



Massachusetts Legislative Bills Submitted

By Al Collings & Jack Hickey

The MA COLAP Board of Directors supports these pending bills and asked all members to contact their legislators to also express support. Details of the bills can be found at www.malegislature.gov/Bills.

Bill S00347-Legislation to protect lakes and ponds from transportation of aquatic nuisances.

This legislation originally submitted by Senator Benjamin Downing in 2009 is designed to access civil penalties of up to \$10,000 and fines of up to \$1,000 for knowingly and intentionally placing or causing to be placed aquatic nuisances upon inland waters, a vessel, a boat transporter, a truck-trailer boat transporter or any other equipment unless that vehicle has been decontaminated in accordance with the regulations of the Department of Conservation and Recreation. DCR shall study and promote improved methods of suppressing, controlling or otherwise mitigating or reducing the spread of aquatic nuisances.

BILL H00225-Legislation to establish an invasive aquatic plant management fund.

This legislation originally submitted by Sean Garballey in 2009 is designed to establish and set up a separate fund by the Department of Environmental Protection to be known as the Invasive Aquatic Plant Management Fund. A grant program will be established to allocate

New Proposed Federal Guidance Expands Clean Water Act Jurisdiction

By Glenn Wood

In a new "Draft Guidance on Identifying Waters Protected by the Clean Water Act" released on April 27, 2011, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are seeking to significantly expand their jurisdiction over more expansive "waters of the United States" under the Federal Clean Water Act (CWA). This Draft Guidance, which is now in a 60 day public comment period through July 1, 2011, has been met with significant concern by many private sector industry groups as well as on Capitol Hill. According to EPA Administration Lisa Jackson, the goal is to protect water quality and to remove uncertainties over jurisdictional protection of Federal waterways and wetlands in the United States. The Guidance is part of a broader "national clean water framework" from the Obama Administration, which includes proposed efforts to reduce contaminants in drinking water, to support science and research to improve water programs and to identify emerging pollution problems.

EPA and the Corps presently use Guidance documents issued in 2003 and 2008, to respectively implement previous U.S. Supreme Court decisions on CWA jurisdiction in *Solid Waste Agency of Northern Cook Country v. U.S. Army Corps of Engineers (SWANCC)*, 531 U.S.159 (2001) and thereafter *Rapanos vs. United States*, 547 US.715 (2006). In *SWANCC*, the Court rejected CWA jurisdiction over isolated, interstate and non-navigable waters if solely based on habitat used by migratory birds.

Officers & Directors

President

Al Collings
afc@charter.net

Vice President

Frank Lyons
franktyons@verizon.net

Acting Secretary

John Reed
reedjp123@yahoo.com

Treasurer

Eric Las
elas@btiweb.com

Directors-at-Large

Mark Briggs
markbrggs@yahoo.com

Jeff Castellani
jjc1369@verizon.net

Jack Hickey
jhickey@jhracs.com

Carol Hildreth
hildreth@comcast.net

Newsletter

Editor: Frank Lyons
franktyons@verizon.net

List of Articles

Mass. Legislative Bills Submitted..... pg. 1
 New Proposed Federal Guidance
 Expands Clean Water Act Jurisdiction .. pg. 1
 Annual Meeting of NECNALMS pg. 3
 MA COLAP Annual Meeting pg. 4
 MASS DEP and EPA Permit Update..... pg. 5
 President’s Letter pg. 6

New Proposed...

Continued from page 1

In the more recent Rapanos decision, which was a split decision, the plurality decision written by Justice Scalia extended CWA jurisdiction only to permanent, standing or flowing waters connected to traditional navigable waters and surface connected wetlands. However, the concurring opinion by Justice Kennedy created the so-called “significant nexus” test, which holds that if certain isolated wetlands and waterbodies “significantly affect the chemical, physical and biological integrity of other covered waters more readily understood as navigable,” CWA jurisdiction existed. The new Guidance applies to all CWA programs including section 303, Water Quality Standards, section 311, Oil Spill Prevention Release, section 401, Water Quality Certification, section 402, National Pollution Discharge Elimination System permits and section 404, Dredge and Fill Material permits.

Under the Draft Guidance, CWA jurisdiction now extends to traditional navigable waters; interstate waters; wetlands adjacent to traditional navigable or interstate waters; non-navigable tributaries to traditional navigable waters that are at least seasonally permanent; and lastly, wetlands that directly abut relatively permanent waters. Additionally, the following waters that have a “significant nexus” to traditional or interstate Federal waters are also now covered: tributaries to traditional navigable or interstate waters; wetlands adjacent to jurisdictional tributaries and waters in an “others waters” category (divided into those that are physically proximate or not). A case-by-case analysis of “other waters” cases would be made looking at existing fish and wildlife habitat and other positive wetlands protection values. As such, the Guidance reaffirms protection over small streams that feed larger tributaries, lakes, ponds and coastal waters. Additionally, under the “adjacency” test, EPA and the Corps can assert jurisdiction over isolated wetland and water bodies that are “physically proximate”, for instance where ducks, turtles or amphibians are documented to move between isolated “waters” and jurisdictional streams/waters for life functions (feeding, breeding, over wintering).

