

Concerns regarding Commonwealth of Massachusetts's environmental performance during Gina McCarthy's tenure

I. Air

- Title V permits: Despite a 1997 statutory deadline for issuance of all “major source” permits, Massachusetts has permitted only 32 percent, the lowest rate in New England. Of the so-called “Filthy Five” power plants in Massachusetts, three are still operating without Title V permits. Although the Romney Administration inherited this problem, they have done little to address the issue.
- Vehicle emissions program: In 2002, it was discovered that the Massachusetts vehicle emissions tests cannot differentiate between cars that emit high levels of pollution and those that run cleanly. Moreover, state officials had actively covered up the problem for more than two years. Specifically, e-mail exchanges between DEP officials and the California-based contracting firm Sierra Research, Inc. show that more than half of the cars that failed the Massachusetts emissions test actually passed a similar test that is sanctioned by EPA and used in most states. Sierra Research officials warned DEP in a May 16, 2001 email that the rate of false failures represents “the highest by far ever seen by Sierra.” Similarly, the Massachusetts test may also pass vehicles that emit more than the federally approved level of pollutants. Rather than report these results to EPA, DEP officials attempted to manipulate the data. In August 2001, Sierra Research informed DEP that they had “made some adjustments” to their numbers which would “cut the failure rate by 50 percent,” although only on paper and not in reality. When confronted with the data, the DEP audited the testing machines (and found that approximately half of them were not working), but refused to acknowledge that the test itself was flawed. Despite repeated requests to the Romney Administration to address this problem, the Commonwealth continues to administer the flawed test.

II. Water

- Rivers. The Commonwealth of Massachusetts continues to neglect its waters. Only 9% of Massachusetts rivers fully support their designated uses, 3.5% partially support such uses, 10% do not support, and a staggering 78% were not even assessed. Of the 22.5% of rivers that were assessed, *none* supported fish consumption, only 27% supported primary contact, and 55% do not support aquatic life.
- Lakes. Similar findings were made for Massachusetts' lakes: while 75% of the lakes were actually assessed, 54% of those assessed do not support any use. Finally, 91.5% of marine waters were not assessed; of those assessed, a full 59% were found to not support any use.

- TMDLs. Federal law requires the states to use Total Maximum Daily Loading assessments (TMDLs) to determine what is causing use impairment. TMDLs must be prepared for waters that do not meet their intended uses under the federal Clean Water Act. The Romney Administration determined that in order to comply with the law, Massachusetts would have to prepare 1500 TMDLs over the next ten years. The estimated cost associated with this is \$138 million over 18 years, and an additional \$7.7 million annually to develop remedial plans for the impaired waters. DEP has baldly stated that it “will not be able to dedicate such a level of resources to TMDLs,” and instead offers to focus on a tiny subset of pollutants and to focus on coastal and urban waters. This strategy is unconscionable, and appears to violate the Clean Water Act.

III. Lands

- Retreat on wetlands protection: The Commonwealth of Massachusetts has long prided itself on its strong Wetlands Protection Act, which protects not only the wetlands themselves, but also a 100-foot buffer around the wetlands. Despite the fact that science overwhelmingly shows that a minimum of 100 feet around wetlands is necessary to maintain the integrity of the wetlands, DEP is currently proposing to allow development in the outer 50 feet of this buffer zone, and then allowing developers another bite of the apple at the inner 50 feet a few years later. Moreover, DEP is attempting to eliminate the right to appeal a variance under the Wetlands Protection Act, pursuant to which the largest and most damaging wetland fills occur.
- Retreat on funding for land preservation: Massachusetts prioritized land purchase and preservation prior to Romney’s election. Overall funding and acreage protected in last four fiscal years was as follows:

FY2001	\$57.1 million	38,112 acres protected
FY2002	\$73.6 million	26,600 acres protected
FY2003	\$36.4 million	10, 732 acres protected
FY2004	\$18.0 million	5,517 acres protected

Under Romney, not only has the money earmarked for land conservation decreased drastically, but it is now coupled with a requirement to provide affordable housing (see http://www.mass.gov/ocd/docs/comcap_application.pdf)

- De-funding of the Natural Heritage and Endangered Species Program (NHESP): In FY 2004, Governor Romney de-funded the Natural Heritage and Endangered Species Program (NHESP), the agency responsible for endangered species review, vernal pools, and habitat issues. NHESP requires a budget of approximately \$650,000 per year, and was forced to rely on donations to survive.

