percolation tests, if any.
- (n) All calculations necessary to show the effect of the proposed activity on the soil and water.

- (o) Lowest floor elevations of any proposed structures.
- (p) The location of any spoil areas. 22
- (q) The existing and proposed water supply for the proposed activity.
- (r) Sewage disposal systems specifically showing the location and the type to be used in compliance with state and local environmental codes.
- (s) Erosion and sedimentation prevention plans for both during and after construction.
- (3) The above recommendations set out in Section 4(2) are not intended to be a complete and final presentation as to what a plan should show. The applicant may submit, or be required to submit by the conservation commission or Commissioner, any further information which will assist in the review and which is deemed necessary to determine the proposed effect on the environment.

Section 5. Filing Procedure

- (1) A Notice of Intent shall not be filed under the Act unless it is completed in the form annexed hereto as Form 3, and also shall include a completed Environmental Data Form.
- (2) The requirement of the Act to obtain or apply for all permits, variances, and approvals required by local by-law with respect to the proposed activity shall include only those which are obtainable at the time the Notice of Intent is filed. When an applicant for a comprehensive permit (under G.L. Chapter 40B, Sections 20-30) to a Board of Appeals (established under G.L. Chapter 40A, Section 14) has received a determination from the Board, whether to grant or deny the permit and, in the case of a denial, has appealed to the Housing Appeals Committee (established under M.G.L. Chapter 23B, S5A) said applicant shall be deemed to have obtained all permits obtainable at the time.
- (3) The applicant shall either obtain all the obtainable permits as described in Section 5 (2) prior to filing a Notice of Intent, or the applicant may file a Notice of Intent after the filing of application(s) for all such obtainable permits. The Notice of Intent shall then include any information submitted in connection with such other application(s) which is necessary to describe the effect of the proposed activity on the environment.
- (4) If a conservation commission rejects a Notice of Intent because of a failure to obtain or apply for all permits, variances and approvals, which are required and obtainable at the time of filing, it must specify in writing the permit, variance or approval that has not been obtained or applied for. A ruling by the municipal agency within whose jurisdiction the issuance of the permit, variance or approval lies or by the Town Counsel concerning the applicability of such permit, variance or approval shall be accepted by the Department.

- (5) A complete filing for the purpose of this Act shall include the following:
- (a) A completed Notice of Intent including plans to be filed therewith.
 - (b) A completed Environmental Data form.
 - (c) The payment of the \$25.00 filing fee.
- (6) The submission of the items required in Section 5(5) shall satisfy the procedural requirements necessary for the conservation commission to hold a public hearing under the Act.
- (7) Where the material required in Section 5(5) is not submitted to the conservation commission, an Order may prohibit the activity after a public hearing.
- (8) The adequacy of the items to be submitted under Section 5(5) shall be reflected in the Order to be issued by the conservation commission.
- (9)
- (a) If a license has been issued within the previous ten years by the division of waterways of the Department for a maintenance dredging project, the requirement to file a formal Notice of Intent shall not apply. A person intending to fill or dredge under such previously issued license shall file a written notice by hand delivery or certified mail with the conservation commission or if none, to the board of selectmen in a town or mayor of a city, in which the land upon which such dredging project is located. Such notice shall contain the name and address of the applicant, the location and date of the maintenance dredging, and the location of the dredge disposal site.
 - (b) If the conservation commission, the board of selectmen or mayor fails to notify the applicant at the applicant's address within twenty days of the receipt of such notice of specific objections to the commencement of such maintenance dredging contemplated under said license, the applicant may commence such work without any further notice to other agencies of the commonwealth. Whether or not the applicant is notified of specific objections, the conservation commission, or if none, the board of selectmen or mayor may at any time, and subject to the approval of the Department, designate an area at which spoil from the dredging may be placed and may require the relocation of shell-fish before such maintenance dredging takes place.
 - (c) If the conservation commission, the board of selectmen or mayor cites specific objections to the notice of intention to dredge, such conservation commission, board of selectmen or mayor may order a hearing, in which case all of the usual procedures set forth in these Regulations shall apply.

- (1) The conservation commission shall issue an Order within twenty-one days from the conclusion of the public hearing. A hearing may be continued to a specific date for good cause by the conservation commission provided that notice of the continuance is given at the first public hearing and publication of the continuance is made in accordance with the Act.
- (2) The applicant, any person aggrieved by an Order issued after the conservation commission's public hearing, any owner of land abutting the land in which the proposed work is to be done, any ten residents of the city or town where land is located, or the Commissioner may request, in writing a determination to be made by the Department within ten days from the conservation commission's Order or determination or failure to act.
- (3) The Commissioner, shall within seventy days from receipt of such a request, issue an Order, which shall include conditions which may regulate or prohibit the proposed activity.
- (4) Except as provided in Section 5(9), the time period allowed for completion of the activity shall be one year from the date of the Order, which may be extended by the issuer of the final Order for one or more additional one-year periods upon application to said issuer at least thirty days prior to the expiration date of the Order or its last extension. An extension shall be in the form annexed hereto as Form 5.
- (5) If there is a significant change of the activity at the time the request for an extension is made, the issuer of the Order may require a new filing of a Notice of Intent.
- (6) The Order of Conditions issued by the conservation commission or the Department shall be in the form annexed hereto as Form 4.

Section 7.

