

June 10, 2008

MassDEP  
attn: Glenn Haas  
One Winter Street, 5th floor  
Boston, MA 02108

RE: Proposed revisions to 314 CMR 2.00, 5.00, 6.00, 12.00 and 20.00

Dear Mr. Haas:

Thank you for the opportunity to comment on the proposed Department of Environmental Protection's (DEP) regulations for groundwater discharge, groundwater quality and reclaimed water. New England Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide; our New England chapter is located outside of Boston, Massachusetts. Although PEER signed a joint comment letter on these proposed regulations through Advocates for Wetlands and Watersheds (AWW), we do have additional concerns which are set forth below.

#### **Pharmaceuticals and Personal Care Products (PPCPs)**

As you are aware, pharmaceuticals and personal care products (PPCPs) in drinking water is an emerging concern in both Massachusetts and around the world. PEER is extremely concerned about the potential for these compounds to impact human health, particularly susceptible populations such as pregnant women, the elderly, and the immuno-compromised. Despite the Department of Environmental Protection's (DEP) repeated public statements that they are leading the way on this topic, we see very little evidence that DEP is being proactive. The promulgation of these regulations at this time presents an ideal opportunity for DEP to be proactive and to take steps to curtail the pollution of our drinking water with these substances.

Specifically, PEER would like to see DEP *prohibit* the discharge of effluent from wastewater treatment facilities from hospitals, nursing homes, assisted living facilities, medical offices, and vet clinics/hospitals into Zone IIs and areas that would affect private drinking water wells (where no other water is available) and surface water drinking water supplies. Instead of taking this step to minimize the discharge of PPCPs into our drinking water supplies, DEP's proposed regulations reclassify hospitals as residences, thus making it easier to discharge into the groundwater of sensitive areas. Specifically, 314 CMR 5.02

redefines “residential” as “apartment buildings, townhouses, condominiums, cooperatives, single family homes, two and three family homes, hospitals, nursing homes, assisted living facilities, rehabilitation facilities, dormitories, and homeless shelters. Residential uses do not include hotels and motels.” See proposed revisions to 314 CMR 5.02. Although DEP staff told me that this change was written to affect only the financial assurance mechanisms contained within the regulations, the practical effect would not be limited to financial assurance mechanisms. DEP must re-write this provision to ensure that hospitals, nursing homes, assisted living facilities, and rehabilitation facilities do not discharge effluent into groundwater affecting drinking water supplies.

It is also unclear whether medical wastes would be considered sewage under these new regulations. If so, medical wastes could be discharged under a general permit, and could result in effluent containing concentrated pharmaceuticals. DEP must clarify that medical wastes are not allowed to be discharged under the general permit.

314 CMR 5.10(4)(a)(1) *requires* wastewater treatment to a secondary level in order to comply with the terms of the general permit. In other words, an applicant wanting to provide tertiary treatment would have to obtain an individual permit. This language should be amended to allow for treatment that is better than secondary. Given that work is currently ongoing to determine effective treatment for effluent contaminated with PPCPs, DEP should amend this language to read “secondary or better.”

### **Enforcement issues**

In FY 2007, 47.8% of groundwater discharge permit holders were in significant non-compliance with their permits. This non-compliance rate will likely be exacerbated by allowing more dischargers to fall into the general permit category. DEP should develop a comprehensive plan to inspect and enforce against groundwater discharge permit violations. While PEER does not object to streamlining permit review, it should only be allowed when there is no compromise in environmental protection.

DEP should include tougher penalties for operators who are violating the permit standards. Since the operators are the ones who are typically responsible for running a wastewater treatment plant, they should be held accountable for their actions. Given the current extremely high non-compliance rate, it is safe to say that existing penalties do not deter violations. If penalties were tougher, and DEP took more enforcement actions, the non-compliance rate might go down.

### **Terminology**

The draft regulations are peppered with terms that are either undefined or difficult to understand. For example, 314 CMR 5.00 contains the word “adjacent” numerous times, yet it is not defined in the regulations. Given that this word has been the subject of many a lawsuit, PEER suggests that it is carefully defined in the definitions section.

Similarly, it is entirely unclear that the phrase “area outside service area of public water supply” means private drinking water wells. This should also be clarified.

Finally, reliance on the accuracy of conceptual Zone IIs is misplaced. As you are aware, DEP has delineated some Zone IIs on the ground, but others are the result of “conceptual models,” and are more than a decade old. Water withdrawal has become more intense as populations of towns climb, and weather patterns are changing - Zone IIs will be affected by these factors. Yet DEP makes no distinction between the Zone IIs that have been delineated and those that are assumed. If a discharge is proposed in an area near a conceptual Zone II, DEP should require the applicant to redelineate the Zone II to ensure that our drinking water supplies are not contaminated.

**Conclusion**

PEER urges DEP to take this opportunity to strengthen protection of our drinking water supplies. Global warming and increased pressures on water supplies make it even more critical that our drinking water is protected to all extents practicable.

Thank you for the opportunity to comment.

Sincerely,

Kyla Bennett, Director  
New England PEER