Understandably, environmental groups are very supportive of EPA’s Guidance whereas industry groups and some members on Capitol Hill are strongly opposed to it. And given both the recent review of EPA funding on Capitol Hill and the upcoming election cycle, this Guidance will prove to be hotly contested. Many have also questioned the fact that this is being issued as a further Guidance from the 2003/2008 documents and that EPA has not gone straight away to a rule-making/regulatory standard. In fact, on this basis alone, litigation

Continued on page 4

SPECIAL THANKS

The following corporations have provided funding for the MA COLAP newsletters:

- Aquatic Control Technology, Inc.
- GZA GeoEnvironmental Inc.
- Lycott Environmental Inc.

Annual Meeting of the New England Chapter of the North American Lake Management Society

(NECNALMS)

NECNALMS 2011 will be held June 3rd and 4th at the University of Rhode Island in Kingston, RI.

“Our New England Waters--Watershed Management in a Changing World”

The Friday morning Volunteer Monitoring Summit and afternoon 2-hour workshops on:

- 1) Nuisance Algae Identification and Control,
- 2) Macrophytes-Key Native and Introduced Species,
- 3) Volunteer Assessment of River and Stream Continuity--Field Protocol,
- 4) Volunteer monitoring of Cyanobacteria, and
- 5) Mapping your Watershed in Google Maps or Google Earth provide hands-on training by experienced professionals.

The Saturday program provides a wealth of information for anyone interested in the management of lakes and watersheds. Break Out Session Topics include:

- A. Climate Change--Climate History of Lake Ice-Out in New England and more
- B. Invasive Plant Management
- C. New Tools and Techniques for Lake and Watershed Management
- D. Getting to the Bottom of Aquatic Plants, including Suction Harvesting Myths and Methods
- E. Cyanobacteria--New England Overview and Case Studies
- F. Lake Law--What your Lake Association Needs to Know
- G. Lake-Friendly Landscaping
- H. Getting Serious about Dams, including Creating Dam Districts
- I. Ask the Experts Interactive Session

Overnight accommodations in modern, spacious dormitory rooms, meals, and free parking are available

on-site. Workshops, presentations and exhibitors will all be conveniently situated in The Center for Biotechnology and Life Sciences (CBLs). Look for more information online at <http://www.uri.edu/ce/wq/ww/nec.htm> including site directions and maps, complete abstracts, and workshop outlines, or contact Elizabeth Herron at 401-874-4552 or emh@uri.edu for more information.

REGISTRATION FORM

Name: _____

Affiliation: _____

Mailing Address: _____

Phone: _____

Email: _____

Registration (includes breaks and lunches):

- Friday Vol. Mon. Summit only - \$30 _____
- Friday workshops only - \$30 _____
- Friday (Summit & workshops) only - \$45 _____
- Saturday sessions only - \$45 _____
- Friday & Saturday package - \$70 _____

Dormitory rooms

Available Friday night for single rooms - \$55 _____

Additional linen & hotel amenities fee - \$11 _____

OR

Bring your own sheets/sleeping bag, soap & shampoo - \$0 _____

Total Registration fee \$ _____

(Group rate at Holiday Inn – South Kingstown 401-789-1051 group name “NE Lakes”) \$89

Friday Workshop Choice(s):

1st session: _____

2nd session: _____

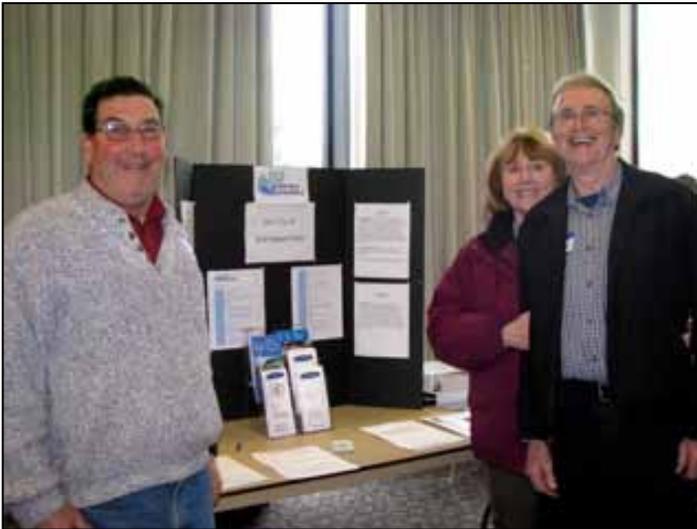
Sorry - credit cards **NOT** accepted. Return form and registration check made payable to “**URI (9072)**”

Elizabeth Herron
Rm 105 CIK
1 Greenhouse Rd
Kingston, RI 02881

Friday dinner - payable to “**Save The Lakes**” \$25 _____

Check here to reserve ticket(s) _____

MA COLAP Annual Meeting



Over seventy-five people attended the 24th MA COLAP Annual Winter Workshop held again at Worcester State University on Saturday, January 29, 2011. The Officers and Directors listed on page 2 were elected to two year terms. Keynote presentation by Dr. Ken Wagner was well received and Senator Stephen Brewer brought greeting form the State House. Our thanks to the many exhibitors and presenters who made the day quite successful. Special thanks to board member Carol Hildreth who managed the entire event. These photos by Peter Hughes captured some of those who participated in the end of day raffle.

