



# Year One Assessment of the Commonwealth's Executive Office of Energy and Environmental Affairs



**APRIL 2016**

*This report was prepared by the following organizations:*



**Clean Water Action** works to protect our environment, health, economic well-being and community quality of life. Our goals include clean, safe and affordable water; prevention of health threatening pollution; creation of environmentally safe jobs and businesses; and empowerment of people to make democracy work.



**Conservation Law Foundation** forges lasting solutions to environmental challenges for the people of New England. CLF takes on powerful opponents who would pollute our air and water and squander our resources. Our deep local knowledge, legal acumen, and policy expertise make CLF a prime mover in building our clean energy future, countering climate change, and safeguarding our communities.



**Environmental League of Massachusetts** is committed to combating climate change and protecting our land, water, and public health. By creating diverse alliances and building the power of the environmental community, we use our collective influence to ensure Massachusetts is a leader in environmental and economic sustainability.



**Environment Massachusetts** is a statewide, citizen-funded environmental advocacy organization. Our staff and members work to protect Massachusetts' air, water and open spaces through grassroots organizing, coalition-building, public education, and direct advocacy.



**Massachusetts Rivers Alliance's** mission is to protect and restore the Commonwealth's rivers and streams. The organization works to strengthen statewide river policies in four areas: water quality, stream flow, wildlife habitat, and investment in green infrastructure. We also strengthen, connect, and unify our 60+ member organizations in support of shared river protection goals.



**Massachusetts Sierra Club's** mission is to inspire and empower humanity to explore, enjoy, and protect the wild places of the Earth. We aim to help accelerate the transition to 100 percent carbon-free electricity by 2030, to replace carbon-based fuels in other sectors by 2040, to protect the natural environment of Massachusetts, to represent member concerns effectively at state and local levels, and to promote diversity, equity, and inclusiveness.

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# INTRODUCTION

The Commonwealth's natural environment is one of our greatest assets. Governors of both parties have long shared a sense that strong environmental policies result in a better quality of life and stronger economy for residents of the Commonwealth. For generations, we have been devoted to protecting our natural resources and resource-based industries such as fishing, farming, forestry and tourism, which are an important part of our economy and of the environmental heritage and history we all share.

The mission of the Executive Office of Energy and Environmental Affairs (EEA) is to set a course toward a clean energy future, and to preserve open space, species habitat, and working landscapes; enforce pollution laws to protect public health and natural resources; review the environmental impact of major real estate and infrastructure developments; enhance the state's role in energy conservation and production; manage fish and wildlife; and provide opportunities for outdoor recreation at the parks, beaches, and rivers that make Massachusetts such a wonderful place to live, work, learn, and play.

## OUR ASSESSMENT

After one year in office, we provide a review of the administration's environmental policy and management decisions with the hope that it helps the administration with future policy and budget decisions to protect the environment. In this first year review, we highlight a number of key issue areas of concern. We also include a number of areas where positive steps have been taken but where more can be done. We selected and assessed particular issues that are major environmental and energy priorities.

This assessment is deeply impacted by five transcendent and interconnected elements:

- Funding
- Early retirements
- Regulatory review
- Policy decisions/actions
- Strategic Management

## Overall Grade **C**

In light of the findings here, the Executive Office of Energy and Environmental Affairs (EEA) earns a collective grade of C for their first year of work.

## FUNDING

As detailed in the Budget section below, for our environmental agencies to successfully carry out their broad missions, adequate funding is essential. We have called for 1% of the state budget to be dedicated to support the environmental agencies. Governor Baker committed to this amount, over four years, as a candidate. However, we are moving in the wrong direction. Neither of the administration's two budgets to date have come close to this amount and in fact the Governor's latest budget cut environmental funding by an additional 7%. Reduced resources translates into reduced capacity to protect the environment.

## EARLY RETIREMENTS

One of the administration's first actions was to offer state employees early retirement incentives in an effort to reduce the state's payroll obligations. This seemingly benign action adversely impacted the environmental agencies which were already struggling to accomplish their missions with inadequate staff. The Department of Conservation and Recreation, which manages the state's parks, pools, rinks, beaches, and forests lost 98 workers. The Department of Environmental Protection (MassDEP), lost 106 workers, (14% percent of its workforce) many of whom were highly experienced and seasoned staff with years of expertise in technical areas including many engineers and environmental analysts. The loss of more than 200 staff members has serious ramifications for how effectively the agencies can do their work.

## REGULATORY REVIEW

Another of the Administration's first actions was a comprehensive regulatory review. While a review of this sort is any administration's prerogative, this resource intensive review distracted limited agency staff at precisely the same time agencies were also absorbing and adjusting to the significant loss of staff from early retirements.

## POLICY DECISIONS

As detailed in this assessment, in a number of key issue areas, EEA policy decisions or failure to act have raised serious concerns among environmental advocates particularly in the energy, water and toxics arenas. On a number of other issues, EEA has taken positive actions, but more can be done.

Collectively these actions "raise red flags" concerning overall financial, regulatory and policy support for the environment.

## MANAGEMENT

For the environment, nothing could be more important than having high quality management, capable of assessing how policies are performing on the ground and adjusting them, as needed. Managers need to give their staffs clear assignments, with action-oriented end points, and hold staff accountable for the results, while providing them with adequate resources to be able to carry out their assignments. We need to see this in the environmental agencies.

