

# GLOBAL WARMING SOLUTIONS ACT

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# MA GWSA

25% reduction by 2020  
80% reduction by 2050



Most stringent in the nation in  
2008

Established:

1. GHG emissions baseline assessment and “business as usual” projection
2. GHG emissions registry, reporting system, and inventory
3. Plans to accompany emissions limits each decade
4. Requirement for interim emissions limits
5. **Requirement to promulgate regulations**

## SECTION 3(D)

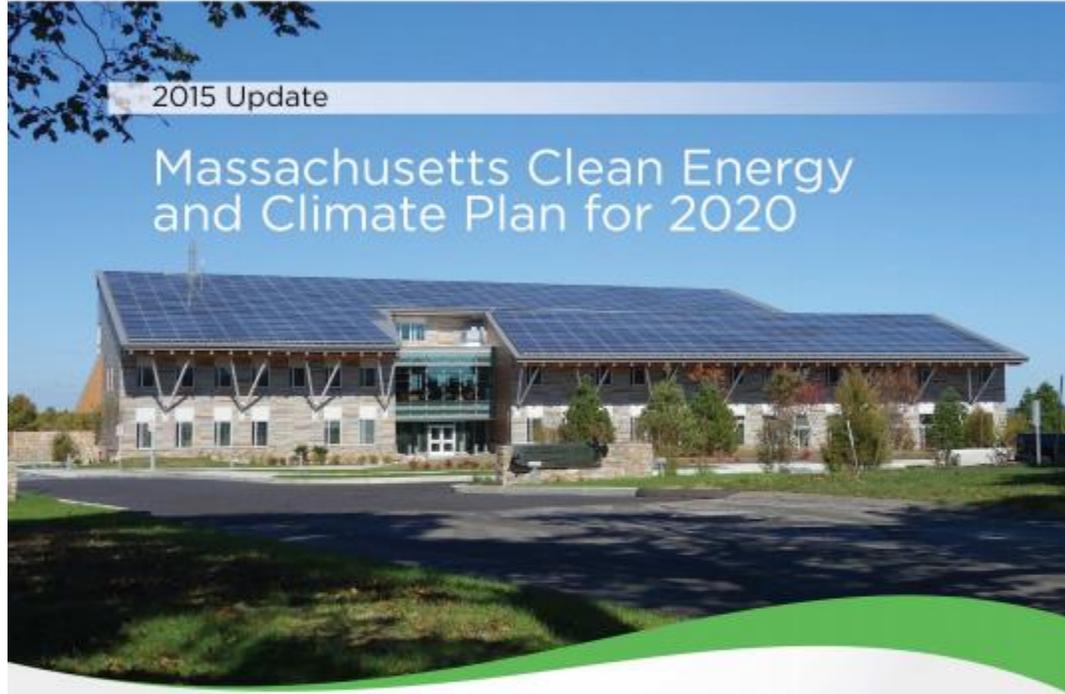
(d) The department shall promulgate regulations establishing a desired level of declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions.

# PLAN



2015 Update

## Massachusetts Clean Energy and Climate Plan for 2020



A report to the Great and General Court pursuant to the  
Global Warming Solutions Act  
(Chapter 298 of the Acts of 2008, and as codified at M.G.L. c. 21N)

Secretary of Energy and Environmental Affairs Matthew A. Beaton

December 31, 2015



# ADVOCACY FOR REGULATIONS

Ask agency

Advocate to agency

Notice of intent to sue agency

File lawsuit

# LITIGATION

Plaintiffs: Four MA teenagers (participated in petition for rulemaking)  
Conservation Law Foundation  
MA Energy Consumers Alliance

Defendant: MA Dept. of Environmental Protection

Claims: (1) Declaratory judgment: DEP violated GWSA by failing to issue regulations compliant with section 3(d)  
(2) Writ of mandamus compelling DEP to issue regulations compliant with section 3(d)

# ARGUMENTS

Statutory interpretation:

*(d) The department shall promulgate regulations establishing a desired level of declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions.*

DEP:

Not mandated limits. S. 3(d) “desired level” language only required DEP to establish aspirational goals or unenforceable targets.

Plaintiffs:

Clear mandate for limits. Plain language of s. 3(d) = regulations that address multiple sources or categories of sources of emissions, impose a limit on emissions that may be released, limit the aggregate emissions released, set emissions limits for each year and set limits that decline on an annual basis.

# ARGUMENTS

Do existing regulations satisfy s. 3(d):

1. Low Emission Vehicle Regulations
2. Sulfur Hexafluoride Regulations
3. Regional Greenhouse Gas Initiative Regulations

# PROCEDURE

1. GWSA required 3(d) regulations by January 1, 2012.
2. [Advocacy to agency]
3. Complaint filed August 2014
4. Superior Court entered declaratory judgment in favor of DEP (after summary judgment motions).
5. Plaintiffs filed notice of appeal then requested direct review by the SJC.
6. SJC granted direct review in October 2015.
7. Decision May 17, 2016

## KAIN V. DEP, 474 MASS. 278 (2016).

“...the unambiguous language of § 3 (d) requires the department to promulgate regulations that establish volumetric limits on multiple greenhouse gas emissions sources, expressed in carbon dioxide equivalents, and that such limits must decline on an annual basis. We further conclude that the sulfur hexafluoride, RGGI, and LEV regulations fall short of complying with the requirements of § 3 (d), because they fail to ensure the type of mass-based reductions in greenhouse gases across the sources or categories of sources regulated under each of the programs, as intended by the Legislature. Accordingly, we reverse the judgment of the Superior Court.” p. 280.

# REGULATIONS

## Final Regulations

**310 CMR 7.72: Reducing Sulfur Hexafluoride Emissions from Gas-Insulated Switchgear**

[Learn more about these regulations.](#)

**310 CMR 7.73: Reducing Methane Emissions from Natural Gas Distribution Mains and Services**

- [Final Regulation](#)
- [Fact Sheet](#)

**310 CMR 7.74: Reducing CO2 Emissions From Electricity Generating Facilities**

*MassDEP promulgated amendments to these regulations in 2017 and 2018. [Learn more.](#)*

## Final Regulations - Continued

**310 CMR 7.75: Clean Energy Standard**

*MassDEP promulgated amendments to these regulations in 2017. [Learn more.](#)*

**310 CMR 60.05 Global Warming Solutions Act Requirements for Transportation**

- [Final Regulation](#)
- [Fact Sheet](#)

**310 CMR 60.06 CO2 Emission Limits for State Fleet Passenger Vehicles**

- [Final Regulation](#)
- [Fact Sheet](#)

# COMMENTS ON H. 688

1. Excellent bill, very important!
2. Helpful to have cause of action pathway (improvement from MA statute)
3. Questions about council creation
4. A few suggestions to tighten language re: how far is far enough:
  - “**Sources or categories of sources**” (s. 591(b)(1)(B))
    - Edit to clearly refer to the categories of sources you’re talking about (industrial, transportation, buildings, etc)
  - “Secretary... shall adopt rules... **consistent** with the... Plan” (s. 593(a))
    - Edit to: Shall adopt regulations as **prescribed by** the Plan (and similarly tighten language about what Plan will cover on regulations)
  - “Develop a detailed record...to establish a **reasonable basis to believe** that the rules shall achieve...” (s. 593(a)(2))
    - May want to give agency guidance on what forms a “reasonable basis”  
  
e.g., reasonable basis means that GHG emissions modeling shows that the regulation at issue will accomplish at least X% of the required emissions reductions for that decade



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