Massachusetts Environmental and Land Use Alert

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Massachusetts Office
15 Walnut Street
Suite 400
Wellesley, MA 02481
(781) 416-5700

Authors

Marc J. Goldstein
mgoldstein@bdlaw.com

Jeanine L.G. Grachuk
jgrachuk@bdlaw.com

Aladdine D. Joroff
ajoroff@bdlaw.com

Brian C. Levey
blevey@bdlaw.com

Corinna T. McMackin
cmcmackin@bdlaw.com

Stephen M. Richmond
srichmond@bdlaw.com

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Massachusetts Environmental Developments

Special Coverage of MassDEP Regulatory Reforms

MassDEP Proposes Site Cleanup Program Regulatory Changes under Regulatory Reform Initiative

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Comprehensive Permit Decisions from Massachusetts Top Court Side with Developers

After a deciding a paucity of cases under the Anti-Snob Zoning Act, M.G.L. c. 40B, §§ 20-23, the Massachusetts Supreme Judicial Court handed down two cases within one week reaffirming the broad authority of local boards of appeal and the Housing Appeals Committee to issue Comprehensive Permits authorizing affordable housing projects. *(full article)*

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The Massachusetts Department of Housing and Community Development (DHCD) offered an additional incentive to municipalities similar to Chapter 40R, to adopt zoning districts promoting housing for working families of all incomes called the “Compact Neighborhoods Policy.” *(full article)*

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The U.S. Environmental Protection Agency determined in December 2012 that certain inputs to emission equations under eight subparts of 40 CFR Part 98, the greenhouse gas reporting

program, will not for now be treated as confidential business information. *(full article)*

EPA Issues Revised Enforcement Guidance Regarding Use of the Bona Fide Prospective Purchaser Defense by Tenants and Model Comfort Letters for Lessees with Renewable Energy Developments

In December 2012, the United States Environmental Protection Agency ("EPA") issued revised enforcement guidance regarding the ability of tenants who lease contaminated or formerly contaminated properties to utilize the Bona Fide Prospective Purchaser defense against liability under the Comprehensive Environmental Response, Compensation, and Liability Act. *(full article)*

EPA Proposes to Require 36 States to Revise Startup, Shutdown, and Malfunction Air Emission Provisions in State Implementation Plans

On February 22, 2013, the U.S. Environmental Protection Agency (EPA) published a proposed rule that requires 36 states to revise startup, shutdown, and malfunction (SSM) provisions in their State Implementation Plans (SIPs). *(full article)*

States Propose to Regulate Chemicals While Congress Debates TSCA

In the absence of legislation overhauling the federal Toxic Substances Control Act, 19 states have introduced bills in 2013 to regulate chemical exposures, primarily in consumer products. It is unclear which, if any, will become law. Nevertheless, these 41 bills show that states consider themselves full partners with Congress in addressing chemicals management issues. *(full article)*

TSCA Implementation at EPA: Looking Ahead

Following the reelection of President Obama and the departure of Administrator Lisa Jackson, the Environmental Protection Agency will continue to aggressively implement its Enhanced Chemicals Management Program under the Toxic Substances Control Act (TSCA). While EPA will be able to continue and build on its recent policies, there will also certainly be opportunities to rethink and refine certain policy elements going forward. *(full article)*

EPA Releases State Enforcement Dashboards and Comparative Maps

On February 7, 2013, EPA released new interactive tools which are intended to provide enforcement performance data and comparative maps through its Enforcement and Compliance History Online (ECHO) service. *(full article)*

Firm News and Events

Former EPA General Counsel Scott Fulton to Join Beveridge & Diamond, P.C.