A healthy environment and a healthy economy are inextricably linked. Our natural resources support a thriving tourism industry that generated \$19.5 billion in 2014 and supported over 130,000 jobs. Clean energy and technology have created over 6,000 new businesses and close to 100,000 new jobs in the Commonwealth, the fastest growing segment of our economy. Our fishing industry and agricultural sectors employ thousands more.

## CONSTRUCTIVE ENGAGEMENT

The authors of this report have a deep commitment to finding effective approaches to environmental protection and helping the Commonwealth realize its ambitious clean energy and climate goals. We hope to play a constructive role.

We are releasing this report in the spirit of working together to ensure that our state succeeds in addressing the serious environmental, energy and economic challenges that lie ahead. We look forward to engaging with the Administration and the environmental agencies to meet our shared goals.



## 1. ENVIRONMENTAL BUDGET

Grade **C**

*“Governor Baker’s proposed annual state budget is 3.5% higher than last year’s but he is slashing environmental spending by \$16 million or 7%.”*

During the 2014 gubernatorial campaign, candidate Charlie Baker committed to devoting 1% of the entire state operating budget for environmental programs by the end of four years. In years past, environmental agencies had been funded at a 1% level, but the growth of the overall state budget paired with cuts to the environmental agencies’ budgets have led to the environmental agencies receiving only 0.6% of the state budget today. These funding cuts mean the agencies cannot adequately carry out their core functions, not to mention added responsibilities

related to climate change, water resource management, and mercury reduction, to name a few. Having issued two budgets, Governor Baker has not made progress toward honoring the commitment of 1% of the total budget for the environment.

At a recent budget hearing before the House and Senate Ways and Means Committees, EEA Secretary Matthew Beaton was upbeat about the condition of Massachusetts’ environmental agencies, despite evidence to the contrary that they are struggling.

According to EEA, losing 200 employees all at once due to the Early Retirement Program -- employees who had considerable expertise and were making significant contributions to protecting our environment and public health -- has had no impact on the agencies' work.

The Governor's Fiscal Year 2017 budget cuts funding for the environmental agencies by \$16 million (\$215 million compared to \$231 million in the FY16 budget passed by the legislature). And while the proposed budget of \$39.6 billion reflects a 3.5% increase over last year's overall state budget, spending on environmental agencies drops by 7%. Specifically, the Governor's budget would cut the Dept. of Environmental Protection by \$7.4 million (13% cut), the Department of Conservation and Recreation by \$6.9 million (8% cut), the Dept. of

Agricultural Resources by \$1.1 million (5% cut), level fund the Dept. of Fish and Game and cut EEA's budget by \$326,000 (1% cut).

The numbers speak for themselves. The practical effect of cuts to the environmental budget result in the state no longer being able to adequately maintain protected parkland (for example, it has led the state to give away seven acres of prime parkland along the Charles River in Brighton to Simmons College). Massachusetts can no longer adequately supervise the independent cleanup of brownfield sites. The Commonwealth is falling short on meeting its statutory obligations for a 25% reduction in greenhouse gas pollution by 2020. Massachusetts cannot consider itself a pro-environment state if it continues to significantly underfund its environmental programs.

## RECOMMENDATION

Increase funding for the environmental agencies so they can carry out their full responsibilities to protect the environment and public health. Honor the commitment to dedicate 1% of the state's budget to environmental protection.





## 2. ENERGY & CLIMATE CHANGE

Massachusetts is at a crossroads in terms of our energy future. Decisions we make today will either set us on a path to a low carbon future -- or lock us into reliance on fossil fuels for decades. Our energy policy should prioritize in-region renewable energy resources that reduce our reliance on natural gas, improve public health, and develop new industries in our state.

Looked at as a whole, the Baker administration's record to date on energy and climate is of great concern. On the plus side, the administration has committed to meeting our mandatory greenhouse gas reduction requirements set by the Global Warming Solutions Act, supported the existing Regional Greenhouse Gas Initiative which is reducing carbon emissions from the electric generating sector, supported the recently updated Three-Year Energy Efficiency Plans,

and adopted GHG reduction targets for 2030 and 2040 along with other NE Governors and Eastern Canadian Premiers.

However, as noted below, we are not making the progress needed to transition to a clean energy future. The administration has prioritized hydropower imports and gas pipeline expansion over energy efficiency and renewable energy, making it unlikely that we can fashion a truly diversified energy portfolio that can meet our long-term policy goals. Policy decisions on energy have been framed as choosing items off an energy “combo platter” which does not particularly indicate good strategic planning and policy development. Through the development of smart, targeted policies that reduce emissions through greater energy efficiency, developing new opportunities for renewable energy,

and encouraging other alternatives to the combustion of fossil fuels, we can reach our goals. In the process, the Commonwealth can be more energy independent, and improve our economy with new technologies, new companies, and new jobs. Massachusetts cannot afford -- economically or environmentally -- to delay.