New Proposed...

Continued from page 3



is anticipated. Although EPA has indicated that it will advance regulatory revisions under the CWA, they have not provided any specific time frames or details on the extent of future rule-making.

The new Guidance does not apply to roadside ditches or gullies, nor ponds or other artificial water bodies that have been excavated in former upland. Additionally, the Draft Guidance does not impact existing CWA exemptions which include a wide range of farming, forestry and ranching activities. Still, vocal concerns have been raised that the Draft Guidance extends Federal jurisdiction well beyond that allowed under the CWA and existing case law, and will create additional regulatory costs on property owners with no significant additional environmental benefit.



Given this new expanded Federal waterways/wetlands jurisdiction, and combined with the existing significant breadth of local, State and Federal jurisdictional controls on Massachusetts lakes and ponds, lake associations as well as public and private sector property owners will need to carefully consider all jurisdictional aspects of these varied regulatory programs on properties and projects. This article presents only a broad overview of the new Guidance and any proposed activities that involve discharge of dredged or fill materials or pollutants into or near any water bodies, streams or wetlands will need to be properly analyzed, and permitted if required.

Mass. Legislative...

Continued from page 1

money to lake associations and towns which seek to administer an invasive aquatic plant prevention and mitigation prevention program.

Members of the Boards of MA COLAP and LAPA West are also monitoring Bill S00349 relative to establishing standards for restoring and maintaining stream flows, water levels and hydrologic regimes that protect natural aquatic life in rivers and streams. While conceptually sound, implementation could have some serious negative effects on lakes and ponds if provisions for local conditions are not adequately addressed in the legislation and subsequent rules and regulations.



View of Ames Pond in North Easton, Massachusetts

Photo credit: ©iStockPhoto/mjbs

Massachusetts Dept. of Environmental Protection (MASS DEP) and U.S. Environmental Protection Agency (EPA) Permit Update:

By Jeff Castellani

After long awaited and much anticipated implementation of the Federal permit process as well as modifications to the State permit process, the current MASS DEP permit format will remain in effect for 2011 aquatic herbicide / algaecide applications.

On March 28, 2011, the Sixth Circuit of Appeals granted EPA's request for an extension to comply with the National Pollutant Discharge Elimination System (NPDES) permit for applications of pesticides to U.S. waters mandated by the 2009 decision by the Sixth Circuit Court of Appeals (National Cotton Council, et al. v. EPA). The court's decision extended the deadline for the NPDES Pesticide General Permits (PGP) from April 9, 2011 to October 31, 2011.

The stay granted by the Sixth Circuit of Appeals allows the EPA sufficient time to engage in Endangered Species Act consultation and complete the development of an electronic database to streamline requests for coverage under the Agency's PGP. The extension also allows states to complete revisions to their respective permit application and process.

The acreage requirement for compliance under NPDES has been a moving target. The yearly acreage guideline for aquatic herbicide / algaecide application per waterbody has reportedly changed from 20 or more treatment acres to 80 or more treatment acres following EPA outreach to stakeholders.

Legislation passed by the House of Representatives on March 31, 2011, H-.R. 872: 'Reducing Regulatory Burdens Act of 2011' would eliminate the NPDES permit requirement, if passed by the Senate.

Until the requirement is possibly eliminated or the final version of the NPDES guidelines and PGP permit is announced, you can follow its evolution by visiting www.epa.gov/npdes/pesticides for background.



Massachusetts Congress of
Lake and Pond Associations, Inc. (MA COLAP)
P. O. Box 873
West Brookfield, MA 01585
Return Service Requested



Summer 2011

President's Letter

Summer 2011

By Al Collings, MA COLAP President

Dear members and friends of MA COLAP,

We have a challenge before us. MA COLAP has been revitalized and the board of directors is now discussing the next phase of growth and outreach to lake and pond associations across the commonwealth. The initial intent of the organization was to have an umbrella state wide association with chapter associations in various regions. The very active and successful Lake and Pond Associations of Western Mass. (LAPA West) is the only current regional association. We had a central Mass. Association for brief time, but had to suspend its activities to concentrate on the rebuilding of the state wide organization. Now, the board of directors is discussing how to proceed with developing COLAP chapters in the northeast, south east and central areas of the state. As part of the effort, we are also again discussing the creation of an executive director position (alternatively, could be the next president of MA COLAP) that could concentrate on this regional development work. Such a position

would also take the lead in monitoring and testifying on legislative and regulatory proposals. Like everything else in life, this increased effort will take time and money. Already, members of the board of directors are looking at potential funding sources as well as discussing a position with individuals who might want to take on the challenge of leading MA COLAP in the future. Want to learn more and help? Call me at 508.867.7165 or e-mail me at afc@charter.net.



Have a safe and enjoyable summer season.

Al Collings,
President