IV. Toxics

- Unhealthy Schools: Boston's public schools are riddled with environmental problems, including excessive dust, poor ventilation and leaky roofs, according to

a systemwide inspection conducted last year. According to the report, 90 percent of city schools have at least one problem that can trigger asthma attacks or allergies (Tracy Jan, Boston Globe <http://www.boston.com/news/local/massachusetts/articles/2004/11/19/environmental_report_details_city_school_ills>).

V. Intimidation of Public Servants

- Gag orders: Incoming Governor Mitt Romney issued a directive to state environmental agencies suspending any contact with media representatives. Specifically, the memo stated that “[t]he Director advises that the Governor’s office will be reviewing all communications with the media, at least on a temporary basis effective immediately...Please advise any media representatives that call you that you are unable to assist them at this time.” A second directive, issued shortly after Romney took office, forbid contact with legislators. The notice given to all Massachusetts Environmental Police stated “[u]ntil further notice the following two requirements will be strictly followed by all DLE [Division of Law Enforcement] personnel: Under no circumstances shall any member of the agency have contact with a member of the State Legislature on any matter related to our Division activities unless approved by the Director. Under no circumstances shall any member of this agency speak with or provide written statements to the media regarding any activity that this agency is engaged in or may be engaged in. All requests from media for comments should be forwarded to the director for action. Failure to comply with this directive could result in disciplinary action.” These directives make no exception for communications made by employees on their own time that are protected by First Amendment free speech guarantees.
- Union busting. Officials in the office of Governor Mitt Romney engaged in unfair labor practices against state attorneys during a proposed statewide reorganization process. Specifically, Governor Romney planned to create a new separate legal department within a proposed Office of Solicitor General (OSG) in the Governor's office. As part of the plan, as many as half of the state's 800 attorneys would be laid off. Those who survive the cut would be pulled out of their individual agencies and placed in to the new OSG unit. The plan included a number of prohibited practices, including: forbidding state lawyers from membership in government employee unions; forcing employees to leave their agencies without allowing their seniority rights to be transferred; and reclassifying attorneys to become “at will” employees, so that they may be hired and fired without cause and without appeal rights. Strong opposition to the plan from unions and NGOs prevented Romney from carrying it out.
- Placing Environment Within an Economic Development Office: The Office of Commonwealth Development (OCD), created under this Administration,

combined the former departments of transportation, housing, environment and energy. This super agency allows conflicts of interest to flourish. For example, the Department of Transportation is one of the Commonwealth's largest environmental violators, yet under the new OCD, the employees who enforce against these violations and the violators themselves report to the same boss. The OCD was supposed to be more efficient, but resulted in a decrease in environmental protection.

- Politicizing Enforcement and Permit Reviews: When Governor Romney came into office, he and his Administration initially tried to fire the five Administrative Law Judges (ALJs) in the Department of Environmental Protection (DEP) because the ALJs were continually ruling against DEP. When the ALJs fought back by filing an action against the Romney Administration, he revoked the firing, but stripped them of their union protection and transferred them out of DEP and into another agency. He also installed a "pre-screener" at DEP to screen all the appeals that come into the agency, and determine which should be forwarded onto the ALJs for adjudication. Most of the appeals filed against DEP are being dismissed without review by the impartial ALJs.
- Raises for managers, but not for workers: The Romney Administration recently gave DEP managers a large (up to 8% raise), while the workers on the front lines have not had a cost of living increase or a raise for three years.
- Closing of DEP field offices: The Romney Administration closed down one of its four field offices in northeastern Massachusetts, citing efficiency. DEP employees who remained with the agency now commute into Boston, where the Commonwealth pays much more for rent. Moreover, the regulated community and aggrieved citizens in northeastern Massachusetts now have less access to DEP, and it takes longer for DEP inspectors to reach enforcement sites. When the Romney Administration tried to close the southeast regional office, outspoken critics prevented the move.