

Renewable Energy Developers Stand to Benefit from MassDEP's Efforts to Streamline Regulatory Requirements

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October 27, 2011

On October 24, 2011 MassDEP released the framework for a regulatory reform proposal that would streamline environmental permitting and approval processes in Massachusetts. Although the major impetus for these reforms is an effort to apply the agency's declining resources more efficiently – since 2002 MassDEP's budget has declined by more than 25 percent and the number of full-time MassDEP employees has declined by 30 percent – new commissioner Ken Kimmell has prioritized reforms that would simultaneously reduce permitting obstacles for environmentally beneficial projects. Several of the reforms outlined would specifically facilitate the development of renewable energy projects by consolidating or streamlining existing permitting requirements.

The proposal identifies, in general terms, twenty-one regulatory changes that MassDEP will seek to implement by next summer. Of particular interest to renewable energy developers, the proposal includes reforms that would reduce and consolidate permitting requirements under the various regulatory programs that currently apply to activities located on or near wetlands, waterways, coastal areas and landfills. Specifically, MassDEP has proposed:

1. Allowing "Renewable Energy Projects" (projects eligible to receive Renewable Energy Credits) that are subject to the Wetlands Protection Act – generally those located in proximity to wetland areas or bodies of water – to benefit from a streamlined and more predictable permitting pathway that is already applied to other types of "limited projects" such as public road and drainage maintenance, landfill closures, maintenance of farms, construction and maintenance of utilities, and authorized responses to releases of hazardous materials;
2. Allowing innovative clean energy projects proposed for coastal areas to move forward on a "pilot" basis that would set up a predictable review and approval pathway and bypass otherwise applicable regulatory schemes that might frustrate implementation of new technologies;
3. Allowing permits-by-rule for renewable energy reuse projects at closed landfills, thereby reducing the burdens associated with gaining approval of such projects.

Moreover, renewable energy projects might also benefit from MassDEP having additional resources available to devote to its new "Clean Energy Results Program" ("CERP"). The details of the CERP are not yet clear, but in broad outline it will be an effort to provide information to facilitate the siting of renewable energy facilities in Massachusetts.

MassDEP is seeking public comment on its proposals and anticipates releasing a final action plan incorporating the comments it receives. MassDEP's proposals will not have the force of law until MassDEP formally revises the affected regulations, a process that will include additional opportunity for public comment. Because the details of how the aspirational goals put forward by MassDEP are incorporated into final regulations could have a significant impact on the regulatory burden faced by renewable developers in Massachusetts, renewable energy developers should follow the progress of these proposals closely. The extent to which these proposed regulatory changes succeed in reducing unnecessary regulatory burdens on renewable energy projects will depend on the involvement of the renewable energy industry in the rule-making process.

Foley Hoag's [Energy Technology and Renewables](#) practice has extensive experience in all aspects of developing renewable energy projects in Massachusetts, including: representing clients and trade groups in rule-making proceedings, assisting clients with siting, obtaining all necessary governmental approvals, and negotiating power purchase and interconnection agreements. If you have questions about MassDEP's proposed reforms, please contact Mary Beth Gentleman, [Seth Jaffe](#), or [Zach Gerson](#), or contact your lawyer at Foley Hoag.

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