Certificate of Compliance

- (1) A Certificate of Compliance may be given by the issuer of the final Order certifying in a recordable form that the activity described in the Notice of Intent and Plans has been completed in accordance with the Order. A copy of the Certificate of Compliance shall be sent to the conservation commission or the Department by the issuer, whichever is appropriate.
- (2) A Certificate of Compliance may be obtained upon a written request to the issuer of the final Order by the applicant.
- (3) After receipt of the request for a Certificate of Compliance, an on-site inspection shall be made by the applicant and the issuer of the final Order.
- (4) A Certificate of Compliance as specified in Section 7 (1) shall be in the form annexed hereto as Form 6.
- (5) Where the Order has not been satisfied after the review and inspection, the issuer of the final Order may deny the issuance of a Certificate of Compliance.

- (6) Where a project has been completed in accordance with plans stamped by a Registered Professional Engineer, Architect, Landscape Architect, or Land Surveyor, a written statement by the aforesaid professional people, certifying compliance with the plans shall accompany the said request for a Certificate of Compliance.

Section 8. Agency Hearings and Meetings

- (1) After a request for a determination to the Commissioner by the applicant, any person aggrieved by an Order, an abutter, ten residents of the city or town, or any lawful intervenor(s), he shall afford the opportunity for informal meetings to all parties, including the conservation commissions, in order to gather any necessary information to assist in the review of the proposed activity and to attempt to reconcile differences of opinion related to the proposed activity.
- (2) The Commissioner shall afford the opportunity for a formal hearing to any party who has formal standing before the Department. The hearing must be requested within ten days after the issuance of the Superseding Order.
- (3) All such formal hearings at the Department shall be conducted in accordance with the Rules and Regulations For the Conduct of Adjudicatory Proceedings which have been adopted by the Department.

Section 9. Emergencies

- (1) A notice of intent shall not be required for emergency projects necessary for the protection of the health or safety of the commonwealth which are to be performed or which are ordered to be performed by an agency of the commonwealth or a political subdivision thereof.
- (2) An emergency project shall mean any project certified to be an emergency by the conservation commission. If the conservation commission fails to act favorably within twenty-four hours of receipt of a request for certification of an emergency project, said project may be so certified by the commissioner. Any person requesting certification of an emergency project shall specify why the project is necessary for the protection of the health and safety of the Commonwealth and what agency of the Commonwealth or subdivision thereof is to perform the project or has ordered the project to be performed. The certification of emergency shall describe the work which is to be allowed and no such work shall be allowed beyond that necessary to abate the emergency. A site inspection shall be made prior to certification.
- (3) An emergency certification shall be issued for the protection of health or safety of the Commonwealth.
- (4) The time limitation for emergency work shall not exceed thirty days unless it is with the written approval of the Commissioner.

The Massachusetts Environmental Policy Act, G.L. Chapter 30, Sections 61 through 62H, inclusive, may require the filing of an Environmental Notification Form and an Environmental Impact Report for a specific activity. Executive Office of Environmental Affairs "Regulations Governing the Implementation of the Massachusetts Environmental Policy Act" govern. If G.L. Chapter 30, Sections 61 and 62 and the regulations promulgated thereunder so require, the Department shall issue an Order prohibiting any work or activity within the jurisdiction of the Act until there has been compliance with said sections and regulations.

Section 11.

Severability

If any provision of the regulations within any part, or the application thereof is held to be invalid, such invalidity shall not affect any provision of the regulations not specifically held to be invalid.

Section 12.

Effective Date

- (1) The effective date of Parts I and II of these regulations shall be August 10, 1978. Part II of these regulations, that is, Sections 21 through 36, shall not apply to any Notice of Intent filed prior to August 10, 1978, or any extension to an Order of Conditions when the Notice of Intent upon which such Order was based was filed prior to August 10, 1978.
- (2) All proceedings and actions commenced under the Act prior to the effective date of the within regulations shall remain in full force and effect.

Sections 13 - 20: Reserved.

Adopted by the Commissioner of the Department of Environmental Quality Engineering.

7/28/78
July 28, 1978

David Standley
David Standley
Commissioner

A true copy: attest

Barbara Ingle
Barbara Ingle, Director
Wetlands Division

SECTION 99

Forms and Diagram

COMMONWEALTH OF MASSACHUSETTS

G.L. C. 131 s. 40

REQUEST TO DETERMINE APPLICABILITY OF THE WETLAND PROTECTION ACT

1. I, the undersigned, hereby request that the _____ (name of Conservation Commission) make a determination as to whether or not the Act is applicable to the area, or work to be performed on said area, a description of which is submitted herewith and made a part of this request.

2. The name(s) and address(es) of the owner(s) of the area are:

3. I hereby certify that all abutters (attached list) to the area described above which is subject to this written request, and the owner, if not the person making the request, have been notified that a determination is being requested of the Conservation Commission under the Act.

4. I have filed a copy of this request with the appropriate regional office of the Massachusetts Department of Environmental Quality Engineering, (see map for regions and addresses).

Northeast _____ Southeast _____ Central _____ Western _____

5. Is the area subject to this request in, or within 100 feet of: a coastal dune _____; coastal bank _____; coastal beach _____; salt marsh _____; land under the ocean _____; a salt pond _____; anadromous/catadromous fish run _____; do not know _____?

