

# MACC Newsletter



Early Summer 1992  
Volume XXI Number 4

Massachusetts Association  
of  
Conservation Commissions

Community Conservation  
since 1961

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MACC  
10 Juniper Road  
Belmont, MA 02178  
(617) 489-3930

## Telephone Hours

MACC's telephone hours are 10 am - 2 pm Monday - Thursday. If you would like to come into the office to review publications, etc. please call ahead to arrange a time.

## DEP Filing Fees Challenged by Homebuilders

### Questionnaire Sent to Commissions

The Massachusetts Homebuilders Association and others have filed a lawsuit challenging the validity of filing fees collected under the Wetlands Protection Act (GL Ch. 131, sec. 40) and its Regulations (310 CMR 10).

The complaint was filed in July of 1989 - before the filing fees went into effect. Fourteen counts cover various aspects of filing fees and additionally challenge the state's statutory and constitutional authority for the 1983 Regulations. In their complaint the plaintiffs, among other things:

The state believes and will argue to the court that local Conservation Commission expenditures for administering the Wetlands Act generally exceed NOI fee revenues.

- (1) Challenge the state's authority to require fees for appeals
- (2) Claim that the fees benefit the public and not the applicant
- (3) Claim the fees are excessive.

The Secretary of Environmental Affairs, the Commissioner of the Department of Environmental Protection (DEP), and the Office of Administration and Finance (which promulgated the fee schedule under 801 CMR 4.02) are named as

Continued on page 4

## Governor Signs Watershed Bill

Governor Weld has signed into law a watershed protection bill which regulates land use near the Quabbin and Wachusett Reservoirs, and limits development density over aquifers in their watersheds as well as along the Ware River.

These areas provide water to about half the residents of Massachusetts.



Protection not only minimizes the potential for contamination of these vital supplies but will save the state money.

The federal Safe Drinking Water Act would require up to \$1.5 billion in filtration equipment in the absence of the protection afforded by this legislation.

The new Cohen law includes over \$100 to enable the state to purchase development rights to the most sensitive areas.

Sponsored by Representative David Cohen and numerous other legislators the "Cohen" law is good news for Massachusetts.

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## Records Retention

### Revised Schedule for Extension Permits

The Secretary of State's Office has revised the Records Retention Schedule for Conservation Commissions to clarify the retention period for Extension Permits for Orders of Conditions. Extension permits must be kept on file for one year following the termination date of the permit.

Formerly the retention period was simply listed as one year from the date of issuance of the Extension Permit. Using termination date as an end point is logical because Orders of Conditions can be extended for one or more periods of up to three years.

Conservation Commissions are required to maintain certain records by the Conservation Commission Act (G.L. Ch. 40, sec. 8c), the Wetlands Protection Act (G.L. Ch. 131, sec. 40), and the Public Records Act (G.L. Ch. 66, sec. 6). Each kind of document has a specified retention period or must be kept until a designated action occurs.

**Conservation Commissions are required to maintain certain records...Each kind of document has a specified retention period or must be kept until a designated action occurs.**

The Records Retention Schedule (RS-18-82) covers 24 categories of "administrative" and "activity" documents. "Administrative" records include annual reports, correspondence, hearing and meeting minutes, invoices, vouchers, receipts and, under the Wetlands Act, public hearing notices.

"Activity" records include forms filed with or issued by the Commission under the Wetlands Act, as well as certain other documents. Each wetlands form has its own retention schedule. For example, a Certificate of Compliance may be destroyed anytime after it is recorded at the Registry of Deeds, while a Cease and Desist Order must be kept until a Notice of Intent is filed or a Certificate of Compliance issued.

Other "activity" records which must be kept include leases, licenses, agreements, letters of understanding for the use of conservation land (which must

be kept for the life of the agreement) and information about community activities and programs (which may be destroyed after use). The designated retention periods are all minimum times. Commissions are free to keep documents longer, even indefinitely.