## 2.1

# ENERGY EFFICIENCY PROGRAMS

Grade **B**

The Green Communities Act of 2008 launched an ambitious and successful effort to reduce energy waste and make energy efficiency our state's "first fuel." Energy efficiency is the least costly way to meet our electricity and heating needs. As a result of our utility-run energy efficiency programs and our state's building energy code regulations, Massachusetts has curbed growth in energy demand while our economy has grown.

The Baker Administration and the Department of Energy Resources (DOER) took a positive step by supporting the increase in savings targets for the recently approved 2016-2018 Energy Efficiency programs. Those programs, if successfully implemented, will save customers the equivalent of 2.7% of our annual electricity demand and 1.25% of our annual gas demand.

The Baker Administration has the opportunity to go beyond what is contained in the three year plans and achieve even greater emissions reductions and savings for customers. The recent Analysis Group study on our regional energy needs identifies substantial additional energy savings and demand reduction strategies at a total lifetime cost of 6.75 cents per kwh, significantly

below retail energy prices.<sup>1</sup> These savings would meet our energy needs and obviate the need for major gas pipeline capacity expansion in future years.

The Administration must also continue to make progress in advancing energy efficiency in new residential and commercial buildings through our energy code. The Administration's recent climate plan states that they plan to update the current statewide energy code to the 2015 model energy code this year, as required by law. However, the Administration should also update the optional "stretch" energy code that has been adopted by 161 cities and towns. The stretch code allows communities to require greater energy savings than the base statewide code. The regulations have not been updated since the adoption of the 2012 statewide energy code, effectively nullifying the stretch energy code. The proposed draft stretch code update, however, would only apply to buildings of 100,000 square feet or greater, exempting the majority of buildings in the state.

The Administration deserves praise for its recent announcement of the Affordable Access to Clean and Efficient Energy Initiative which reserves funding to

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[1] Analysis Group, "Power System Reliability in New England," November 2015, p. 23, <http://www.mass.gov/ago/docs/energy-utilities/reros-study-final.pdf>

address the particular needs of low and moderate-income communities for increased access to energy efficiency services. The details of the program are not yet fleshed out but we hope it represents a serious effort to remove barriers for low income residents to participate in the state's energy efficiency programs.

These barriers include problems with translation for non-English speakers, home pre-weatherization concerns such as checking for knob-and-tube wiring, and the need for community partner outreach so that information comes from trusted community voices.

## RECOMMENDATION

Massachusetts must build on its strong energy efficiency programs and seek greater energy and demand reductions over the next four years. That means requiring our electric and gas utilities to invest in the level of energy efficiency and demand response measures identified by the Analysis Group in its recent study for the Attorney General's office. That amounts to an additional 1,300 megawatts of winter peak energy efficiency and 1,100 megawatts of demand response by 2030.

- We encourage the Administration to act promptly to update the “stretch” energy code and ensure it applies to all new residential and commercial buildings.

- The Administration should build on the “Affordable Access to Clean and Efficient Energy Initiative” to enable more low and moderate-income communities to participate in the energy efficiency and solar energy programs.

## 2.2

# GAS PIPELINES

Grade **D**

The Governor's “combo platter” approach to energy policy, a strategy which includes expansion of natural gas infrastructure, will likely strand the Commonwealth at greenhouse gas emissions levels far above those that are needed to meet the GWSA's legal requirements in 2050 and any interim 2030 and 2040 requirements. The Administration's advocacy for expansion of gas pipelines also puts our state parks and forests, as well as rivers and wetlands, directly in the cross-hairs of

multiple natural gas pipelines. Further, the natural gas pipeline proposals are routed through significant conservation areas, which were not set aside as the cheapest and easiest routes for private infrastructure projects.

This strategy also exposes the businesses and families of the Commonwealth to an irresponsible level of economic risk over the next 20 years. Half of our

electricity generation is already tied directly to the volatile national gas market. There is also good reason to believe that proposed pipelines will be used to export natural gas which would most likely increase New England's gas prices. Governor Baker's DOER requested, and his DPU approved, a scheme by which electric utilities can contract for new gas pipeline

capacity and recover the cost of these contracts from electric ratepayers. This scheme shifts the substantial costs and risks of building new pipelines from gas companies and utilities onto ratepayers and violates the state's utility law, and is under appeal on those grounds. It also would seem contrary to the Governor's stated position against new taxes or fees.

## RECOMMENDATION

The Administration should reconsider its policies and reverse its position on asking for electric customers to pay for gas pipeline expansion.

### 2.3

## RENEWABLES

Grade **C+**

The Governor has provided funding for the development of energy storage technology and his hydropower legislation allows for procurement of some renewable energy, but the Administration is doing very little in practice to support the deep investments in renewable energy that will be required to decarbonize our electric grid and reduce GHG emissions by 80% as required by the Global Warming Solutions Act. The Governor's "combo platter" approach to energy is unsustainable and doomed to produce overinvestment in fossil fuels without greater commitment to renewable energy.

The Governor's signature energy priority is his hydropower procurement bill, which would allow Massachusetts electric utilities to enter into long-term contracts with hydropower developers for up to 1/3 of

Massachusetts' electricity supply. The legislation would allow, but not require, other types of renewable energy to be procured as part of a hydro deal. While less harmful a piece of the "combo platter" than natural gas, the focus on hydropower, a mature technology owned in many cases by provincial Canadian governments, prevents the Commonwealth from investing in the local renewable technologies that need our support at this stage of their development.

