



# *The Commonwealth of Massachusetts*

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June 30, 2006

## **DRAFT RECORD OF DECISION**

PROJECT NAME: Urgent Repairs to Byron Weston Mill Dam No. 1  
PROJECT MUNICIPALITY: Dalton  
PROJECT WATERSHED: Housatonic  
EOEA NUMBER: 13804  
PROJECT PROPONENT: Crane and Company, Inc.  
DATE NOTICED IN MONITOR: May 24, 2006

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by permitting agencies.

### Project Description

As outlined in the Expanded Environmental Notification Form (EENF), the project proposes the completion of dam safety repairs to the Byron Weston Mill Dam No. 1 that were initiated in August 2005 but were disrupted by extreme flow conditions in October 2005. The Byron Weston Mill Dam No. 1 is located on the East Branch of the Housatonic River. The dam impounds Center Pond and is located approximately 100 feet downstream of Route 8. The dam is classified as an Intermediate size structure and has a hazard potential classification of Significant (Class II), as per 302 CMR 10.00.

On August 24, 2005, the Department of Conservation and Recreation (DCR) Office of Dam Safety issued a letter determining that the dam was in an unsafe condition, and ordering the proponent to drain the impoundment. During the emergency repairs, a large 2-foot by 2-foot cavity on the downstream east toe of the dam was discovered. The proponent then initiated several emergency actions to stabilize the dam and to limit seepage below and through the dam,

but the work was interrupted by October 2005 rain events.

The Byron Weston Mill Dam No. 1 is no longer considered unsafe, and the Office of Dam Safety does not consider the work required to complete the dam improvements initiated in August 2005 to be of an emergency nature. The remaining repairs are designed to mitigate continued observed seepage below and around the dam, which is causing a potentially hazardous condition.

The proposed dam safety repairs outlined in the EENF include lowering the impoundment; dewatering the area immediately downstream of the dam by means of pumping water out within a sandbag cofferdam; pouring a concrete plug at the downstream toe of the dam in order to encapsulate eroded bedrock at the interface of the dam and the bedrock foundation; repointing the masonry faces of the dam, training walls, and abutments; replacing a section of the west downstream training wall, placing low permeability earth fill along the upstream training wall, and potentially performing additional grouting in order to plug remaining seepage paths through the stone masonry, if necessary. The water level in the impoundment will be restored to its normal pool level once the work is completed.

#### Jurisdiction

The project is subject to the preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(1)(b) of the MEPA regulations because it will result in the alteration of more than ten acres of wetlands (Land Under Water). The project will require a Category 2 permit from the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the Clean Water Act; a Chapter 253 Dam Safety Permit from DCR; a 401 Water Quality Certificate and a Chapter 91 Determination from the Department of Environmental Protection (DEP); review from the Massachusetts Historical Commission; and an Order of Conditions from the Dalton Conservation Commission.

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required or potentially required permits with the potential to cause Damage to the Environment. In this case, MEPA jurisdiction on this project extends to wetlands, waterways and historic resources.

#### Waiver Request

The proponent submitted an Expanded Environmental Notification Form (EENF) for the project with a request for a waiver from the requirement for the preparation of an EIR. The waiver request was discussed at the consultation/scoping session for the project which was held on June 9, 2006.

#### Criteria for Waiver

Section 11.11 of the MEPA Regulations provides that a waiver may be granted upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. In the case of categorically included projects,

this finding shall be based on one or more of the following circumstances: 1) the project is likely to cause no damage to the environment; and 2) ample and unconstrained infrastructure exists to support the project. The terms agreed to as a condition of the waiver will bring about benefits in excess of those that could be achieved in the absence of a waiver.

### Findings

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

1. The proponent has undertaken extensive consultation with the regulatory agencies that require involvement in the project. Representatives from DCR's Office of Dam Safety, the Army Corps of Engineers, the Department of Environmental Protection and the Massachusetts Division of Fisheries and Wildlife met onsite in March of 2006 to discuss the status of the project. In their comments on the EENF, DEP recommends close coordination between federal, state and local agencies on the permitting of the project.
2. All environmental impacts resulting from the project will be temporary in nature. As the project involves repairs to an existing structure, there are ample and unconstrained infrastructure facilities and services to support the project.
3. DEP has determined that the project does not require a Chapter 91 Waterways License because the impacts associated with the repair work at the dam below the High Water Mark of the non-tidal Housatonic River are necessary for the benefit of public safety and to ensure that the standards at 310 CMR 9.35 and 9.36 are preserved in the future. In accordance with 310 CMR 9.05(3)(f), DEP has found that the work is associated with the continuation of an existing unauthorized structure constructed prior to 1939 on a non-tidal river. Therefore, the work does not require a license.
4. The proponent submitted a comprehensive alternatives analysis with the EENF demonstrating that the proposed method of drawing down the pond is the least environmentally damaging practicable alternative. The preferred alternative consists of dewatering Center Pond by allowing all water currently in the Pond to flow into a 30-inch diameter penstock and into a sump located just upstream of the dam. The alternatives analysis was developed in consultation with permitting agencies and to comply with the Water Quality Certificate regulations at 314 CMR 9.06(1).
5. The Byron Weston Paper Mill (Centennial Paper Mill) is included in MHC's Inventory of Historic Assets of the Commonwealth. The Massachusetts Historical Commission has determined that the proposed project will have "no adverse effect" (36 CFR 800.5(b) and 950 CMR 71.07(2)(b)(2)) on historic properties. The Stockbridge-Munsee Tribal Historic Preservation Office has stated that it will defer to the State Archaeologist on the review of the project.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I propose to grant the waiver requested for the

Byron Weston Mill Dam No. 1 project, subject to the above findings. This Draft Record of Decision (DROD) shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

June 30, 2006

Date

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Stephen R. Pritchard

Comments received:

6/15/2006 Department of Environmental Protection, Western Regional Office

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