Signature

Date

Address

COMMONWEALTH OF MASSACHUSETTS

DETERMINATION OF APPLICABILITY OF THE WETLAND PROTECTION ACT

G.L. C.131 s. 40

TO:

DATE:

Pursuant to the authority of G.L. C.131 s.40, the _____

_____ has considered your request for a determination of applicability together with the plans submitted with it and has made the following determination:

1. The area shown on the plans is not subject to the Act.
2. The entire area shown on the plans is subject to the Act and shall require a filing of the Notice of Intent.
3. Only the area described below is subject to the Act and shall require a filing of the Notice of Intent:

-
4. The area shown on the plans is subject to the Act but the proposed work is not dredging, filling, removing, or altering, and therefore a Notice of Intent is not required.
 5. The determination that the work is not subject to the Act shall expire within one (1) year from the date herein.
 6. This determination does not relieve the person requesting the determination from complying with all other applicable federal, state or local statutes, ordinances, by-laws, and/or regulations.
 7. Failure to comply with this determination and with all related statutes and other regulatory measures shall be deemed cause to revoke or modify the said determination.
 8. No work may be commenced under this determination until all appeal periods have elapsed.

ISSUED BY: _____

Where the Department of Environmental Quality Engineering issues a negative superseding determination, you are hereby notified of your right to a formal hearing provided it is made within ten (10) days from the date of the superseding determination of the Department of Environmental Quality Engineering.

WETLANDS PROTECTION ACT

MASSACHUSETTS G.L. C. 131 s. 40

NOTICE OF INTENT

All parts of this form and the attached Environmental Data Form shall be completed under the pains and penalties of perjury. Incomplete filings may be rejected.

DATE: _____

Conservation Commission of (City/Town): _____

1. Notice is hereby given in accordance with the provisions of Massachusetts G.L. c. 131, s. 40 that the proposed activity described herein is within the jurisdiction of

(City/Town) _____, at _____ Street

Most recent recording at the Registry of _____, Book _____,

Page _____.

Certificate (if registered) _____.

2. The land on which the work is proposed to be done is owned by:

NAME(s) _____ ADDRESS _____

3. The Applicant submitting this Notice is:

NAME _____ ADDRESS _____

TELEPHONE _____

(Optional)The following person is hereby designated to represent the applicant in matters arising hereunder:

Name _____ Address _____

Telephone _____

4. Plans describing and defining the work, included herewith and made a part hereof, are titled and dated:

5. Identical material has been submitted by certified mail as follows:

Original to Conservation Commission (Date) _____

Three copies to appropriate regional office of the Department of Environmental Quality Engineering (see map for regions and addresses). Date _____

Northeast _____ Southeast _____ Central _____ Western _____

6. Has the required \$25.00 filing fee, payable to the city or town, been included with the submission to the Conservation Commission? _____
7. Has the Environmental Data Form been completed and submitted with each copy? _____
8. Has a locus map (8½" x 11" copy of USGS topographic sheet with the site marked) been included with each copy? _____
- 9.
- (A) Have all obtainable permits, variances, and approvals required by local by-law been obtained? _____
- (B) If they have not been obtained, have they been applied for? _____
If yes, include with this Notice of Intent any information which has been submitted with such applications which is necessary to describe the effect of the proposed activity on the environment.
- 10.
- (A) Is the site of the proposed work subject to a wetland restriction order recorded pursuant to G.L. c. 131, s. 40A, or G.L. c. 130, s. 105, by the Department of Environmental Management? Yes _____ No _____ Do not know _____
- (B) Is the site of the proposed work in, or within 100 feet of: a coastal dune _____; coastal bank _____; coastal beach _____; salt marsh _____; land under the ocean _____; a salt pond _____; anadromous/catadromous fish run _____; do not know _____?
11. Signature(s) of owner(s) of the land (if by agent or option holder, written authorization must be attached) _____
12. What is the purpose of the proposed project?

13. I HEREBY CERTIFY UNDER THE PAINS AND PENALTIES OF PERJURY THAT THE FORGOING NOTICE OF INTENT AND ACCOMPANYING ENVIRONMENTAL DATA FORM ARE TRUE AND COMPLETE.

Signature of Applicant

Date

WETLAND PROTECTION ACT

ENVIRONMENTAL DATA FORM

1. All parts of this form are to be filled out by the applicant or his agent under the provisions of G.L. C. 131 s. 40.
2. Where a section is not relevant to the application in question, the words "Not Applicable" should be entered on the appropriate line.

NAME OF APPLICANT

ADDRESS OF APPLICANT

MUNICIPALITIES WHERE ACTIVITY IS PROPOSED AND NOTICE IS FILED

DESCRIPTION OF PROPERTY INVOLVED IN APPLICATION (including the dimensions of any existing buildings, decks, marinas, existing cesspools)

DESCRIPTION OF MODIFICATIONS PROPOSED ON THE SITE, including grading, dredging, removal of vegetation, etc.