The Governor must also make room for offshore wind on his combo platter. While Massachusetts is described by the industry as "the Saudi Arabia of offshore wind" due to our geography, the Baker Administration has not committed to significant support for offshore wind energy as part of comprehensive energy legislation.

The Governor's public remarks regarding offshore wind have largely focused on its potential price.

It is inadequate for the state to wait for the price of offshore wind to "compete" with the wholesale price of fossil fuel-powered electricity; not only would we miss an unprecedented opportunity to help develop the national headquarters of a new industry in Massachusetts, but we would be judging the all-in cost of offshore wind against only a portion of the cost of heavily subsidized fossil fuel electricity.

Solar power, including distributed solar generation, provides benefits to the electricity grid that outweigh the retail net metering rate for solar projects. Despite this reality, the Governor's legislative efforts to

significantly curtail the reimbursement rate for solar jeopardized the thousands of jobs in the substantial Massachusetts solar industry, our state's national leadership in the development of solar energy, and the ability of businesses and families, including low income electricity customers, to access the benefits of solar in the future.

The administration's answer to concerns raised about gas pipelines is to tout the Governor's hydropower bill. This is a very narrow approach that does not support local renewables and the jobs that solar and wind have and will continue to create. This approach also does not address the billions of dollars that leave the state to purchase energy and fuels.

## RECOMMENDATION

**To encourage a truly diversified energy portfolio, the Baker administration should:**

■ Publicly support comprehensive energy legislation that:

- ☐ includes a procurement of at least 2000 MW of offshore wind by 2030
- ☐ requires a minimum amount of RPS Class I renewable energy as part of any hydropower procurement.
- ☐ increases the Renewable Portfolio Standard (RPS) to move our state to 40% renewable energy by 2030.

■ Support elimination of the solar net metering cap and work to restore the full "retail rate" net metering compensation for low-income and community solar projects.



## 2.4

# GREENING GATEWAY CITIES PROGRAM

Grade **B+**

The Baker administration has committed to a tree-planting program in Gateway Cities that will reap climate benefits over the long-term. Building off a successful pilot program in Chelsea, Holyoke and Fall River, the Dept. of Conservation and Recreation will oversee tree planting in two phases in a total of 22 Gateway Cities. In addition to taking up CO<sub>2</sub>, trees provide shade that can keep homes cooler in the summer and buffer homes from wind and cold in the winter. Each 1% of new tree canopy saves 1-2%

in heating and cooling costs. During the past three planting seasons 3,700 trees have been planted with a goal of more than 26,000 trees planted by the end of the first phase of work in 2018. Energy savings begin about 8 years after planting and increase each year. Over the course of 30 years, energy savings will be 2.2 times the cost of the program. Other benefits from tree planting include reduced storm water and urban heat island effect, improved air quality and an increase in property values.

## 2.5

# REDUCING GHG EMISSIONS FROM TRANSPORTATION

Grade **D**

In 2010, the agency heads of the transportation, energy, and environmental agencies of 11 Northeast and mid-Atlantic states and the District of Columbia, committed to work together through the Transportation and Climate Initiative (TCI) to reduce greenhouse gas emissions from the transportation sector. This effort is coordinated by the Georgetown Climate Center. MA had been an active participant since the inception of TCI with regular attendance by EEA, DEP, and MassDOT staff. In December 2015, TCI released a report, *Reducing Greenhouse Gas Emissions from the Transportation*

*Sector*, that analyzes the potential to reduce transportation greenhouse gas emissions (GHG) in the TCI region. The report finds that market-based strategies and public investments could achieve emission reductions from the transportation sector between 29 to 40 percent in the region by 2030. The report further finds that these policies would result in net cost savings of up to \$72.5 billion over 15 years for businesses and consumers, along with tens of thousands of new jobs and improvements in public health.

Achieving progress in the transportation sector is essential as transportation has become the Commonwealth's largest source of GHG emissions at over 40% of total emissions. It is time to get serious about transportation emissions reductions and to explore innovative approaches such as setting a 2035 sunset date for the sale of gasoline cars. With new policies including carbon pricing, we can achieve long-term emissions reductions from this sector.

Along with the release of the report, the Georgetown Climate Center announced that Connecticut, Delaware, the District of Columbia, New York, Rhode Island, and Vermont have committed to working together to further explore and develop market-based policies to significantly reduce greenhouse gas emissions and other pollution from the transportation sector. Maryland and New Hampshire provided statements supportive of TCI to accompany the announcement. **Massachusetts was notably absent.**

Given that transportation is the largest and fastest growing contributor of GHG emissions in the region, that Massachusetts could very well not meet its 2020 target and that we have been a national leader in

addressing climate change, it was disappointing that Massachusetts was not one of the states that agreed to work with our partners in the region to explore policies that will reduce GHG emissions from the transportation sector.

Massachusetts' experience with the successful Regional Greenhouse Gas Initiative (RGGI) illustrates the benefits of market-based climate policy. Since RGGI's launch in 2009, emissions from covered power plants are down 35%, while auctioning of emissions allowances has raised almost \$2.4 billion for states to reinvest in energy efficiency and clean energy programs that reduce fossil fuel imports and generate broader macroeconomic benefits.

