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# The Economy and the Regulatory Environment

## In Search of a New Paradigm

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*This article focuses on the economy and the regulatory environment. The economic downturn over the past six years has taken its toll on Massachusetts. At the same time, there is immense pressure on the part of the electorate to ensure that our quality of life is protected and enhanced. It is clear that the business community, citizens, and our elected officials are searching for a new paradigm. The concept of a policy of sustainable development is emerging — political and corporate actions that produce well-paying jobs, that create a competitive business climate and improve life within the context of our existing communities. The authors believe that this new paradigm, a mixture of vision and pragmatism, is achievable through collective will.*

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**T**he framework for this article emerged from a conference on the Massachusetts economy and the regulatory environment held at the University of Massachusetts Amherst on July 30, 1992. Attendees included environmentalists, business officials, academics, conservationists, chamber of commerce officials, and public officials. Its intent was to provide ideas, concepts, and approaches that the state could develop into economic initiatives.<sup>1</sup> Some of the thoughts generated by the participants were ultimately incorporated into a statewide strategy for job creation and economic growth and published in a report entitled *Choosing to Compete*.<sup>2</sup> Many ideas were underplayed or were not included. We believe that the ideas, concepts, and approaches, as a package, still have merit. We offer them in this article to further stimulate the debate on future economic policy directions.

We chose the subtitle "In Search of a New Paradigm"<sup>3</sup> because we believe that Massachusetts must seek out fundamentally new directions if its economy is to prosper, its environment is to be protected, and its quality of life is to be maintained and enhanced. It is not a time for timidity, incremental change, or pressure politics. It is time for comprehensive, bold actions that create a new way of thinking about how and where we work, live, and play.

We focus on the economy and the regulatory environment. Nowhere is the battle ground so well staked out as with this issue. As much as one hates to use dichotomies,

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the fact remains that there are still powerful groups that consider our regulations too restrictive and equally powerful groups that think they are too liberal.<sup>4</sup> While we see some erosion of these positions and a desire for mutual cooperation, the divisions are still strong. It is our hope that this dichotomy will cease to exist and that a spirit of mutual need will emerge. We are convinced that the policies explained below can help.

The article is divided into three parts: the first is an expression of concerns and responses to the economy and environmental reform inquiry, the second a commentary on ten policy initiatives that could improve the regulatory environment, the third our thoughts on the long-term implication of these policies.

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### **Responses to the Economy and Environmental Reform Inquiry**

Given the state of the economy and the need to attract jobs and enhance the tax base while maintaining a sense of quality and community character, regulatory concerns are important to all players involved in either generating new or retaining existing businesses. The following four key themes emerge constantly.

- There is a need to improve the speeding of the permitting process. Some in the business community perceive that there are burdensome and unnecessary delays in implementing the review procedure. It should be noted that this is not a plea to weaken existing procedures, but simply to decrease the time required to complete them.
- There is a need for consistency. An expressed opinion maintains that the application of rules and regulations varies extensively among state agencies, regions, and localities.
- There is a need to develop a new mind-set that promotes sustainable development. This mind-set must start at the top of state government, be proactive, and involve several cabinet-level departments. It will take the power of the state to subvert the existing dominant paradigm.
- There is a need to clean up our urban areas first. We can no longer waste the industrial resources in our cities while converting valued open and agricultural lands for other uses. Indeed, our urban areas offer “win-win” opportunities: we can preserve our heritage, provide needed jobs, maximize infrastructure investments, and maintain open space.

Participants were encouraged to discuss and voice their opinions on the role of government within the realm of regulatory reform. When asked how the state’s regulations and regulating process could best support economic development, they most commonly cited the following:

- The need for partnership in an integrated, coordinated process with all players at the table.
- The need for compatibility. Regulations must be meaningful and in context with

development. They must be neither overly harsh nor lenient. They must be risk-based.

- The need for consistency. Regulations must be clear, understandable, and meaningfully measurable.
- The need for predictability. The standards, process, methods of evaluation, and time required in the process must be clearly stipulated and understood.
- The need to privatize and use the regional planning agencies to speed up the regulatory review process.
- The need to review regulations periodically to ensure that they are still meaningful and necessary.
- There is a need to change the image of Massachusetts as an antibusiness state.
- Technical assistance, outreach, and education for the business community, local boards, and commissions, and the regulators themselves, is essential.
- There is a need to define a vision for the types of businesses that are welcome in Massachusetts.