Scott Fulton, the former General Counsel of the U.S. Environmental Protection Agency (EPA), will join Beveridge & Diamond, P.C. as a Principal in the Firm's Washington, DC office, effective March 25, 2013. *(full article)*

Members of Beveridge & Diamond's Massachusetts Office Receive "Super Lawyers" Recognition

Five members of Beveridge & Diamond's Massachusetts office have been recognized by the Super Lawyers rating service as being among the top lawyers in their areas of practice in Massachusetts. *(full article)*

Marc J. Goldstein Named Managing Shareholder of Beveridge & Diamond's Massachusetts Office

Beveridge & Diamond recently named Marc J. Goldstein as the Managing Shareholder of its Massachusetts Office. *(full article)*

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Massachusetts Environmental Developments

Special Coverage of MassDEP Regulatory Reforms

MassDEP Proposes Site Cleanup Program Regulatory Changes under Regulatory Reform Initiative

The Massachusetts Department of Environmental Protection ("MassDEP") issued proposed changes to its site cleanup program pursuant to M.G.L. c. 21E on February 28, 2013. These proposed regulatory changes are part of an extensive review by MassDEP of its regulations and programs in an effort to improve its efficiency, which have also included proposed changes to asbestos abatement and solid waste, which are covered in other e-alert articles in this issue. The proposed revised regulations at 310 CMR 40.0000 are available at http://www.mass.gov/dep/service/regulations/newregs.htm#proposed. The public comment period runs May 17, 2013. Public hearings have been scheduled throughout the state during early April 2013.

The Massachusetts site cleanup program is a privatized program, which means that private consultants, known as Licensed Site Professionals, make site cleanup decisions under the timelines and criteria identified in the regulations, subject to MassDEP audit and enforcement authority. Highlights of the changes to these proposed regulations are detailed below.

Vapor Intrusion and Site Closure changes

Vapor intrusion occurs when soil or groundwater contaminants migrate into indoor air of an overlying building. Over the last several years, MassDEP has conducted an extensive evaluation of assessment, remediation, and site closure issues at vapor intrusion sites. MassDEP has expressed concern regarding exposures to humans in such buildings, and in December 2011 issued "interim final" guidance explaining its views on how to approach assessment and remediation of such sites. Many questions have arisen over how to achieve closure at these sites. This regulatory proposal is intended to address these issues.

The proposal would eliminate one type of temporary site closure, now known as a Class C-2 RAO. In addition, the terminology for all site closures has changed from Response Action Outcomes of various classes to Permanent Solutions with No Conditions, Permanent Solutions with Conditions, and Temporary Solutions.

A Permanent Solution with Conditions would include closures where a deed restriction is necessary, known in Massachusetts as Activity and Use Limitations (AUL). This will enable vapor intrusion sites to be closed with an AUL if they meet the existing requirements for site closure except that an active exposure pathway elimination measure must continue to be operated after closure. For these vapor intrusion sites, in addition to the AUL, a permit will be required so that MassDEP will continue to have oversight of the continued operation of the active exposure pathway elimination measure.

In addition, a Permanent Solution with Conditions would be used when information in the closure report must be taken into account to ensure future uses are protective. MassDEP stated that it expects this will be used in four circumstances: (i) elevated contamination under a roadway; (ii) anthropogenic background/historic fill; (iii) residential gardens; and (iv) residual contamination in groundwater at undeveloped sites remains that may pose a risk of vapor intrusion into future buildings.

Non-aqueous Phase Liquid

Many sites in Massachusetts that are impacted by non-aqueous phase liquid (NAPL) cannot reach site closure because the upper concentration limit is exceeded at those sites. Based on an updated scientific understanding, MassDEP is proposing to reform its approach by removing the upper concentration limit for NAPL of one-half inch,

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simplifying the reporting requirements but also reducing the threshold for reporting from one-half to one-eighth inch and adding specific requirements for assessing sites with NAPL. In addition, the proposal would allow for closure of sites with "stable" NAPL with an AUL, but would not allow closure of sites with "non-stable" NAPL.

Sustainability

The proposal would require all response actions to reduce, "to the extent practicable, non-renewable energy use, air pollutants, greenhouse gas emissions, and ecosystem and water resources impacts … through materials management, waste reduction, land management, ecosystem protection, and renewable energy use." This would be a new, substantive requirement applicable to all response actions.