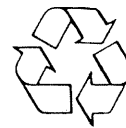
**Approval of the Supervisor of Public Records is required to destroy documents.**

Approval of the Supervisor of Public Records is required to destroy documents. Authorization is obtained by writing to the Supervisor of Public Records and listing the categories of records (each has a number) and the time periods for which authorization is sought. Written approval will be sent to the Commission.

Copies of the Records Retention Schedule including information, procedures and a sample letter to the state can be obtained by sending MACC a self-addressed envelope with a \$29 stamp.

Sally A. Zielinski, Ph.D.  
Executive Director

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## REMINDER MACC FY 93 Dues

Annual membership dues for Conservation Commissions have been sent. All Commissions should have received an invoice for FY 93 dues, along with MACC's most recent list of Commission members, staff and associates. Dues are payable by **August 31, 1992** for Commissions to continue receiving MACC benefits. Please update your membership list and return it with your dues payment. Also include the text of a new or amended wetlands bylaw and regulations.

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## MACCWest Efforts Underway

MACCWest is up and running! With the help of Board members Jane Harris and Judith Eiseman and former Board member Sally Sheperdson, MACC past president Alexandra Dawson's vision of a networking line for Western Massachusetts Conservation Commissioners is a reality!

**MACC past president Alexandra Dawson's vision of a networking line for Western Massachusetts Conservation Commissioners is a reality!**

Summer hours are a bit erratic, but the answering machine is always on so someone will return calls. Bear with us as we get our volunteers into a routine -- things should be smoothed out by September. For those of you in the four western counties, the MACCWest phone is (413) 584-2724.

MACCWest will not duplicate functions of the main office. Rather, it will extend

MACC's 31 years of experience more effectively to a region with special problems. MACCWest will offer regionally targeted advice, expert referrals, and visits to Commissions, other local officials and any groups interested in resource protection.

Western Massachusetts Commissions should continue to call the main office in Belmont for regular MACC business -- publications, workshops in other parts of the state, lists, dues, updates on MACC legislative activities and so forth. MACCWest is your regional issues help

**MACCWest will offer regionally targeted advice, expert referrals, and visits to Commissions, other local officials and any groups interested in resource protection.**

line but obviously cannot replace or duplicate all the main office functions.

Past president Alexandra Dawson is coordinating the effort from her home in Hadley. The MACCWest Committee includes Board members Mickey Marcus, Nancy Reed, Robert Dery, Sally Sheperdson, Jane Harris, as well as Kathryn Ruhf, Chair of the Belchertown Conservation Commission. It is chaired by First Vice President Judith Eiseman. The Committee is working under the direction of Executive Director Sally Zielinski. Coordinator Dawson and the Committee welcome your suggestions for making this outreach effort as helpful to you as possible.

NOTE: A recent press release inadvertently listed an incorrect phone number for MACC Executive Director Sally Zielinski. She can be reached at (617) 489-3930.

Judith Eiseman  
MACC First Vice President  
Chair, MACCWest Committee

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## Agricultural Exemption

### FAC Member Responds to MACC Article

*The following letter was received from Kathryn Ruhf, member of the Farmlands Advisory Committee. The Committee drafted the changes to the Agricultural Exemption in the Wetlands Protection Act which went out with minor modifications for public review and comment in February.*

*Final regulations have not yet been promulgated by DEP. MACC continues to vigorously oppose the February draft as an illegal extension of the exemption for land "in" agricultural use to land "for" agricultural use.*

*MACC has consistently supported the retention of a strong agricultural base in Massachusetts, programs to assist farmers in keeping land in agricultural use, and efforts to foster mutual understanding between Conservation Commissions and farmers.*

As a member of the Farmland Advisory Committee (FAC), I feel compelled to respond to the article about the work of the FAC in MACC's Early Spring 1992 Newsletter. The FAC was appointed to

assist DEP in clarifying the agricultural exemption to the Wetlands Protection Act. While I believe that MACC must maintain a vigilant and visible position with respect to the protection of wetland resources, I am disappointed that it has chosen a front page opportunity to inflame rather than to educate about the proposed changes, with apparent disregard for the complexity of the issues and perspectives which every proposed rephrasing of the regulations involved.