A. SOILS

1. United States Department of Agriculture Soil Types (show on map)

2. Permeability of soil on the site. (Dates of testing)

3. Rate of percolation of water through the soil. (Dates of testing)

B. SURFACE WATERS

1. Distance of site from nearest surface water (Date of measurement)

2. Sources of runoff water

3. Rate of runoff from the site

4. Destination of runoff water

5. Chemical additives to runoff water on the site

C. GROUND COVER

1. Extent of existing impervious ground cover on the site

2. Extent of proposed impervious ground cover on the site

3. Extent of existing vegetative cover on the site

4. Extent of proposed vegetative cover on the site

D. TOPOGRAPHY

1. Maximum existing elevation on site

2. Minimum existing elevation on site

3. Maximum proposed elevation of site

4. Minimum proposed elevation of site

5. Description of proposed change in topography

E. GROUND WATER

1. Minimum depth to water table on site (at time of filing)

2. Maximum depth to water table on site (at time of filing)

3. Seasonal maximum ground water elevation

F. WATER SUPPLY

34

1. The source of the water to be provided to the site

2. The expected water requirements (g.p.d.) for the site

3. The uses to which water will be put

G. SEWAGE DISPOSAL

1. Sewage disposal system (description and location on the site, of system)

2. Expected content of the sewage effluents (human waste, pesticides, detergents, oils, heavy metals, other chemicals)

3. Expected daily volume of sewage

H. SOLID WASTE

1. Estimated quantity of solid waste to be developed on the site

2. Method for disposal of solid waste

3. Plans for recycling of solid waste

I. BOAT YARDS, DOCKS, MARINAS

1. Capacity of marina (number of boats, running feet)

2. Description of docks and floats (site, dimensions)

3. Description of sewage pumpout facilities (type of waste disposal)

4. Description of fueling facilities and fuel storage tanks

5. Description of fuel spill prevention measures and equipment

J. IMPACT OF PROPOSED ACTION APPLIED FOR

1. Effects on plant species
(upland and marine)

2. Effects on marine species (shellfish, finfish)

3. Effects on drainage and runoff

4. Effects on siltation of surface waters

5. Effects on groundwater quality

6. Effects on surface water quality

K. ALTERNATIVES TO PROPOSED ACTION

1. Describe alternatives to the requested action

2. Describe the benefits of the requested action over the alternatives

ORDER OF CONDITIONS

WETLANDS PROTECTION ACT

G.L. C. 131, s. 40

CITY/TOWN _____

FILE NUMBER _____

TO: NAME _____

ADDRESS _____

CERTIFIED MAIL NUMBER _____

PROJECT LOCATION:

Address _____

Recorded at Registry of _____, Book _____, Page _____.

Certificate (if registered) _____

REGARDING:

Notice of Intent dated _____

and plans titled and dated _____

THIS ORDER IS ISSUED ON(date) _____

Pursuant to the authority of G.L. c. 131, s. 40, the _____ has reviewed your Notice of Intent and plans identified above, and has determined that the area on which the proposed work is to be done is significant to one or more of the interests listed in G.L. c. 131, s. 40. The _____ hereby orders that the following conditions are necessary to protect said interests and all work shall be performed in strict accordance with them and with the Notice of Intent and plans identified above except where such plans are modified by said conditions.

CONDITIONS

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.
2. This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws and/or regulations.
4. The work authorized hereunder shall be completed within one (1) year from the date of this order unless it is for a maintenance dredging project subject to Section 5(9). The order may be extended by the issuing authority for one or more additional one-year periods upon application to the said issuing authority at least thirty (30) days prior to the expiration date of the order or its extension.

5. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including, without limiting the generality of the foregoing, lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
6. No work may be commenced until all appeal periods have elapsed from the order of the Conservation Commission or from a final order by the Department of Environmental Quality Engineering.
7. No work shall be undertaken until the final order, with respect to the proposed project, has been recorded in the Registry of Deeds for the district in which the land is located within the chain of title of the affected property. The Document number indicating such recording shall be submitted on the form at the end of this order to the issuer of this order prior to commencement of work.
8. A sign shall be displayed at the site not less than two square feet or more than three square feet bearing the words, "Massachusetts Department of Environmental Quality Engineering. Number _____".
9. Where the Department of Environmental Quality Engineering is requested to make a determination and to issue a superseding order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
10. Upon completion of the work described herein, the applicant shall forthwith request, in writing, that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
11. The work shall conform to the following described plans and additional conditions:

The applicant, any person aggrieved by this order, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to appeal this order to the Department of Environmental Quality Engineering provided the request is made in writing and by certified mail to the Department within ten (10) days from the issuance of this order.

ISSUED BY _____

On this _____ day of _____ 19 _____, before me personally appeared _____ to me known to be the person described in, and who executed, the foregoing instrument and acknowledged that he executed the same as his free act and deed.

My Commission expires _____

DETACH ON DOTTED LINE AND SUBMIT TO THE ISSUER OF THIS ORDER PRIOR TO COMMENCEMENT OF WORK.

TO _____ (Issuing Authority)

PLEASE BE ADVISED THAT THE ORDER OF CONDITIONS FOR THE PROJECT AT _____, FILE NUMBER _____, HAS BEEN RECORDED AT THE REGISTRY OF _____, ON (DATE) _____.

If recorded land, the instrument number which identifies this transaction is _____.
If registered land, the document number which identifies this transaction is _____.

Signed _____
Applicant

COMMONWEALTH OF MASSACHUSETTS

WETLAND PROTECTION ACT

G.L. C.131 s. 40

EXTENSION PERMIT

DATE _____

FILE NO. _____

PROJECT LOCATION _____

TO:

CERTIFIED MAIL NO. _____

This document extends the order issued to _____
_____ for a period of one year, from the date of termination
of the last order issued in regard to this project or extension of same which ever is
the later date.