On the role of state government in ensuring economic growth in the context of the Clean Air Act, the responses may be summarized as follows:

- The need for coordinated and integrated actions at the cabinet level.
- There is a need to reduce traffic by creating restrictions for automobiles and incentives for mass transit.
- It is far better to develop inner cities than to build on open land.
- The state must play an oversight role, decentralizing implementation, providing needed information, and ensuring business participation in the creation of regulations.
- The question of open-ended liability concerning hazardous waste must be addressed.

Three key points emerged in a discussion of ways the state government can help to encourage the growth of environmental industries.

- Massachusetts has a decided competitive advantage in the environmental industries, which should be positively exploited.
- We have to build on our strengths and provide state resources to further nurture these companies.



- We must continue to look at new techniques, test them, and provide information on the results to our communities.

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## **Policy Initiatives**

The ten policy initiatives that follow represent a balanced synthesis of the perspectives outlined in the first section. We believe they are important in terms of improving the regulatory environment.

1. It should be the policy of the commonwealth of Massachusetts to ensure that environmental and economic interests are integrated and coordinated at the highest level of government, with maximum regard for the long-term interests of the state.

This recommendation stems from the observation that stovepipe decision making often results in conflicts, delays, and lost opportunities. If, for example, the secretaries of Economic Affairs, Agriculture, the Executive Office of Communities and Development, Environmental Affairs, and Transportation and Construction prepared joint position papers on investments in infrastructure, there is little doubt that inner-city areas would benefit, that areas subject to hazardous waste (21-E) problems<sup>5</sup> would be improved and environmentally sensitive areas and farmland more easily protected. While we are not espousing state control of land use or development decisions, we are declaring that the state must coordinate its “carrots and sticks” to ensure the guarding of our quality of life.

A Hatfield, Massachusetts, case study illustrates our point. When C&S Wholesale Grocers requested permission to build a 335,000-square-foot (approximately 8 acres!) warehouse in the town, it was granted. This rural community is highly dependent upon the fertile Connecticut River Valley for its economic base. By all accounts, the Department of Food and Agriculture (DFA) and the Pioneer Valley Regional Planning Commission have been attempting to maintain a healthy agricultural base in the valley.<sup>6</sup>

Yet this warehouse is being placed right in the center of the state’s most productive agricultural area. Further, and perhaps most important, it is being done through a grant provided by the Executive Office of Communities and Development (EOCD). Who are the winners in this case? Clearly Hatfield will gain tax revenues, its citizens will have new job opportunities, and its farmers will have a new market. On the other hand, while there are suitable vacant sites in surrounding urban areas and greater need for jobs in the cities, a major concern is that the warehouse is likely to attract other similar businesses that will further change the character of the land to nonagricultural uses. In the short term, this decision has clearly benefited the local community; in the long term, it will do little to ensure the enhancement of the quality of our built environment.

Clearly, the decision on issuing the permit to C&S Wholesale Grocers should have been considered jointly by DFA and EOCD only after a careful determination of its long-term impacts. Unfortunately, this did not occur. We are not naive about the problems of policy integration. Different agencies have different constituencies. But there are too many examples like the C&S case to allow flaccid decision making to continue.

2. It should be the policy of the commonwealth of Massachusetts to actively pursue greater private-sector participation in deliberations concerning future regulations.

This should not be perceived as an attack on the state environmental organizations. They have accomplished wonders and contributed immeasurably to our quality of life.

The fact remains that there is a perception (at least) that the business community has been underrepresented, but it must also be noted that many business organizations are involved — small business, big business, defense business, the High Tech Council, the unions, Associated Industries of Massachusetts, and the Environmental Business Council, among others. It is crucial that a much broader degree of private-sector participation be pursued.