Deed Restrictions (AULs)

Deed restrictions known as AULs are real estate documents that limit the types of activities that can occur on a property into the future and can be used to limit the amount of cleanup necessary to reach site closure. The proposed changes would simplify the AUL submittal and eliminate duplication. In addition, the changes would require submittal of information to MassDEP upon a future transfer of the real estate confirming that the AUL was incorporated into the deed.

Deadline Changes

In recognition of the fact that some sites require multiple sampling rounds to evaluate temporal variability, the proposed changes would increase the time to complete the comprehensive site assessment (Phase II Report) from two years to three years. In addition, the time to complete the remedial action plan (Phase III Report) would increase from two years to four years.

Reporting and Risk Assessment

MassDEP is proposing to clarify which sources (e.g., EPA) of toxicity information are preferred in determining risk at a site. In addition, MassDEP is proposing changes to several reporting and cleanup standards.

Permit Tier Classification and Numerical Ranking System Changes

Under the current program, sites that are not fully remediated within one year are ranked to identify the sites that pose a higher level of potential risk to receptors and warrant additional MassDEP attention. The highest ranked sites are considered Tier I and require a permit. MassDEP proposes to simply the ranking criteria by replacing it with a "Tier I Criteria" worksheet and eliminating the permit requirement. Under the revision, sites that have an immediate response action in process at the time of tier classification will be more likely to be classified as Tier I.

For further information on these regulatory changes, site cleanup, or MassDEP, please contact Jeanine Grachuk at jgrachuk@bdlaw.com.

MassDEP Proposes Changes to Solid Waste Regulations

The Massachusetts Department of Environmental Protection ("MassDEP") issued proposed regulatory changes to its solid waste program as part of an extensive review by MassDEP of its regulations and programs in an effort to improve its efficiency. These regulatory changes have also included proposed changes to asbestos abatement and waste site cleanup, which are covered in other e-alert articles in this issue. The proposed revised regulations at 310 CMR 19.000 are available at http://www.mass.gov/dep/service/regulations/newregs.htm#swdreg.

In addition to streamlining MassDEP workloads, the solid waste changes under consideration by MassDEP may substantially increase regulatory burdens borne by the regulated community. This office has been involved with the regulated community in

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evaluating and responding to these proposals.

MassDEP's proposed solid waste amendments seek to change the construction and operating rules for solid waste facilities, 310 CMR 19.000, in three primary ways, by: (i) changing MassDEP permitting for solid waste transfer stations, the regulation of certain post-closure uses at closed landfills, and the management of Special Wastes; (ii) standardizing and dramatically expanding the use of third-party inspectors and the scope and frequency of inspections at solid waste management facilities; and (iii) standardizing certain other program requirements that have historically been dealt with in facility permits.

If finalized as proposed, the amendments will affect the nearly three hundred (300) solid waste management facilities across Massachusetts, and MassDEP predicts they will eliminate approximately 20 percent of the permit applications MassDEP receives regarding solid waste management.

The more significant changes proposed by MassDEP include the following:

1. Streamlining the permitting of transfer stations, except construction and demolition waste transfer stations. Specifically:
    a. Eliminate the current requirement to obtain an Authorization to Operate;
    b. Require comprehensive compliance certifications by responsible officers (i) following adoption of the new rules, (ii) 30 days in advance of beginning operation of new facilities, (iii) upon modification of facilities without permit changes, (iv) every five years, and (v) before facility transfers;
    c. Allow any small transfer station to increase its daily tonnage receipts up to 50 tons per day without requiring a permit modification; and
    d. Allow any larger transfer station to increase its daily tonnage receipts up to 25 percent without requiring a permit modification.
2. Creating a new "presumptive approval" process, which would allow many different types of changes to facilities without formal permit modifications. Under this process, a facility operator would submit notice of an intended change and the change would be presumptively approved if MassDEP did not prohibit it within 45 days. Such changes could include:
    a. Allowing several types of post-closure uses of landfills;
    b. Allowing the management of Special Wastes; and
    c. Allowing changes to design, equipment, and operational procedures.
3. Standardizing and dramatically expanding the use of third-party inspections at solid waste management facilities by:
    a. Imposing significantly increased requirements for many facilities to conduct third-party operation and maintenance inspections based on type and size of facility, including a truly remarkable increase in the scope and stringency of inspections;
    b. Requiring significantly increased requirements for third-party waste ban compliance inspections at landfills, transfer stations, and all other types of solid waste facilities based on type and size of facility; and
    c. Creating a new process for MassDEP to qualify third-party inspectors in advance of their use on inspections and requirements for direct reporting by inspectors to MassDEP on a range of issues.
4. Establishing a general performance standard for sampling and analysis and standardizing the report format for landfill environmental monitoring reports.
5. Substantially increasing MassDEP's authority to obtain access to and information

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about solid waste facilities and other properties where solid waste has come to be located. MassDEP also proposes some limited procedural protections for the owner and operator of property in the event that they may become subject to a Department demand for entry.

6. Nearly eliminating MassDEP's Special Waste program, by reducing program requirements to the three current listed Special Wastes and effectively deregulating non-listed Special Wastes.

7. Creating new and increased requirements for deed notices of landfill operations, including a proposal to extend notice obligations to many new circumstances not currently required by law.

Although several of MassDEP's proposed amendments are viewed by the regulated community as either necessary adjustments to accommodate reduced MassDEP resources and funding, many other of the proposals are viewed as significantly adding to regulatory burdens and imposing many new and costly requirements that are not commensurate with the reductions in MassDEP resource commitments. These include concerns regarding the proposed frequency, scope and breadth of third-party inspections, differentiation between construction and demolition waste and other waste materials, requirements for transfer station expansions, and changes involving Special Wastes.

The public comment period for these proposed rules initially ran through February 8, 2013, but at the request of the regulated community it was extended to February 25. MassDEP is now involved in reviewing and responding to the comments that were received during the public comment period.

MassDEP's proposed reforms are expected in the future to include changes in other areas, such as Chapter 91, wastewater, and wetlands. We will provide updates as these developments occur.

For further information on the proposed revisions to the Massachusetts solid waste program, please contact Steve Richmond at srichmond@bdlaw.com, Jeanine Grachuk at jgrachuk@bdlaw.com, or Corinna McMackin at cmcmackin@bdlaw.com.

Asbestos Abatement Regulatory Changes Proposed by MassDEP

The Massachusetts Department of Environmental Protection ("MassDEP") proposed changes to the regulations governing asbestos abatement at 310 CMR 7.15 as part of its ongoing review of its regulations and programs in an effort to improve its efficiency. These regulatory changes have also included proposed changes to solid waste and waste site cleanup rules, which are covered in other e-alert articles in this issue. The proposed regulations are available at: http://www.mass.gov/dep/service/regulations/newregs.htm#swdreg.

The asbestos abatement program has a broad reach. According to the background materials to the proposed rules, in fiscal year 2011 alone, approximately 16,000 notifications of asbestos abatement projects were submitted by more than 170 different asbestos contractors, and more than 100 enforcement actions were completed for violations of the asbestos regulations.

Specifically, MassDEP proposes to revise it air regulations pertaining to asbestos abatement found at 310 CMR 7.15 by implementing the following changes:

1. Add an explicit requirement that a thorough survey be conducted to identify asbestos prior to a renovation or demolition project, consistent with the federal rule;
2. Add an explicit requirement that asbestos waste shipment records be used, consistent with the federal rule;
3. Eliminate the requirement that owner-occupied single-family homeowners

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submit a 10-day notice prior to conducting abatement; all other requirements continue to apply;

4. Align specific work practice requirements for certain non-friable asbestos containing materials with existing state Department of Labor Standards regulations;
5. Create work-practice requirements for small-scale operation and maintenance projects on flooring products and gypsum wallboard/joint compound systems without notification; and
6. Allow for alternative work practices where appropriate (e.g., fire-damaged buildings), with approval.