Signature of Issuing Authority

On this _____ day of _____ 19____, before me personally
appeared _____

to me known to be the person described in and who executed the foregoing instrument
and acknowledged that he executed the same as his free act and deed.

Notary Public

My commission expires

COMMONWEALTH OF MASSACHUSETTS

WETLANDS PROTECTION ACT

G.L. C.131 s. 40

CERTIFICATE OF COMPLIANCE

PROJECT LOCATION _____ DATE _____

FILE NO. _____

It is hereby certified that the work regulated by an Order of Conditions dated _____ by the Department of Environmental Quality Engineering [] Conservation Commission [] has been satisfactorily completed.

This Certificate shall be recorded in the Registry of Deeds for the district in which the land is located. The Order was originally recorded on _____ in _____
(Date) (Book) (Page)

Signature of Issuing Authority

On this _____ day of _____ 19____, before me personally appeared _____

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public

My commission expires

DETERMINATION AND ORDER WHEN A PRESUMPTION OF SIGNIFICANCE IN PART II IS OVERCOME

(This form is to be used only when a presumption of significance is overcome.)

The date of issuance of this Order is the date a copy is mailed via certified mail or hand delivered to the appropriate DEQE regional office. The Order shall not be a valid order until so sent or delivered. No work may commence until all appeal periods have elapsed from this order or from a final order by DEQE.

To: Name _____ (applicant who filed the
Notice of Intent)
Address _____

1. In accordance with the provisions of Section 24(3) of Part II, this Order is to inform you that, after a public hearing held on _____ (date), concerning your proposed project, File # _____, at _____ (location of site), the _____ Conservation Commission has determined, and so orders, that the site of the proposed work is

not significant to the interests of G.L.c.131, s.40, despite the presumption of significance in Section _____ of Part II,

is significant to the interests of GL c.131, s.40 despite the presumption of non-significance in Section _____ (25 or 26 only) of Part II.

2. The site of the proposed work is a _____ (name type of resource area), but plays no role (or plays a role in, as appropriate) in _____ (list interests cited in appropriate section) because:

This section must explain in detail why the presumption(s) of significance or non-significance for the site of the proposed work is (are) not valid in this case. The Conservation Commission must make a clear showing that the area plays no role in protecting or providing the interests to which it is presumed to be significant, or is significant to the interests to which it is presumed to be not significant, as appropriate. Documentation (such as maps, reports, testimony) shall be required.

The applicant, any person aggrieved by this order, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to appeal this order to the Department of Environmental Quality Engineering provided the request is made in writing and sent by certified mail to the Department within ten (10) days from the issuance of this order.