## RECOMMENDATION

Massachusetts must develop robust new policies to reduce emissions from the transportation sector. We have been assured that the state is still "participating" in TCI but we believe that Massachusetts needs to be a public and active participant, leading the way and urging our neighboring states to go beyond the gains we are reaping from federal clean vehicle policies.



## ELECTRIC VEHICLES

Grade **B+**

As noted previously, our transportation sector is responsible for 40% of the Commonwealth's GHG emissions. It is urgent that we address this sector if we are to meet our 2020 and 2050 greenhouse gas reduction requirements. We know that an important component of reducing emissions from the transportation sector is electrification of our vehicle fleet. To its credit the Baker Administration acknowledges this:

■ The 2015 update of the Massachusetts Clean Energy and Climate Plan notes "... the only viable path to deep reductions in GHG emissions is through a combination of reduced energy consumption (through increased energy efficiency in vehicles and buildings), expanded availability of clean electricity, and electrification of the transportation and heating sectors."

■ Massachusetts is a signatory to the eight state Zero Emission Vehicle Memorandum of Understanding, which commits to three million electric vehicles (EVs) on the road by 2025. That translates to 300,000 EVs on Massachusetts roads by 2025.

■ Massachusetts is a signatory to the International Zero-Emission Vehicle Alliance, which sets a goal of all new passenger vehicles to be ZEVs by 2050.

An EV in Massachusetts emits approximately 70% fewer emissions than those of an internal combustion engine (ICE) vehicle, after factoring in the emissions of the

electricity sources for the EV versus the emissions from the extraction, transport, and burning of oil in an ICE vehicle. As we continue to further shift our power sector toward renewable electricity generation, thanks in part to state policies like the Renewable Portfolio Standard, EVs become even cleaner. Massachusetts has taken important steps to electrify our vehicle fleet. In a report by the Conservation Law Foundation, Sierra Club, and Acadia Center titled *Charging Up*, the authors outline specific tactics that states can implement to increase the number of ZEVs. Massachusetts has implemented a number of the recommendations:

■ Established a high-level task force through creation of the ZEV Commission

■ Created the MOR-EV program which offers up to \$2,500 toward the purchase or lease of a new EV.

■ Created the EVIP program which offers funding toward the purchase of electric vehicle supply equipment.

But much more must be done. With only 5,500 EVs on the road we are not on course to see 300,000 on the road by 2025. There are only six electric buses in Massachusetts, all at the Worcester Regional Transit Authority.

Massachusetts must work aggressively to electrify our government fleets, our public transit systems, and our personal vehicles in order to meet our GWSA requirements, ZEV MOU goals, and to exercise global citizenship in doing our part to avert the worst effects of climate change.

## RECOMMENDATION

- Actively support changes to the base building code that would require EV charging pre-wiring in the base building code (currently under consideration by the Board of Building Regulation and Standards, BBRS).
- Urge electric utilities to install EV charging infrastructure in multi-unit apartments and near highway rest stops in order to reduce “range anxiety” among potential EV drivers.
- Urge electric utilities to create “time of use rates” for EV owners, in order to reduce charging costs and also ensure charging doesn’t take place during periods of peak electricity demand.
- The state should purchase more electric vehicles for the state fleet, as well as incorporate electric buses into public transit systems. Replacing diesel powered buses with electric buses has an added benefit of reducing air pollution in environmental justice communities.





### 3. WATER

*“ DEP staffing is down 30% since 2009 with 108 experienced staff taking advantage of the Early Retirement Program. Governor Baker is allowing just 34 hires to fill these vital public health and safety roles. ”*

Water policy is an area where the environment intersects with public health, public safety and the economy in increasingly dramatic ways. Recent public health emergencies with poisoned drinking water in Flint, Michigan, and drought-related water shortages in California have shone a bright light on water, a vital resource we often take for granted. Failure to manage our water sustainably, invest in its infrastructure, regulate pollutants, and plan for the future in the face of a warming climate imperil not only environmental

health, but the Commonwealth's ability to grow and thrive.

Thus far, water policy is an area where the new administration has been weak. As mentioned in the introduction, EEA agencies have seen deep staff reductions as a result of budget cuts and the Early Retirement Incentive Program that was one of the first actions taken by the Baker Administration.

Early retirements hit MassDEP especially hard. Water is a highly-regulated resource and good stewardship requires a very skilled regulatory staff. The agency lost 108 experienced staff, and was only able to hire back 34. These reductions follow several years of staff declines, with a 30% staff loss for the agency since 2009. The resulting list of work not getting done is long, continues to grow, and includes:

- Issuing water supply permits and conducting five-year permit reviews.
- Monitoring, assessing and reporting on water quality around the state.
- Developing Total Maximum Daily Load analyses for the state's water bodies (these are essentially water pollution control plans).
- Enforcing water permit conditions.