According to the new Environmental Handbook, MACC is "dedicated to the education of Commission members". I hope that MACC will use future Newsletter issues to inform and strengthen Commissioners' understanding of agriculture and of the issues surrounding the requirements for resource management by farmers and others in "primary industries".

As far as farmers and Conservation Commissions are concerned, I would say that misunderstanding, misinformation and abuses exist on both "sides" and will not be eradicated by fine-tuning

terminology or arguing over legislative intent. Ultimately, these problems are best resolved by maximizing opportunities for the respectful exchange of information. This approach has been consistently advocated by the FAC, whose members, I believe, have demonstrated a steadfast concern for and commitment to the protection and wise use of wetland resources.

I recognize that the participants in this task include both those whose jobs and volunteer efforts are devoted to protection of the resource base and those whose livelihoods depend on its use. Stewardship standards for management which sustains and does not abuse the resource should be our common goal. If we are to achieve it, we must seek to create alliances, not adversaries. I hope that together we can create such opportunities.

Kathy Ruhf  
Co-Director New England  
Small Farm Institute  
Belchertown Conservation Commission

# DEP Filing Fees Challenged

Continued from page 1

defendants. At this time Conservation Commissions are not parties to the suit. However, the plaintiffs are seeking data from Conservation Commissions regarding the size of their budgets, amount of filing fee monies which have been received with Notices of Intent (NOIs), and the amount expended to administer the Wetlands Act. A cover letter and questionnaire were recently mailed to each Conservation Commission. The cover letter states: "Because this case may affect the interests of conservation commissions as well as DEP, it has become necessary to determine whether one or more conservation commissions should be made parties to the suit in order to present the conservation commissions' perspective."

Commission response to this questionnaire is entirely voluntary. The state believes and will argue to the court that local Conservation Commission expenditures for administering the Wetlands Act generally exceed NOI fee revenues.

The questionnaire also asks Commissions with staff to indicate the percentage of staff time spent administering the Wetlands Act. It is important that Commissions consider the full range of activities involved in processing NOIs when answering this question. MACC interprets the following activities to be among those required at various stages of

the NOI review process:

\*Informal meetings with applicants, consultants and contractors (pre- and post-application meetings, on-site consultations)

\*Paperwork (reviewing applications for completeness, corresponding with DEP and the Natural Heritage and Endangered Species Program, hearing scheduling and legal notices, drafting Orders of Conditions (OOCs), typing and photocopying and mailing OOCs)

\*Field work (on-site meetings with applicants, performing and reviewing delineations, site inspections, compliance inspections)

\*Public hearings and continuances

\*Coordinating and consulting with other town boards and departments

**It is important that Commissions consider the full range of activities involved in processing NOIs...**

\* Discussions with abutters and other interested parties

\* Post-permitting activities (inspection of erosion controls, follow-up monitoring and enforcement, site inspections for Certificates of Compliance)

\*Enforcement of OOCs (and associated paperwork and site visits).

A January 1990 Guideline from the

Massachusetts Department of Revenue (DOR) states: "Monies in the Wetlands Protection Fund are available for appropriation by town meeting or city/town council only for the use of the conservation commission in carrying out its duties under the Wetlands Protection


**Commission response to this questionnaire is entirely voluntary.**

Act. The funds may not be appropriated or spent for any other purpose." Commissions can receive a copy of the DOR Guideline by sending a self-addressed envelope with a \$.29 stamp to MACC.

Filing fees became effective in November of 1989, are based on project type, and must be paid when a NOI or Abbreviated NOI is filed with a Conservation Commission or when DEP is asked to review a case on appeal.

MACC continues to regard filing fees as valid user fees essential to Conservation Commissions' ability to administer the Wetlands Act in a sound, professional and timely fashion. We are following this case very closely.