3. Issued by (the signature of the Conservation Commission is required)

_____	_____
_____	_____
_____	_____

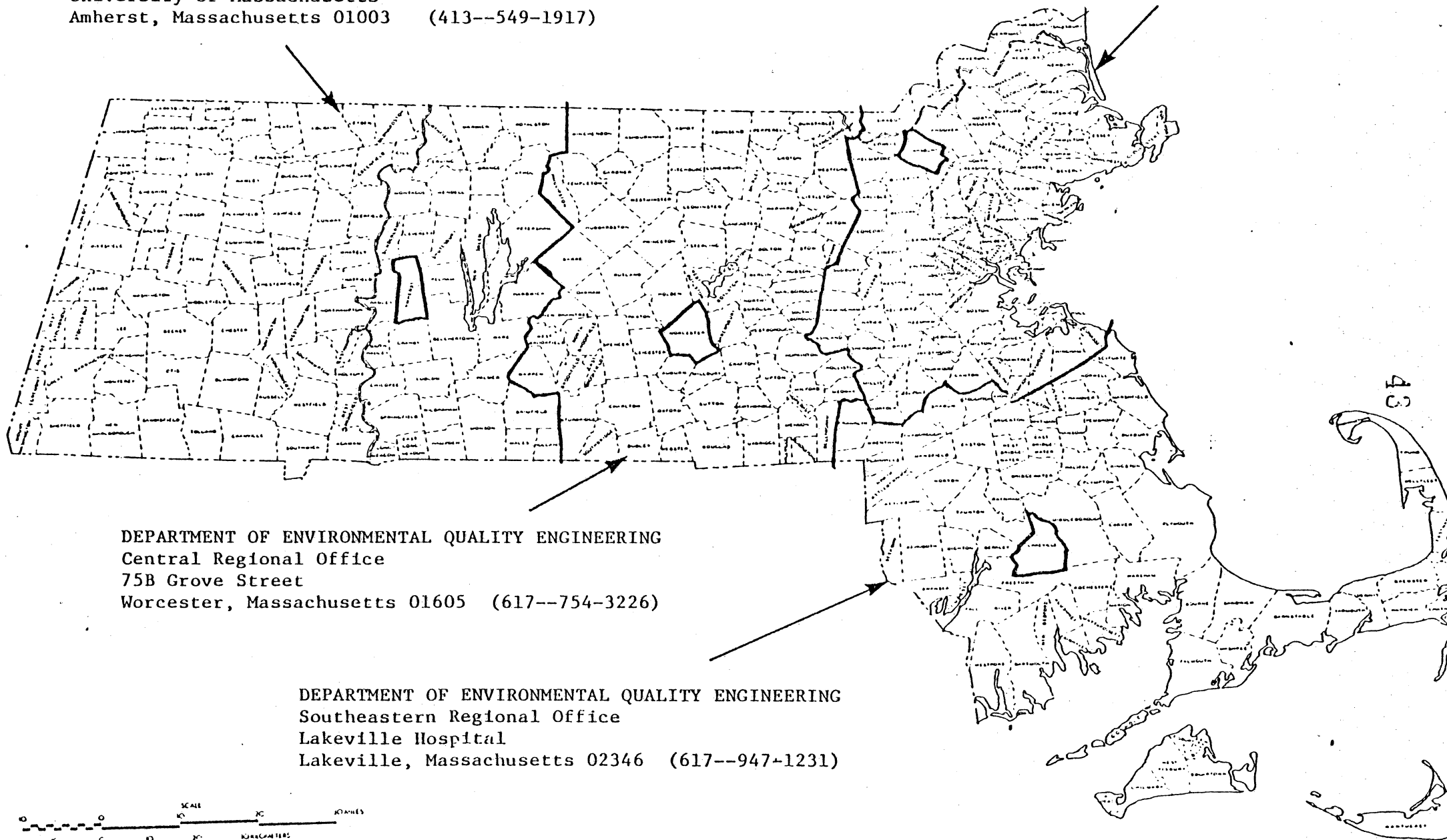
Date of issuance _____

On this _____ day of _____ 19____, before me personally appeared _____ known to be the person described in, and who executed, the foregoing instrument and acknowledged that he executed the same as his free act and deed.

_____ My Commission expires _____

DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING
Western Regional Office
Public Health Center
University of Massachusetts
Amherst, Massachusetts 01003 (413--549-1917)

DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING
Northeastern Regional Office
Tewksbury Hospital
Tewksbury, Massachusetts 01876 (617--851-7261)



DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING
Central Regional Office
75B Grove Street
Worcester, Massachusetts 01605 (617--754-3226)

DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING
Southeastern Regional Office
Lakeville Hospital
Lakeville, Massachusetts 02346 (617--947-1231)

Diagram 1

1977 Amendments to General Laws c. 131 §40

Chapter 601 of the Acts of 1977:

SECTION 1. The first paragraph of section 40 of chapter 131 of the General Laws is hereby amended by striking out the fifth sentence, as amended by chapter 131 of the acts of 1977, and inserting in place thereof the following sentence: - No such notice shall be sent before all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the environment.

SECTION 2. This act shall take effect on December first, nineteen hundred and seventy-seven.

Chapter 625 of the Acts of 1977

SECTION 2. Section 40 of chapter 131 of the General Laws is hereby amended by inserting after the eighteenth paragraph the following three paragraphs: -

Notwithstanding the provisions of section fourteen of chapter twenty-one A or any other provision of law to the contrary, the notice of intention required in the first paragraph of this section shall not apply to a maintenance dredging project for which a license has been previously issued within ten years by the division of waterways of the department of environmental quality engineering. A person intending to fill or dredge under such previously issued license shall file a written notice by certified mail to the conservation commission or if none, to the board of selectmen in a town or mayor of a city in which the land upon which such dredging project is located. Such notice shall contain the name and address of the applicant.

If the conservation commission, the board of selectmen or mayor fails to notify the applicant at the applicant's address within twenty days of the receipt of such notice of the specific objections to the commencement of such dredging fill or maintenance dredging contemplated under said license, the applicant may commence such work without any further notice to other agencies of the commonwealth. Notwithstanding failure to notify an applicant as hereinbefore provided, the conservation commission, the board of selectmen or mayor may at any time designate an area at which spoilage from the dredging may be placed and may require the relocation of shellfish before such maintenance dredging takes place.

If the conservation commission, the board of selectmen or mayor cites specific objections to the notice of intention, such conservation commission, board of selectmen or mayor may order a hearing as provided in this section and all other pertinent provisions of this section shall apply.

1978 Amendments

Chapter 65 of the Acts of 1978:

SECTION 1. The thirteenth paragraph of section 40 of chapter 131 is hereby amended by striking out the fifth sentence, as appearing in section 241 of chapter 706 of the acts of 1975, and inserting in place thereof the following sentence:- Upon receipt of such request the department shall make the determination requested and shall by written order issue within seventy days of receipt of such request, signed by the commissioner or his designee, impose such conditions as will contribute to the protection of the interests described herein; provided, however, that said department shall notify the applicant within thirty days of the receipt of such request if his application or request is not in proper form or is lacking information or documentation necessary to make the determination.

SECTION 2. Said thirteenth paragraph of said section 40 of said chapter 131 is hereby further amended by striking out the eighth sentence, as so appearing, and inserting in place thereof the following sentence:- Notwithstanding the withdrawal, the commissioner or his designee may continue the determination if he notifies all parties within ten days of receipt of the withdrawal.