The public comment period for these proposed rules ended February 25, 2013.

For further information on these regulatory changes, please contact Jeanine Grachuk at jgrachuk@bdlaw.com.

Massachusetts Land Use Developments

Comprehensive Permit Decisions from Massachusetts Top Court Side with Developers

After a deciding a paucity of cases under the Anti-Snob Zoning Act, M.G.L. c. 40B, §§ 20-23, the Massachusetts Supreme Judicial Court handed down two cases within one week reaffirming the broad authority of local boards of appeal and the Housing Appeals Committee to issue Comprehensive Permits authorizing affordable housing projects.

In *Zoning Board of Appeals of Lunenberg v. Housing Appeals Committee*, SJC-11102 (January 8, 2013), the Court struck down a local zoning board's multi-pronged attack on the Housing Appeals Committee's (HAC) decision to reverse the local board and require it to issue a Comprehensive Permit to Hollis Hills, LLC to build a 146-unit condominium project. Significantly, the Court rejected the local board's contention that the HAC erred in failing to consider the availability of low-cost, market-rate, unsubsidized housing in the town in weighing the regional need for housing need. The board's argument failed because it conflicted with the very terms of the Chapter 40B, § 20, that "[l]ow or moderate income housing" means "any housing *subsidized by the federal or state government under any program*…." (emphasis added). The plain text of the statute required the HAC, in weighing the housing need, to exclude any affordable housing that was not subsidized under a qualifying government-sponsored program.

The Court also rejected the board's argument that the Town's master or comprehensive plan outweighed the regional need for affordable housing. While the HAC found that the master plan was legitimately adopted, continued to function as a viable planning tool, promoted affordable housing, and was implemented in the area of the site, the HAC rejected the notion that the plan outweighed the regional housing need. In reviewing the local plan, the Court found that it had yielded no affordable units in nearly four years and had not identified the site for a particular use inconsistent with the project. To the contrary, the project was located adjacent to one of the sites that the local plan earmarked for affordable housing but was later approved for use as a self-storage facility.

Finally, the Court held that the HAC had the authority to waive any zoning violations or violations of a planning board's prior approval related to one of the parcels making up the project site for the 40B project. The so-called Electric Avenue parcel, which provided Hollis Hills with access to the public sewer, contained a portion of a building straddling the common boundary between the project site and adjoining landowner's property. This condition was previously approved by the planning board when the Electric Avenue parcel and adjacent land were in common ownership. The Court found that notwithstanding the sale of the Electric Avenue parcel to Hollis Hills, the HAC, with its power over zoning and planning considerations, had the authority to waive the

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violation of both the zoning setback and the terms of the planning board's permit. These local concerns were insufficient to outweigh the regional need for affordable housing.

Less than one week later, the Court handed down another decision rejecting multiple challenges by a local zoning board to another HAC order requiring the issuance of Comprehensive Permit for a 150-unit rental project under Chapter 40B. In Zoning Board of Appeals of Sunderland v. Sugarbush Meadow, LLC, SJC–11100 (January 14, 2013), the Court again rejected the contention that the availability of low-cost, market-rate, unsubsidized housing in the town should be considered in weighing the town's local concerns against the housing need. The Town's expert had testified that the Town has "one of the highest percentages of rental housing" in the Commonwealth, that "83% of all existing rental housing units in Sunderland are being rented at affordable rents, even though they may not be subsidized," and that 46 percent of the Town's housing stock is rented at prices considered "affordable" by the Commonwealth. Nonetheless, the Court held to the rule that the plain text of the statute required the HAC to exclude from consideration any affordable housing that is not subsidized under a qualifying government-sponsored program.