*Note: Please send MACC a copy of any information provided to the Homebuilders.*



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**Good News for Endangered Species**

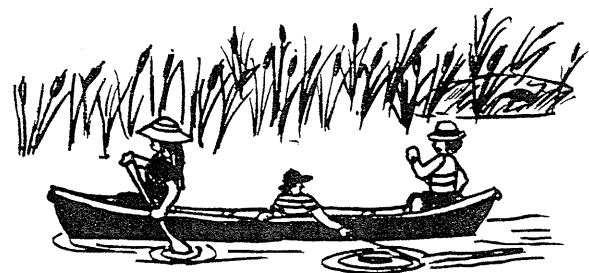
According to the Washington Post, a study by the World Wildlife Fund has found that few federal projects have been seriously affected by the Endangered Species Act. **Only 19** of nearly 75,000 potential projects have been stalled or stopped in the past five years.



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## Environmental Impact Laws: An Important Layer of Project Review

*This is the first of a two part article on federal and state laws providing review of development projects for environmental impacts. Part I describes the statutes. Part II will cover specific steps to follow in reviewing projects under the Massachusetts Environmental Policy Act (MEPA). Part I is taken from the 1991 Edition of MACC's Environmental Handbook for Massachusetts Conservation Commissioners.*

### National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. s. 4321 et seq.) requires all federal agencies to file, in advance of beginning major projects and activities substantially affecting the environment, a detailed Environmental Impact Statement (EIS) for the proposed action and possible alternatives, including "no action." Copies of these statements are made available to the public and to government agencies.

Since it was enacted in 1970, the federal law has resulted in numerous lawsuits and reams of publicity as conservationists challenged the failure of federal agencies to prepare EISs and the inadequacies of the studies that were submitted. Through changes in federal regulations, the law is now limited to big projects such as new federally aided highways, reservoirs, and flood-control works and management plans for federal land. For smaller undertakings, such as private work permitted by the Army Corps of Engineers, a brief "environmental assessment" is usually followed by a "FNSI": a finding of no significant impact, exempting the activity from an EIS. EISs are listed in the Federal Register. Commissioners should seek EISs for projects that affect their communities and should comment on the project.

**If the state agency builds or funds the project, that agency's EIR must cover all impacts of the work. If a state agency issues a license or permit only, the private developer must prepare a more limited EIR, related to the scope of the activity for which the license or permit will be issued.**

### Massachusetts Environmental Policy Act

More familiar to Massachusetts citizens

is the Massachusetts Environmental Policy Act (MEPA). GL Ch. 30, sec. 61-62H requires an Environmental Impact Report (EIR) for "works, projects and activities" undertaken, funded or permitted by state (not municipal or county) agencies and local housing or redevelopment authorities, if they may significantly affect the natural environment. If the state agency builds or funds the project, that agency's EIR must cover all impacts of the work. If a state agency issues a license or permit only, the private developer must prepare a more limited EIR, related to the scope of the activity for which the license or permit will be issued. Nevertheless, many private developers required to write an EIR will prudently study all

**These regulations distinguish three levels of state activities: those which are exempt from the law; those for which a full-scale EIR is mandated (unless the proponent can get a waiver from the Secretary of Environmental Affairs); and a huge range for which an EIR may or may not be required.**

environmental impacts and not merely those related to the particular permit(s) sought.

The MEPA process is governed by Regulations found in 301 CMR 11.00. These regulations distinguish three levels of state activities: those which are exempt from the law; those for which a full-scale EIR is mandated (unless the proponent can get a waiver from the Secretary of Environmental Affairs); and a huge range for which an EIR may or may not be required. For this last group, the Executive Office of Environmental Affairs (EOEA), which administers the program through its MEPA Unit, has created a special system for public comment through the "Environmental Monitor."