MASSACHUSETTS GENERAL LAWS

CHAPTER 131 SECTION 40

Section 40. Removal, fill, dredging or altering of land bordering waters; definitions; procedures; enforcement; exceptions; penalties

No person shall remove, fill, dredge or alter any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Said notice shall be sent by certified mail to the conservation commission or, if none to the board of selectmen in a town or the mayor of a city in which the land upon which such activity is proposed is located. Each such notice shall be accompanied by a filing fee of twenty-five dollars payable to the city or town. Copies of such notice shall be sent at the same by certified mail to the department of environmental quality engineering. No such notice shall be sent before all permits, variances and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained. Upon receipt of any notice hereunder the department of environmental quality engineering, hereinafter called the department, shall designate a file number for such notice and shall send a notification of such number to the person giving notice to the conservation commission, selectmen or mayor to whom the notice was given. Said notification shall state the name of the owner of the land upon which the proposed work is to be done and the location of said land.

Within twenty-one days of the receipt by a conservation commission of a written request made by any person and sent by certified mail, said commission shall make a written determination as to whether this section is applicable to any land or work thereon. When such person is other than the owner, notice of any such determination shall also be sent to the owner.

The term "applicant" as used in this section shall mean the person giving notice of intention to remove, fill, dredge or alter.

The term "person" as used in this section shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents or assigns.

The term "bogs" as used in this section shall mean areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (Sphagnum) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (Aster nemoralis), azaleas (Rhododendron canadense and R. viscosum), black spruce (Picea mariana), bog cotton (Eriophorum), cranberry (Vaccinium corymbosum), larch (Larix laricina), laurels (Kalmia angustifolia and K. polifolia), leatherleaf (Chamaedaphne calyculata), orchids (Arethusa, Calopogon, Pogonia), pitcher plants (Sarracenia purpurea), sedges (Cyperaceae), sundews (Droseraccae), sweet gale (Myrica gale), white cedar (Chamaecyparis thyoides).

The term "coastal wetlands", as used in this section, shall mean any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

The term "freshwater wetlands", as used in this section; shall mean wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

The term "swamps", as used in this section, shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (Alnus), ashes (Fraxinus), azaleas (Rhododendron canadense and R. viscosum), black alder (Ilex verticillata), black spruce (Picea mariana), buttonbush (Cephalanthus occidentalis), American or white elm (Ulmus americana), white Hellebore (Veratrum viride), hemlock (Tsuga canadensis), highbush blueberry (Vaccinium corymbosum), larch (Larix laricina), cowslip (Caltha palustris), poison sumac (Toxicodendron vernix), red maple (Acer rubrum), skunk cabbage (Symplocarpus foetidus), sphagnum mosses (Sphagnum), spicebush (Lindera benzoin), black gum tupelo (Nyssa sylvatica), sweet pepperbush (Clethra alnifolia), white cedar (Chamaecyparis thyoides), willow (Salicaceae).

The term "wet meadows", as used in this section where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag (Iris), vervain (Verbena), thoroughwort (Eupatorium), dock (Rumex), false loosestrife (Ludwigia), hydrophilic grasses (Gramincae), loosestrife (Lythrum), marsh fern (Dryopteris thelypteris), rushes (Juncaceae),

sedges (Cyperaceae), sensitive fern (Onoclea sensibilis), smartweed (Polygonum).

The term "marshes", as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), bur reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Gramineae), leatherleaf (Chamaedaphne calyculata), pickeral weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Juncaceae), sedges (Cyperaceae), smartweeds (Polygonum), sweet gale (Myrica gale), water milfoil (Halcragaceae), water lilies (Nymphaeaceae), water starworts (Callitrichaceae), water willow (Decodon verticillatus).

The conservation commission, selectmen or mayor receiving notice under this section shall hold a public hearing on the proposed activity within twenty-one days of the receipt of said notice. Notice of the time and place of said hearing shall be given by the hearing authority at the expense of the applicant, not less than five days prior to such hearing, by publication in a newspaper of general circulation in the city or town where the activity is proposed and by mailing a notice to the applicant and to the board of health and the planning board of said city or town. The conservation commission and its agents, officers and employees and the commissioner of natural resources and his agents and employees, may enter upon privately owned land for the purpose of performing their duties under this section.

If after said hearing the conservation commission, selectmen or mayor, as the case may be, determine that the area on which the proposed work is to be done is significant to public or private water supply, to the ground water supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, or to the protection of fisheries, such conservation commission, board of selectmen or mayor shall by written order within twenty-one days of such hearing impose such conditions as will contribute to the protection of the interests described herein, and all work shall be done in accordance therewith. If the conservation commission, selectmen or mayor, as the case may be, make a determination that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of such determination within twenty-one days after said hearing. Such order or notification shall be signed by the mayor or a majority of the conservation commission or board of selectmen, as the case may be, and a copy thereof shall be sent forthwith to the applicant and to the department.