For too long, the business community has been left out of the process of environmental policy development. The net result is that the owners are typically distrustful of the environmental movement and frequently resist efforts to protect the quality of the environment.<sup>7</sup> Nowhere could this be better observed than through a review of the Rivers bill, which would impose reasonable restrictions on development within 150 feet of rivers and streams. The governor is a strong supporter of the bill as are all environmental groups. A *Boston Globe* editorial bluntly stated that the bill, after five years of floundering in the legislature, deserved to be passed. Yet the Associated Industries of Massachusetts, the Massachusetts Bankers Association, and the Greater Boston Real Estate Board all have lobbied against the bill. To date they have been successful, as the bill remains tied up in the House Ways and Means Committee.<sup>8</sup>

There is no logical reason why the bill should threaten businesses. If anything, its enactment would add value to property and increase our quality of life. We believe the fear is a knee-jerk reaction and that careful analysis would cause the business community to change its perspective.

It should also be noted that the environmental community is at times just as fixed in its positions as the business community. We have rarely seen the Audubon Society, for example, show any degree of flexibility in its opinions. We have also observed the Conservation Law Foundation's pursuit of what we would consider frivolous court actions designed simply to delay and add cost to a project the group opposes. The point is that the coming together of the environmentalists and the business communities can only help to improve the quality of life of all Massachusetts residents.

3. It should be the policy of the commonwealth of Massachusetts to ensure that all its environmental regulations are necessary, understandable, measurable, predictable, standardized, consistently applied, supported by business communities, and regularly evaluated to ensure that they are meeting their intent.

There have long been overlapping regulations. For example, whenever we deal with the environmental prospects associated with the revitalization of an old mill, we are required to go through processes involving three federal agencies — the Department of Housing and Urban Development, the Environmental Protection Agency, and the Army Corps of Engineers — as well as the state Department of Environmental Protection and the local conservation commission. While each organization has its own charge, there are areas of significant duplication.<sup>9</sup> There is no reason for developers to repeat the same steps again and again.

Control over the resale of sludge is an example of a regulation that the public and business owners don't understand. The standards require sludge to be cleaner than over-the-counter compost, yet the parties removing it cannot sell it. The rationale that it may still be tainted simply doesn't make sense.<sup>10</sup>

The questions of measurability center on the perception that tolerance levels are often set beyond people's ability to measure them. The increased sophistication of scientific measuring instruments has resulted in the ability to determine microscopically



whether negative environmental impacts are occurring on a site. In a very short while, we have made major advances from measuring parts per million to parts per billion and beyond. However, the significance of these measurements is not understood. In short, measurement must define risk understandably.

Concerning predictability, standardization, and consistency, it is important that the rules remain constant, that the same treatment is given to all parties, and that changes do not occur in midstream. Unfortunately, there is a perception that this is not the case. More specifically, there is a belief that local boards of health and conservation commissions have often used their powers to block growth (rather than protect wetlands), provide advantageous rulings to local developers (as opposed to those from elsewhere), and have sliding scales on “orders of conditions” depending on the popularity of a project.<sup>11</sup> Finally, there is a need to gain the support of the business community before a regulation becomes a rule. The opinion of an overwhelming number of businesspeople is that environmental regulations are necessary and important. However, methods of application are a different story.

4. It should be the policy of the commonwealth of Massachusetts to assist, train, and educate the business community in the application of regulatory procedures.

No one denies the need for inspection and, in cases of noncompliance, the application of punitive measures. Overwhelmingly, however, the business community is willing to comply with the letter and spirit of environmental regulations. A concern frequently emerges because businesspeople do not know what is expected of them. Providing technical assistance, training, education, and a constant flow of information can help to eliminate many of these problems.

The key apprehension centers on the role of inspectors and the interpretation of rules. Do inspectors visit factories to find mistakes and punish offenders or to help protect the environment? If we accept the premise that business wants to comply, inspectors' visits should be directed toward helping businesses to comply. Carefully trained, articulate, and knowledgeable inspectors can improve the compliance rates of factories and enhance the environment. In many cases, we are arguing that inspectors should follow the procedures of the army's inspector general: the army informs organizations of what will be inspected, when it will be inspected, and the criteria for meeting the standards. Announcements are made months before planned site visits occur, and the organizations gain assistance from others as they prepare for evaluation. Punishing a company doesn't help anyone; providing knowledge to it helps everyone.