### 3.1

## SUSTAINABLE WATER MANAGEMENT

Grade **Incomplete**

While most people have heard about water shortages in California, few people realize that excessive water withdrawals in the summer dry up about 20% of the streams here in Massachusetts. This happens when water demand exceeds the supply of groundwater. The Sustainable Water Management Initiative, or "SWMI," was a multi-year, multi-stakeholder effort to ensure a more sustainable water future for Massachusetts by better balancing water use with the needs of freshwater resources. The resulting new Water Management Act regulations were promulgated in 2014 to protect water resources.

The program was intended to create predictable and science-based permitting for the 20-year water withdrawal permits issued by MassDEP to municipalities and other large water users. The regulations require large water users to minimize the impacts of existing water withdrawals and to mitigate impacts from increased withdrawals "commensurate with impact." They also require that water users seeking additional water from rivers with low flows first explore less damaging feasible alternative water sources.

**Examples of the problems include:**

**Almost NO Permits have been issued in the last year.**

With three minor exceptions, MassDEP has failed to issue water withdrawal permits under the program. This follows a four-year permit delay while the new policy was being developed. About 114 permits are now backed up in the system. Importantly, the failure to implement the SWMI regulations means the new protections have not gone into effect, including compliance with eight "standard conditions" such as lawn-watering restrictions during droughts. Despite these problems, MassDEP's statutorily-mandated advisory committee has only met sporadically in the past year.

**Redeveloping Framingham Wells.** The administration has moved to expend \$1.6M in capital funding from the environmental bond to facilitate the reopening of water supply wells in Framingham, which would have a clear adverse environmental impact on streams in

the Sudbury River watershed. Permitting these wells to reopen would be directly contrary to the new water policy and regulations which specify that a water supplier seeking to increase water use from a flow-depleted source must first evaluate the feasibility of other sources. Framingham already uses a less

environmentally damaging water source (MWRA water), but seeks to go backward, to return to a local source that would deplete flow in nearby streams.

## RECOMMENDATION

The new policy is a step forward for water sustainability in Massachusetts, but only if MassDEP actually implements it vigorously and consistently around the state. We urge MassDEP to issue these 114 permits, and those that follow, in accordance with its new policy.

### 3.2

## STORMWATER MANAGEMENT

Grade **C**

Most MA rivers, streams, lakes and ponds don't meet water quality standards due to polluted stormwater runoff that quickly enters water bodies during and after a storm. While U.S. EPA is responsible for setting stormwater management requirements through surface water discharge permits, the state in partnership jointly issues these permits and issues the accompanying water quality certifications. These permits are critical to reducing the major source of pollution to MA waterbodies. Cleaning up our rivers, streams, lakes and ponds is critical to both public and environmental health. EEA withheld the state's signature on this permit for many months, while

negotiating concessions from EPA. We are dismayed that the Massachusetts Department of "Environmental Protection" used its considerable influence with the EPA to weaken pollution control requirements in this important statewide permit. Stormwater pollution is also especially pronounced in urban areas, making this an environmental justice issue as well. The delay in co-signing the permit sent a message to the regulated municipalities that improving water quality is not a state priority. As of this writing, MassDEP has announced that it will co-sign the permit, and it should be out shortly. This new permit is eight years overdue.

## RECOMMENDATION

We urge the agency to support strong measures to address stormwater pollution of our water bodies and to join EPA in vigorously enforcing the conditions of the new permit. The state can address cost concerns through the provision of municipal grants, technical assistance, and support for regional stormwater collaboratives rather than by allowing more pollution into rivers, lakes, ponds, and coastal waters.

### 3.3

## DELEGATION OF POLLUTION CONTROL PROGRAMS

Grade **D**

In Massachusetts, U.S. EPA is responsible for issuing wastewater and stormwater permits under the federal Clean Water Act (National Pollution Discharge Elimination System, or NPDES permits). Inexplicably, given the agency's struggle to manage existing programs, and the NPDES program's high price tag, MassDEP is now urgently seeking to assume responsibility for this program.

The question of delegation, or "primacy" for the NPDES program has come up at least twice before, most recently in 2013, when the legislature asked MassDEP to evaluate feasibility. The agency reported back that taking on the program would cost approximately \$10M annually (it now estimates the cost at \$7.5M). The federal government now provides this expensive program at no cost to our state, courtesy of all U.S. taxpayers.

Proponents for delegation consist of permit holders who are seeking more "flexibility" on permit requirements. This will likely translate into looser restrictions on pollution, and longer timelines to come into compliance with new permit requirements – in other words, we will all have to live with more water pollution, and for longer.

Despite the daunting price tag, drain on current and future resources for MassDEP, and lack of environmental benefit, the administration has decided to pursue delegation this year. The agency is researching program and funding options, and has put together a stakeholder advisory committee. MassDEP Commissioner Suuberg has indicated that the administration plans to introduce legislation this year that would allow for the shift.

## RECOMMENDATION

We strongly recommend against the state seeking delegation of this program at this time. With its failure to implement the new Water Management Act program, its refusal to sign the stormwater permit without concessions from EPA, and its inability to carry out even MassDEP's core mission of assessing the water quality of the state's waterbodies, the Baker administration has not demonstrated a commitment to water resource protection.

MassDEP desperately needs additional funding to fulfill its existing obligations to protect water quality and quantity. We strongly support increasing the agency's annual operating budget, and hope the administration will support the agency at a higher level in future budgets. If MassDEP is able to raise an additional \$7.5M per year, it should use this funding to restart its many stalled water protection programs, not to take on an expensive new program already provided by EPA at no charge to our state.