Proponents of any project, public or private, which is not categorically exempt under the regulations, submit Environmental Notification Forms (ENFs) to the MEPA unit. These summaries of possible environmental impacts are printed twice a month in the EOEA "Environmental Monitor." After a 20-day public comment period, the Secretary decides whether an EIR will be required. This publication offers an opportunity for

effective citizen review of proposed projects. Relevant pages of the Monitor are supposed to be sent to every Conservation Commission; or the Commission may get itself on the Monitor mailing list without charge by writing to EOEA during the periods when the Monitor subscription list is open. This is one of the few chances Commissions have to influence what happens in other towns. Remember, comments must be made within the 20-day period.

If an EIR is required, the MEPA unit will hold a "scoping" session, usually on the site, which any interested person may attend, to raise important environmental issues. The MEPA "scope" determines precisely what issues must be addressed in the EIR; and other subjects cannot be raised later.

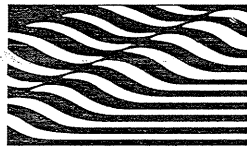
### Wetlands

The MEPA regulations give special attention to wetlands protection. DEP must file an ENF for every Superseding Order of Conditions issued under the Wetlands Protection Act involving more than 5000 square feet of fill in a Bordering Vegetated Wetland, 1000 square feet of Salt Marsh, or 500 feet of Bank. Filing an ENF does not in itself guarantee that an EIR will be required. However, an EIR is mandated for DEP-permitted projects which will alter more than an acre of BVW or Salt Marsh or 10 acres of other resource areas protected by the Wetlands Act. The problem is, this law does not apply at all unless the Order of Conditions is issued by DEP, a state agency.

**...an EIR is mandated for DEP-permitted projects which will alter more than an acre of BVW or Salt Marsh or 10 acres of other resource areas protected by the Wetlands Act.**

It is advisable for every Commission to assign one of its members to read the Monitor. Whenever a Commission believes the negative impact of a Superseding Order will be significant, it should track down the ENF and lobby for an EIR on the project, comment on the draft EIR and also on the final product. When an applicant refuses to provide adequate information on the environmental impacts of a project that

Continued on page 7



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## Environmental Impact Laws

Continued from page 5

meets MEPA thresholds, denial of the project can be the first step toward triggering MEPA review. Because MEPA review must precede the state permit, proponents may submit an ENF before even coming before the Commission. This gives the Commission a chance to attend the scoping session. The MEPA process rarely stops a project altogether, but it may be instrumental in modifying the impacts. Occasionally a proponent will withdraw a project if the review reveals that the modifications which will be required are extensive.

If EOE declares an area to be of "critical environmental concern", then an ENF must be submitted for practically any activity undertaken, funded or permitted by the state in that area. This is another good reason to lobby for the creation of ACECs.

### Questions about NEPA and MEPA

Two questions are commonly asked about these laws. First, does the process merely disclose impacts, or can it be used to stop a damaging project? The federal law has been interpreted by the U.S. Supreme Court to be largely a disclosure law. However, sec. 61 of MEPA requires an agency "finding" that the applicant has, in effect, chosen the least damaging course of action. It is virtually impossible for a state agency to make such a finding if the Secretary has ruled that the final EIR "does not properly comply with the law."

The second question is, why are these laws limited to projects requiring government decision. The laws of several other states apply to large projects of all kinds, even if there is no state involvement. Many environmentalists think MEPA should be so amended. The MEPA regulations do provide a limited "fail-safe" provision for otherwise exempt projects. Under this regulation, a group of advocates can ask the Secretary to require an EIR.

Some municipalities have adopted local requirements modeled on the state law. These are usually found in the special permit sections of local zoning codes or in subdivision regulations that require submission of data for large subdivisions.

## Plumbing Code Changes Regarding Floor Drains

The Division of Water Supply recently succeeded in revising the Massachusetts Plumbing Code to allow existing vehicle maintenance and other regulated facilities the option to seal their floor drain(s). The changes, approved on December 4, 1991, will make it easier for facility owners to stop unauthorized discharges to the ground by allowing, in addition to the installation of holding tanks and connections to municipal sewers, the option of sealing floor drains.