In the interpretation of rules, too often one inspector is overzealous and the next overly lax. It is vital that the standards for evaluation be clear, the methods understood, and the range of personal interpretation narrowed. Only then can business communities gain a clear understanding of what is expected of them.

5. It should be the policy of the commonwealth of Massachusetts to establish risk assessments in dealing with environmental regulations.

There are differences in degree between survival, critical, major, and minor environmental problems, yet many find too little distinction in the actions taken to solve problems. The trite phrase “using a jackhammer to kill a gnat” comes to mind. There are two key issues here. The first is the impact that the phrase “chemically dirty site” has on the development community. If one is trying to revitalize an old mill property and tests reveal even minor contaminants in the soil — or produce even rumors of contaminants

— lenders almost instantly are reluctant to finance the site. One cannot blame them. After all, business owners who feel they cannot make a site work walk away from a project and turn it over to a lender who in turn inherits at least some responsibility for the report. Further, if a potential buyer has the choice between a new clean site or a clean site that was once labeled chemically dirty, our experience has shown that, all things considered, the buyer is inevitably drawn to the new one. The point is that there is a tendency for the public and potential buyers to treat all environmental problems as severe.

The second issue is the fear that changes in measurement and technology will result in a never-ending search for more contaminants. This is the “parts per million/parts per billion” conundrum: a site that is clean at the former level is not at the latter. Should the new technology be applied after an investment has been made, both the community and the owners are harmed. There is a clear need to create a well-understood risk-grading system in which the public can feel confident. If this is established, fears can be at least partially minimized.

6. It should be the policy of the commonwealth of Massachusetts to return its economic assets to a high degree of environmental quality.

A strongly held belief is that hazardous waste regulation 21-E and local zoning regulations, among others, result in abandonment, blight, and urban decay. As previously noted, when the cost of cleanup becomes too high, owners frequently walk away from the property, turning it over to a bank and allowing it to rot. There are millions of square feet of existing mill space in that condition with more being added monthly. Unless attention is given to this problem, our urban economic base will further erode and our businesses will continue to build on green lands. While some reforms have been passed (e.g., 21-J), they are not enough to stimulate recovery or stop disinvestment. More is required.

Moreover, not all old mill buildings should be saved. Few presently meet health, sanitation, flood plain, or building and occupational safety standards. Further, the nature of manufacturing production is increasingly linear. We have been told that the price of a multifloor process production typically adds 25 percent to the cost of a unit produced. Thus, with the need to bring these buildings up to standard and to find companies that can overcome the costs of multifloor operation, one can understand why green-field locations with modern buildings can be so appealing.<sup>12</sup> One can also appreciate the necessity to demolish buildings that are beyond help. As long as they stand, they are symbols of decay and defeat. Once they are removed, some of the acreage can be put back into productive use.

7. It should be the policy of the commonwealth of Massachusetts to ensure that our future growth is accomplished in a concentrated manner and in communities where it is most needed.

There is little support for the indiscriminate spread of business and industry across the Massachusetts landscape. We have substantial industrial, commercial, and service facilities and infrastructure in our built-up areas which, once environmentally revitalized, could meet our growth needs for years to come. Unfortunately, we have chosen to ignore such assets and are allowing them to decay. Vermont’s Act 250 offers one model, at least in part, for our future.<sup>13</sup> There is extensive concern that, if unchecked, green-field development will ruin the uniqueness of the built environment of the commonwealth.



Two critical issues are apparent, the first centering on the state of our inner cities. Increasingly the homes of the poor, the aged, immigrants, minorities, and the less educated, they are less and less able to meet their obligations. At the same time, because jobs follow people, we see increased economic growth in suburban and rural areas. The second issue is that of home-rule. The local government powers Massachusetts grants its communities, among the strongest in the nation, have resulted in the placement of strong economic borders between and among communities. These powers have also created a sense of competition among communities as they search for new companies to expand their tax bases. We regularly find instances of companies' moving from center cities to suburbs, thereby gaining access to government grants. Who wins and who loses under these circumstances? Clearly, the companies and the receiving suburbs are the big winners. Just as clearly, the cities lose vital industrial companies, tax revenues, and employment opportunities. Too often, given the age of most of our urban industrial structures, the space abandoned by a departing company is never again occupied.