### 3.4

## REPEAL OF SITE-SPECIFIC WATER QUALITY CRITERIA FOR LAKES AND PONDS

Grade **F**

Many Massachusetts lakes and ponds suffer from nutrient pollution which feeds aquatic vegetation and contributes to outbreaks of toxic blue green algae in the summer. This harms recreation, citizen enjoyment of lakes and ponds, and fish and wildlife. MassDEP is proposing to repeal the nutrient criteria

in the state's Surface Water Quality Standards that protects 78 lakes and ponds. Rather than gathering current water quality data to support and improve these site-specific criteria, MassDEP is planning to eliminate them entirely.

## RECOMMENDATION

Retain the lake and pond water quality criteria and perform new assessments to strengthen these criteria not just for lakes and ponds, but for other water bodies across the state.



## 4. ENVIRONMENTAL JUSTICE

Grade **B-**

EEA currently has an Environmental Justice Policy that was put in place nearly 14 years ago. Governor Baker inherited a gubernatorial executive order on environmental justice, Executive Order 552 (EO 552), which incorporated ambitious deadlines, most of them now the responsibility of the Baker Administration.

We were delighted to hear from EEA Secretary Beaton, in the very early days of the new Administration, of Governor Baker's commitment to environmental justice and his intention to uphold EO 552. We also commend EEA on releasing a Draft Revised Environmental Justice Policy and convening several listening sessions around the state to hear comments and answer questions from stakeholders. Despite this good news, we are concerned that the revised policy has not yet been

released. In addition, we are concerned that many of the other actions called for in EO 552 have not been implemented.

In particular, Section 2 of EO 552 calls for the establishment of the Governor's Environmental Justice Advisory Council. This Council will serve many important roles. First, The Council will be an important signal to the public of Governor Baker's commitment to environmental justice (EJ) principles and the improvement of the lives of thousands of Massachusetts residents who live within close proximity of noxious land uses.

The Council would provide assistance to the Administration as it brings to life the goals of EO 552.

The Council could be especially helpful now that agencies are considerably leaner since so many state employees took advantage of the early retirement program last year. We know that the names of potential members of the Council have been submitted to EEA. Section 5 requires state agencies to create EJ strategies, and Section 6 of EO 552 calls for the creation of an Interagency Working Group (IWG) consisting of the EJ coordinators of all state agencies in order to maximize state resources and coordinate efforts across

the agencies. With the creation of an IWG, agencies will have the support and benefit of shared experiences of sister agencies as they create their EJ strategies.

The IWG will also create consistency across state agencies and facilitate EEA's leadership on EJ issues. A federal IWG was created under the federal executive order on environmental justice signed by President Clinton in 1993. That IWG still exists and has been very successful.

## RECOMMENDATION

- Make a public commitment to promoting environmental justice
- Ensure that all state agencies have EJ Coordinators in place
- Appoint members to the EJ Advisory Council immediately and convene the Interagency Working Group on Environmental Justice.
- Create a plan and timeline for implementing other provisions of EO 552.





## 5. LAND CONSERVATION

Grade **B**

Massachusetts has successfully conserved priority lands to protect clean drinking water and reduce flooding; support working farms and forests; preserve habitat for animals and plants; and ensure public access to beaches, parks, and trails. These investments have been made with a combination of local, state, federal and private funding sources, in collaboration with public and private partners, and willing landowners. State resources leverage significant public and private funds - every \$1 invested by the Commonwealth on land conservation leverages \$1.23 in additional contributions; and, for every \$1 invested in land conservation, \$4 in natural goods and services is returned to the state's economy.

The Baker Administration has articulated and funded a commitment to land conservation and stewardship, with additional interest in projects that help natural systems adapt to a changing climate. We look to the second year of the Administration to better understand the climate change adaptation and land conservation priorities.

The Administration has also created a newly funded program for wildlife habitat management, invested significantly in land stewardship, and increased funding for tree planting in Gateway Cities. Of note, Governor Baker has proposed \$10 million in surplus state funds, if available, to the Community Preservation Act program, showing strong support for the program and the 160 CPA communities to fund open space protection and outdoor recreation, as well as historic preservation and affordable housing.

The Administration is completing land conservation agreements made under the previous administration, which has resulted in a marked downtick in new project development. The total capital funding levels for land protection and grant programs is roughly \$45 million,

which is comparable to previous years, however, funding for agency land protection projects has been considerably less, thus far. Some of these funds have been shifted to municipal grant programs.