In a related ruling, the Court also upheld the HAC's determination that the pertinent "region" by which to measure the regional need for low and moderate income housing included the Town of Sunderland and five nearby towns rather than the 55 municipalities within a 20-mile radius of the Town as proposed by the board. Such a definition would have included the cities of Springfield, Northampton, Holyoke, and Chicopee within the region. The Court found it was within the HAC's discretion to find that the region should not be measured by a radius but by a generally accepted standard applied by affordable housing market analysts.

Second, the Court upheld the HAC's determination that the board failed to meet its burden of establishing that the fire safety concern outweighs the regional need for low and moderate income housing. The Court found that the HAC reasonably concluded that the additional risk to occupants and firefighters created by the inability of firefighters to gain direct access to the roof of the buildings with the ladders possessed by the town's fire department was minimal in light of the advanced sprinkler system to be installed in the buildings and the likelihood that a ladder truck would be made available through mutual aid from an adjoining town. Furthermore, it was reasonable for the HAC to be skeptical of the fire chief's testimony that a building would be unsafe if its roof can only be reached with a ladder truck where the town's zoning bylaw allowed a building height of 45 feet by special permit. Significantly, the Court held that, "A fire chief does not have unbridled discretion effectively to deny a comprehensive permit by refusing to approve fire construction documents based on the height of a proposed building and the absence of a town ladder truck [; rather,…] the board in reviewing such application has the 'same power to issue…approvals' as the fire chief."

Third, where alleged adverse fiscal impacts on the town were based on the inadequacy of existing municipal services or infrastructure and those impacts were not the result of unusual topographical, environmental, or other physical circumstances of the project as required under the provisions of the Code of Massachusetts Regulations (CMR) governing 40B permits, the Court found that the HAC correctly determined that such impact may not be weighed in the "consistent with local needs" balancing test. The Town had offered testimony that the project would make it "necessary" to hire two additional police officers and two additional firemen/emergency medical technicians and would likely increase the town's school age population by more than 50 children, all of which would result in expenses far in excess of the project's expected tax revenue. Under the 760 CMR 56.00, however, such fiscal impacts "may be considered only where there is evidence of unusual topographical, environmental, or other physical circumstances which make the installation of the needed service prohibitively costly." Here, the board made no such showing and its fiscal impact concern was properly rejected.

Finally, developer challenged the board's $10,000 legal fee assessed as a filing fee. The CMR provides that, "Legal fees for general representation of the Board or

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other Local Boards shall not be imposed on the Applicant." The HAC found that the $10,000 legal fee assessed here was "a fee for general legal representation that is prohibited under our regulations and precedents." The HAC has made clear that, in appropriate circumstances, where an attorney's specialized legal expertise is needed to review technical aspects of a proposal, such as title questions, a board may assess the legal fee as a consultant's fee. Here, however, the legal fee was for general legal representation by the board's special counsel who attended all the local hearings and represented the board in the appeal to the HAC. The board may not evade the regulatory prohibition against burdening the applicant with legal fees for general representation simply by characterizing that fee as a filing fee.

For more information about these cases or Comprehensive Permits under Chapter 40B, contact Brian C. Levey at blevey@bdlaw.com or Marc J. Goldstein at mgoldstein@bdlaw.com.

Massachusetts Introduces Compact Neighborhoods Policy

The Massachusetts Department of Housing and Community Development (DHCD) offered an additional incentive to municipalities similar to Chapter 40R, to adopt zoning districts promoting housing for working families of all incomes called the "Compact Neighborhoods Policy."

To participate in this program effective November 14, 2012, a municipality must, among other things, adopt Compact Neighborhood Zoning that allows, as-of-right, at least eight units per acre for multi-family residential use (two-family or more) or at least four units per acre for single-family residential use. Not less than 10 percent of all units constructed within a particular project of more than 12 units must be affordable. Zoning ordinances should create districts that meet the definition of "Smart Growth" in the Chapter 40R regulations with regard to the location and density of the project as well as an emphasis on mixed uses and sustainability principles.