8. It should be the policy of the commonwealth of Massachusetts to promote mass transit across the commonwealth via infrastructure development and incentives while discouraging the use of private automobiles.

The extension of the MBTA draws great praise. Similarly, the maturation of regional mass transit systems (e.g., MART and PVTA) are hailed. But more needs to be done, particularly ensuring that rural areas receive increased mass transit assistance.

The extension of mass transit in all areas of the commonwealth makes sense. In fact, the provisions of the Intermodal Surface Transportation and Efficiency Act and the Clean Air Act will require the commonwealth to make even greater efforts toward reducing automobile dependency. Indications are that there will be a dramatic increase in federal funds to the state for transportation improvements. If these funds are spread across the commonwealth, all of us will gain. However, we fear that they will remain in Greater Boston and that the rest of the state will be neglected.

9. It should be the policy of the commonwealth of Massachusetts to encourage the growth of environmental industries through strong incentives.

Ironically, one of the by-products of the commonwealth's strong environmental regulating system has been the creation of an emerging environmental industry. A look at the environmental *Green Book* reveals hundreds of Massachusetts-based companies.<sup>14</sup> In many ways these industries, which are in the forefront of environmental reform, are technologically superior to those in other states and nations. They form what Michael Porter calls an industrial cluster and a competitive advantage to the commonwealth.<sup>15</sup> It is crucial that we capture this advantage and exploit it for economic purposes.

10. It should be the policy of the commonwealth of Massachusetts to continue testing new technologies and procedures that are designed to protect the environment, help industry, and provide alternative development options for communities.

While there is little political support for small-scale package treatment plants or individualized alternatives to septic systems at this time, technological advances continue to be forthcoming. Similarly, there are steady technological advances in detecting hazardous activities. We must continue to promote any and all technologies that could improve our quality of life. It is also important that we test these advances in the field before allowing them to be applied to our communities.

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## Policy Implications and Action

This ten-point plan will neither create an economic panacea in Massachusetts nor totally or quickly correct our environmental problems. It will, however, place us in a position where, over time, our economy and our environment can be sustained.

We began this article with a comment concerning the need to integrate environmental and economic interest at the highest levels of government. If this occurs, it will signal that a new paradigm is in place. Curiously, this first step would not be that difficult or costly. All it would require is the will of the governor! In essence, the shift has to begin with the person at the top, after which the public could begin to shift.

The pervasive power of the executive should also be applied in terms of bringing the private sector into the fold. We remember that the governor's conference with business leaders about how the state can serve them better was a tremendously effective forum. We urge the governor to sponsor a similar conference in which the business community and environmental leaders determine on which areas they can agree quickly and which will take time to resolve. As with the need to employ the top-down powers of the governor to induce public-sector change, there is a need to gain the support of key business leaders. Ignoring them will result in no change.

Perhaps the most far-reaching element is that which urges a focus on existing settlements. It will be costly, time-consuming, and disruptive, yet it is not open to choice. The industrial areas in these settlements will continue to decay unless government undertakes actions. The old television advertisement in which a repairman says "Pay me now or pay me later" comes to mind. Settlements that we regard as special are deserving of protection and revitalization. As long as we allow industry and retail firms to build

in green fields with minimal concern for our settlement pattern, they will. If, on the other hand, we develop a carrot-and-stick system built on the Vermont model, we can indeed make a difference.

Finally, the policy implications of encouraging research into new environment-related technologies will result in a twofold gain for the commonwealth. It will produce a healthier environment for its citizens and reinforce our growing cluster of environmentally oriented firms.

In short, it is clear that we cannot continue business as usual. As long as business is the perceived enemy of environmentalists and environmentalists are perceived as zealots, as long as any community has the power to "beggar" its neighbor, as long as we continue to ignore our brown fields and destroy our green fields, we will have an erosion of our quality of life. We have the technology and means to bring change.