The Massachusetts Underground Injection Control (UIC) regulations prohibit discharges of hazardous materials such as waste oil and degreasing solvents to the ground via floor drains. These drains frequently lead directly to the ground through a leaching pit, or indirectly by means of a system such as a separator or septic system leading to a leaching field. Unauthorized systems such as these are often used, and therefore receive discharges containing hazardous wastes. In order to protect underground drinking water supplies, these types of discharges need to be stopped as quickly as possible. The UIC program thus decided to seek giving these facilities the option of sealing their drains.

Having succeeded in these efforts, the program will immediately begin an outreach campaign to inspectors and facilities throughout the state. The purposes of this outreach are to close the unauthorized wells, educate facilities on proper management of hazardous wastes, and eliminate any confusion regarding the code changes.

Any new facility that seeks to operate without a floor drain will need to approach the Plumbing Board for a variance to the code. However, no variance will be granted to a facility within a Zone II of a public water supply.

The changes to the code will not become law until Spring of 1992 when the Secretary of State approves them. However, an emergency 90-day code change

identical to the permanent changes was also passed on December 4, 1991 and extended in March 1992, and thus these changes have taken effect.

For further information, you may call the UIC program at (617) 556-1165.

Jacob Moss  
DWS newsletter  
In the Main



## CALENDAR

July 13-23: **Coastal Botany.** Course. Mass. Audubon Society. Explore uplands, freshwater wetlands, and seashore habitats. Includes evening guest lectures and work sessions to supplement the daily field trips. \$360 (\$330 MAS members). Contact the Wellfleet Bay Wildlife Sanctuary at (508) 349-2615.

July 25: **Wetland Species Identification in Summer.** Course. New England Wild Flower Society. Learn to identify the common woody and herbaceous wetland plants in their summer form observing specimens in the classroom as well as plants in their natural communities. \$42 (\$36 members). Contact Public Information Director at (508) 877-7630 or (617) 237-4924.

Aug 28-29: **Wetland Delineation.** Course. Umass. Focus is on methods to identify and delineate wetlands - emphasizes field work. \$325. Contact: Div. of Continuing Education. Trudie Goodchild or Alice Szlosek (413) 545-2484.

## MACC FALL WORKSHOPS

### WETLANDS DELINEATION WITHOUT VEGETATION An Introduction to Hydric Soils

Designed to assist Conservation Commissioners in identifying wetlands boundaries when vegetation is absent or a broad transition area exists.

- \* Workshops in each DEP region
- \* Class discussion
- \* Handouts provided

- \* All workshops 10am-2pm
- \* \$20 members; \$30 non-members
- \* Speakers, locations and directions announced in next Newsletter

**October 3:**  
Western Region: Amherst  
Southeast Region: Cape Cod

**October 17:**  
Central Region: Spencer  
Northeast Region: Cape Ann

#### REGISTRATION FORM

Name \_\_\_\_\_ Commission/Organization \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Total Enclosed \$ \_\_\_\_\_ Workshop date/region \_\_\_\_\_ / \_\_\_\_\_

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#### RENT-AN-EXPERT FROM MACC

MACC will arrange an educational workshop or training session with an expert on the subject of your choice.

Sample topics include:

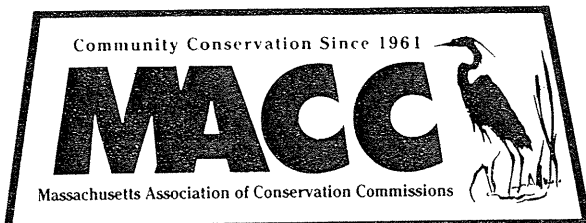
- Wetlands Protection Act (basics, enforcement, filing fees, appeals, changes, etc.)
- Open Space (acquisition, management, plans)
- Bylaws (writing, passing, implementing, drafting regulations)
- Commission Operations (budget, hiring staff, meetings, hearings, Open Meeting Law)

Fee: \$100/hour

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