If DHCD certifies that the municipality has created a "Compact Neighborhood," this certification also can be used by the municipality when it applies for discretionary funding by state agency programs that have included a preference for adoption of a Compact Neighborhood such as the MassWorks infrastructure program. DHCD also has expanded its Priority Development Fund (PDF) criteria to include financial assistance to communities in adopting Compact Neighborhood Zoning.

This initiative will be managed by DHCD's Smart Growth Coordinator in the Office of Sustainable Communities.

For more information about the Compact Neighborhoods Policy, contact Brian C. Levey at blevey@bdlaw.com.

National Developments

Greenhouse Gas Reporting Obligations for Several Sectors Impacted by EPA's Revocation of Confidential Business Information Protection for Specified Part 98 Data

The U.S. Environmental Protection Agency ("EPA") determined in December 2012 that certain inputs to emission equations under eight subparts of 40 CFR Part 98, the greenhouse gas reporting program, will not for now be treated as confidential business information ("CBI"). This input information had previously been subject to a temporary deferral while EPA evaluated the many confidentiality concerns that had been raised by industry. Going forward, EPA's determination indicates that this information must be included in Part 98 reports, and that it will be available for public review. In addition, as EPA's decision ends the deferral that had previously been in effect, companies must submit the relevant input data for reporting years 2010, 2011 and 2012 to EPA by April 1, 2013.

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At the heart of EPA's decision is the provision in Section 114(c) of the Clean Air Act ("CAA") which excludes "emission data" from CBI protection. EPA contends that the data inputs to various Part 98 emission equations fall within the umbrella of "emissions data" and there cannot be withheld from public review on the grounds that it is confidential business information.

Although CBI determinations under the CAA are usually made on a case-specific basis, EPA has elected to make Part 98 determinations on a sector-wide basis in light of the large number of entities and the large amount of information that falls within the scope of Part 98. While EPA's decision to end the deferral for the eight subparts precludes an automatic protection of the input data as CBI, companies can still assert that their information constitutes CBI. In such an event, EPA has indicated in guidance that it will wait until a request for the data is made under the Freedom of Information Act and will then have to decide, on a case-by-case basis, whether the data should be released.

EPA previously deferred the deadlines applicable to certain sectors for reporting input data for emission equations to March 2013 and March 2015 in order to provide the agency time to evaluate the application of confidentiality to such data. In December 2012, EPA found that, for each of the data elements for which reporting was deferred until 2013, some of that information was clearly not emission data, and was either already publicly available or not the type of data that would allow competitors to gain a competitive advantage if publicly released. As such, EPA determined that it would not treat this information as CBI. While EPA has formerly utilized rulemakings to determine which categories of data elements can be protected as CBI, the current determinations were made via a memorandum, which limits opportunities to formally appeal the decisions.

The evaluations and conclusions in EPA's December 2012 memorandum apply to the following Part 98 Subparts; also noted below are the number of affected inputs to emission equations data elements:

- Subpart C - General Stationary Fuel Combustion Sources: Nine data elements, with reporting of the remaining inputs in Subpart C deferred until 2015. .
- Subpart D, Electricity Generation - Several of the Subpart C deferred reporting requirements must also be reported by facilities subject to Subpart D, Electricity Generation.
- Subpart DD – Electrical Transmission and Distribution Equipment: 11 data elements.
- Subpart FF - Underground Coal Mines: 14 data elements.
- Subpart HH - Municipal Solid Waste Landfills: 25 data elements.
- Subpart II - Industrial Wastewater Treatment: 11 data elements, with reporting of five other data elements deferred until 2015.
- Subpart SS - Electrical Equipment Manufacture or Refurbishment: 17 data elements.
- Subpart TT - Industrial Waste Landfills: 13 data elements, with reporting for four other data elements deferred until 2015.

The requirement to report these data elements does not create new recordkeeping obligations, but covered facilities must remember to report relevant information from prior years. A copy of EPA's memorandum, titled "Summary of Evaluation of Greenhouse Gas Reporting Program (GHGRP) Part 98 'Inputs to Emission Equations' Data Elements Deferred Until 2013," is available at http://www.epa.gov/climate/ghgreporting/documents/pdf/2012/documents/2013-inputs-memo.pdf.