AGENCY	Spending (in Millions)	FY2012*	FY2011	FY2010
Dept. of Fish & Game	\$3,680,000	\$6,197,420	\$7,913,700	\$10,490,000
Dept. of Conservation & Recreation	\$3,371,000	\$3,633,625	\$5,798,092	\$6,005,099
Dept. of Agricultural Resources	\$5,900,500	\$5,930,873	\$8,027,030	\$7,986,935
<b>Total</b>	<b>\$12,951,500</b>	<b>\$15,761,918</b>	<b>\$21,738,822</b>	<b>\$24,482,034</b>

\*most recent year that summary data is available

**“I believe that we have a responsibility to protect and preserve our natural resources for future generations and that Massachusetts can and must be a leader in promoting strong environmental policies. As Governor, I would continue the legacy of strong environmental leadership begun by Governor William Weld.”**

Source: Gubernatorial campaign website, [charliebaker2010.com](http://charliebaker2010.com) Nov. 1, 2010

The Commonwealth will continue to face many threats to protected lands, not the least of which is the proposed development of natural gas pipelines through public and privately owned lands. Of immediate interest, the Kinder Morgan Northeast Energy Direct (NED) and Connecticut Expansion projects would significantly impact state owned conservation lands, which are protected by Article 97 of the Massachusetts Constitution. More than 100 parcels of protected open space would be impacted by NED, as would the Connecticut and Westfield Rivers and the Connecticut Expansion project would undermine a substantial taxpayer investment in an irreplaceable asset. In 2007, the Department of Conservation and Recreation (DCR), purchased 904 acres known as Spectacle Pond Farm – a site identified in 1999 as one of the most significant land protection opportunities remaining in the state. At the time of this writing, the Attorney General is defending DCR in an eminent domain proceeding brought by Kinder Morgan to take a permanent easement through Otis State Forest.

**Room for improvement:** During this first year of the Administration, there was a lag in releasing funds and clearly signaling priorities and funding levels. This delay negatively impacted the ability of land owners, land trusts, cities, towns and state agencies to further land conservation efforts. Land conservation, like any complex, transaction-based activity, benefits from predictability and transparency. EEA is working to improve its relationship with cities, towns, land trusts, farmers, foresters and private landowners through increased transparency regarding planned funding levels for land conservation agencies and programs, as well as the criteria that must be met before the state will invest. Knowing how much funding will be invested early in the fiscal year and making funds available in a timely fashion allows for strategic planning, and funding the necessary early steps to pursue multi-year land deals, such as appraisals, title searches and other aspects of due diligence, and can help to facilitate the ability to combine multiple sources of public and private funds and execute projects. We appreciate the Administration's commitment to ensuring that the land protection programs run smoothly and are effective.

## RECOMMENDATION

- Commit to investing at least \$50 million annually in state land protection programs to instill confidence in landowners, land trusts, and other partners, thereby encouraging the development of complex, multi-year projects.
- Provide ample time for project development and execution, by sharing total annual funding commitments early in the fiscal year and releasing funds necessary for due diligence, such as appraisals and title searches.
- Backfill legal positions vacated during the recent early retirement program to ensure that the land conservation programs run smoothly.
- Uphold the public trust and Article 97 of the Massachusetts Constitution and oppose any legislation related to conveyances of conservation land for natural gas pipeline construction if there is a question of need for the project and environmental conflicts or uncertainties exist within the scope of the proposed project.



## 6. REDUCING THE USE OF TOXIC CHEMICALS

Grade **D**

In 1989, Massachusetts enacted a groundbreaking law called The Toxics Use Reduction Act (TURA). The law was updated and amended in 2006. TURA requires Massachusetts companies that use large quantities of certain toxic chemicals to plan for reducing the use of such chemicals to the extent feasible, implement reduction activities, and measure and report on the results so we can track and share the success of the program.

And TURA has been an incredible success. From 1990 to 2013, Massachusetts companies reduced toxic chemical use by 48 percent, waste by 77 percent and on-site releases by 91 percent. In addition, many companies have reported costs savings from working with the program.

One of the main features of the program is designating High Hazard Substances (HHS). As the name implies, these are toxics with significant safety and public health impacts that we need to address. When a chemical is labeled a high hazard substance it can lead to the development of safer alternatives. Such improvements can help to prevent chronic diseases and disorders such as cancer, developmental disabilities, and asthma, which are all linked to exposure to toxins in the environment, and are estimated to account for up to 70% of healthcare costs.

Under state law, the program can designate up to 10 chemicals per year as HHS. Between 2006 and 2013, only seven chemicals were designated in total.

In 2014, the TURA program took a step forward towards realizing the full potential of the program by proposing five chemicals for HHS designation and designating four. However, in 2015, not a single HHS designation was even proposed or discussed. This is a missed opportunity for advancing the TURA program's mission of improving the human and environmental health in the Commonwealth.

The program is further hampered by the fact that fees associated with the program have not been raised since its inception in 1991, despite the fact that an annual increase was required in the law that established the program. This lack of new funding has led to significant cutbacks in the program's staffing, preventing the full realization of health benefits and cost savings that could be achieved.

## RECOMMENDATION

The Toxics Use Reduction Act program should consider at least five additional chemicals per year for HHS designation (including toluene diisocyanate which has already been proposed). Additionally, the TURA fee structure should be modernized in keeping with state law and in order to maintain and improve the effectiveness of the TURA program.

## CONCLUSION

This report evaluates the Administration's progress and on-the-ground results. We hope that in the coming year, we will see a coherent policy and management approach that is marked by:

- Well-crafted policies that focus on environmental quality and long-term clean energy paths.
- Management accountability for progress.
- Clear work plans and a transparent process for monitoring policies and programs.
- Public disclosure of these goals and actions.
- Allocation of sufficient revenue to achieve these goals.

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