If a conservation commission has failed to hold a hearing within the twenty-one day period as required, or if a commission, after holding such hearing, has failed within twenty-one days therefrom to issue an order, or if a commission, upon a written request by any person to determine whether this section is applicable to any work fails within twenty-one days to make said determination, or where an order does issue from said commission, the applicant, any person aggrieved by said commission's order or failure to act, or any owner abutting the land upon which the proposed work is to be done, or any ten residents

of the city or town in which such land is located, may, by certified mail and within ten days from said commission's order or failure to act, request the department to determine whether the area on which the proposed work is to be done is significant to public or private water supply, to the ground water supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish or to the protection of fisheries. The commissioner of environmental quality engineering also may request such a determination within said ten days. The party making any such request shall at the same time send a copy thereof by certified mail to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder. If such party is other than the applicant, a copy of such request shall also be sent at the same time by certified mail to the applicant. Upon receipt of such request the department shall make the determination requested and shall by written order issue within seventy days of receipt of such request, signed by the commissioner, impose such conditions as will contribute to the protection of the interests described herein; provided, however, that said department shall notify the applicant within thirty days of the receipt of such request if his application or request is not in proper form or is lacking information or documentation necessary to make the determination. Such order shall supersede the prior order of the conservation commission, board of selectmen or mayor, and all work shall be done in accordance therewith, but in no event shall any work commence until ten days have elapsed following the issuance of said order. At any time prior to a final order of determination by the department, any party requesting a determination may in writing withdraw the request, and such withdrawal shall be effective upon receipt by the department. Notwithstanding the withdrawal, the commissioner may continue the determination if he notifies all parties within ten days of receipt of the withdrawal. A copy of such order shall be sent to the applicant, to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder.

No work proposed in any notice of intention shall be undertaken until the final order, determination or notification with respect to such work has been recorded in the registry of deeds for the district in which the land is located.

Any site where work is being done which is subject to this section shall display a sign of not less than two square feet or more than three square feet bearing the words "Massachusetts Department of Environmental Quality Engineering File Number . . ." and the sign shall display the file number assigned to the project.

If the department of environmental quality engineering finds that any proposed work would violate the provisions of chapter ninety-one, it shall proceed immediately to enforce the provisions of said chapter.

The provisions of this section shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act; to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of lands in agricultural use; or to any project authorized by special act prior to January first, nineteen hundred and seventy-three.

The notice of intention required in the first paragraph of this section shall not apply to emergency projects necessary for the protection of the health or safety of the commonwealth which are to be performed or which are ordered to be performed by an agency of the commonwealth or a political subdivision thereof. An emergency project shall mean any project certified to be an emergency by the conservation commission of the city or town in which the project would be undertaken, or if none, by the mayor of said city or the selectmen of said town. If the conservation commission, mayor or selectmen, as the case may be, fail to act favorably within twenty-four hours of receipt of a request for certification of an emergency project, said project may be so certified by the commissioner. In no case shall any removal, filling, dredging, or alteration authorized by such certification extend beyond the time necessary to abate the emergency.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this section or in violation of any order issued under this section shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person. Any court having equity jurisdiction may restrain a violation of this section and enter such orders as it deems necessary to remedy such violation, upon the petition of the attorney general, the commissioner, a city or town, an owner or occupant of property which may be affected by said removal, filling, dredging or altering, or ten residents of the commonwealth under the provisions of section ten A of chapter two hundred and fourteen.

Rules and regulations shall be promulgated by the commissioner to effectuate the purposes of this section. However, failure by the commissioner to promulgate rules and regulations shall not act to suspend or invalidate the effect of this section.

Whoever violates any provision of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months or both. Each day or portion thereof of continuing violation shall constitute a separate offense. This section may be enforced by natural resources officers, deputy natural resources officers, and any officer having police powers.

UNIFORM FILING FORM

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This form has been prepared to simplify & make uniform the procedure for submitting materials with the Rules & Regulations Division. You may find it helpful in completing this form to refer to your enabling legislation & to M. G. L. Chapter 30A, as amended by Chapter 459 of the Acts of 1976, which set forth the basic filing requirements.

1 - Date July 28, 1978

2 - Cabinet EOEA Department DEQE Division Wetlands
Contact Willard R. Pope Phone 727-4658
Address 100 Cambridge St., Rm. 1901, Boston, Ma. 02202

3 - Descriptive title of document: Regulations for All Wetlands

4 - Estimate the number of copies that will be purchased in the next six months: By your agency 500 By the public 500

(Note: If you need bulk quantities for your agency, please submit a purchase order form or call 727-2834 to place your order for printing.)

5 - The document attached is best classified as a:

Ch. 30A Regulation

Ch. 30A Emergency Regulation - If this box is checked, state nature of emergency.

Other - If this box is checked, do not complete the rest of the form.

6 - List statutory and/or regulatory authority for this promulgating action: G.L. c.131 §40

Was a public hearing required? Yes No

If approval of other agencies was required, list approvals & date obtained: _____

(OVER)

7 - Date of public hearing (Ch. 30A/2): June 5, 6, & 7, 1978 ; or

Date of "action" (Ch. 30A/3) _____

Was notice of the regulatory proceeding filed in the office of the Secretary of the Commonwealth & published in appropriate newspaper (s) 21 days prior to the public hearing or regulatory action?

Yes No

If "no", list the chapter & section of the General Laws under which notice was given: _____

8 - Regulation will be effective:

as of date of publication pursuant to M. G. L. Ch. 30A

as an emergency regulation as of filing date pursuant to M. G. L. Ch. 30A

as of August 10, 1978 pursuant to M. G. L. Ch. _____
Section(s) _____

9 - The enclosed regulation relates to other regulations already filed as follows:

Supersedes regulation(s)	<u>Wetlands Protection Act</u>	filed	<u>2/15/77</u>
	_____	filed	_____
	_____	filed	_____
	_____	filed	_____
	_____	filed	_____

Amends regulation(s)	_____	filed	_____
	_____	filed	_____
	_____	filed	_____
	_____	filed	_____

Some thing similar
included but not
this

2
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