Where do we go from here? We started with the premise that all we require is the collective will, and there is some evidence that it is emerging. For example, there are movements to improve the application of environmental regulations, there are new center city development incentives, and there is increased cooperation between business officials and regulators. There are also new legislative initiatives, such as the proposed planning and development act, which are working their way through the General Court. However, until the barriers between the business community and regulators are removed, progress will be too slow, too incremental, and too muddled to bring about the new paradigm.

For this reason, we argue that a regulatory commission be formed and funded with the intent of developing a three-year legislative agenda. The commission would include



representatives from the Audubon Society, the Associated Industries of Massachusetts, the Massachusetts Chamber of Commerce, the Massachusetts Association of Conservationists, the Conservation Law Foundation, and academia. Its charge would be to identify those areas where agreement can be quickly realized and where the perspectives of the various organization can become known to the legislature. We are not naive about this approach. Top-down, it is removed from the will of the voters and represents rule by interest groups. Nonetheless, we have seen it work tremendously well at the U.S. Department of Defense, where interest groups developed common agreements on defense cuts and informed Congress that common approaches had been developed. Congress was delighted, for it meant that it would not have to "jerry build" a budget to please everyone. This approach can work in Massachusetts. Will it happen? We believe it will, because there is no choice. A new paradigm is necessary. 🐼

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## Notes

1. The conference was cosponsored by the Massachusetts Executive Office of Economic Affairs and the University of Massachusetts, Maurice A. Donahue Institute.
2. Commonwealth of Massachusetts, *Choosing to Compete: A Statewide Strategy for Job Creation and Economic Growth* (Boston: Executive Office of Economic Affairs, 1993).
3. Professor Ken Geiser (University of Massachusetts Lowell) focused his conference keynote address on the need to reconceptualize environmental and economic values and emphasized the need for a new paradigm that would result in sustainable development.
4. Contributing factors in this debate are conflicting economic and environmental goals and objectives. We emphasize the creation of wealth by exploitation and tend to separate product development and waste creation. Denmark and Germany are developing an industrial-ecological linked system in which one company's waste could become another company's raw material.
5. See Massachusetts General Law, *Chapter 21E, Massachusetts Oil and Hazardous Material Release Prevention and Response Act* (Boston: Office of the Secretary of State, 1986).
6. See Pioneer Valley Planning Commission, *The Strategic Plan for the Pioneer Valley* (West Springfield, Mass.: 1991), 10.
7. Although the skepticism about industry of special interest groups is well documented, little of the fears and mistrust of industrialists and developers is addressed to them. These real concerns have to be articulated as well.
8. See "The Damned-up Rivers Bill," *Boston Globe*, July 25, 1994, 10.
9. This point is made in a report prepared by the WestMass Area Development Corporation, *MEPA Maze: The Trial by Ordeal of One Company Working to Prepare Land for Development in the Late Twentieth Century in the Commonwealth of Massachusetts* (Springfield, 1991). Also see Craig L. Moore and Edward Moscovitch, *The New Economic Reality: Massachusetts Prospects for Long-Term Growth* (Boston: Massachusetts Taxpayers Foundation, 1994), 58.
10. New York City ventured on a pilot program to give free sludge to farmers in Colorado to introduce them to the fertilizing qualities of the product.



11. The use of environmental protection as a method to block growth is not a new argument. The powers of the Board of Health are stipulated in Massachusetts General Laws Chapter 41-1,41-2, and 111. Also see Andrew J. W. Scheffey, *Conservation Commissions in Massachusetts* (Washington, D.C.: Conservation Foundation, 1969).
12. See Zenia Kotval and John Mullin, "The Greenfield-Brownfield Debate: A Balanced Approach to Industrial Development," *Economic Development Commentary* 17, no. 2 (Summer 1993): 18-23.
13. Vermont Act 250 says in effect that new development should occur contiguous to existing growth centers, be in keeping with the character of the community, and have no adverse impact on traffic, infrastructure, fiscal capacity, environment, and community character.
14. See Daniel K. Moon, ed., *The Green Book: New England, 1993-1994* (Andover, Mass.: Green Book Inc., 1993).
15. See Michael Porter, *The Competitive Advantage of Massachusetts* (Boston: Office of the Secretary of State, 1991), 124.