For further information, please contact Aladdine Joroff at ajoroff@bdlaw.com or Stephen Richmond at srichmond@bdlaw.com.

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EPA Issues Revised Enforcement Guidance Regarding Use of the Bona Fide Prospective Purchaser Defense by Tenants and Model Comfort Letters for Lessees with Renewable Energy Developments

In December 2012, the United States Environmental Protection Agency ("EPA") issued revised enforcement guidance regarding the ability of tenants who lease contaminated or formerly contaminated properties to utilize the Bona Fide Prospective Purchaser ("BFPP") defense against liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Although the guidance applies across all industries, the impetus for issuing the document stemmed from renewable energy initiatives such as EPA's RE-Powering America's Land Initiative, which promotes siting renewable energy on potentially contaminated land and mine sites. EPA intends to exercise its enforcement discretion, on a site-specific basis, to treat certain tenants as BFPPs even when owners do not qualify for or maintain a BFPP status. The revised guidance outlines steps that lessees must take to be eligible for such consideration.

Liability under CERCLA, including for owners and operators of a contaminated property, is "strict," meaning there is no requirement that a claimant show negligence or other improper actions by the responsible party, and "joint and several," meaning any responsible party might be held solely liable for the full cleanup costs even if there are several responsible parties.

While not all leases trigger CERCLA liability, tenants could become responsible for pre-existing on-site contamination either by: (i) controlling the property to such an extent that they are considered "de facto" owners; or (ii) exercising a level of control over operations related to pollution so as to be considered an "operator" for CERCLA purposes. Because of this potential liability, some tenants may seek to qualify for the BFPP defense.

The BFPP protection from CERCLA liability is a self-implementing liability protection for parties who own or acquire contaminated property but did not cause or contribute to the contamination and who meet specified pre- and post-acquisition requirements. The CERCLA definition of a BFPP limits the defense to people, or tenants of people, that acquire ownership of a facility after January 11, 2002.

As outlined in EPA's guidance, tenants can "derive" BFPP status from owners who qualify as BFPPs. This derivative BFPP status continues as long as the property owner maintains compliance with the BFPP criteria and the tenant does not impede the performance of a response action or natural resource restoration. Although a tenant may lose its BFPP status if the owner ceases to qualify as a BFPP, EPA may, under its revised enforcement discretion policy, treat the tenant as a BFPP provided that all of the following conditions are satisfied:

- All disposal of hazardous waste substances at the facility occurred prior to the execution of the lease;
- The tenant provides legally required notices;
- The tenant takes reasonable steps with respect to hazardous substance releases;
- The tenant provides cooperation, assistance, and access;
- The tenant complies with land use restrictions and institutional controls;
- The tenant complies with information requests and administrative subpoenas;
- The tenant is not potentially liable for response costs at the facility or "affiliated" with any such person (other than through the lease with the owner); and
- The tenant does not impede any response action or natural resource restoration.

Importantly, a tenant who has held derivative BFPP status does not need to have performed "All Appropriate Inquiry" ("AAI"), i.e., the level of due diligence necessary to make use of statutory defenses to CERCLA liability. At a minimum, AAI includes the performance of a Phase I Environmental Site Assessment, which may extend the period

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of time needed between identifying a suitable property and executing a lease.

Tenants that meet the criteria listed above may be treated by EPA as BFPPs, regardless of whether the owner ever qualified as a BFPP, provided that they also: (i) conduct AAI prior to executing a lease; and (ii) execute the lease after January 11, 2002. This potential protection creates an incentive for prospective tenants to conduct AAI prior to executing a lease if they know that an owner is not a BFPP or are unsure whether an owner qualifies as a BFPP. Conducting AAI at the time of a lease may be more time and cost effective than investigating the status of a current owner.

EPA has reserved the right to forego exercising its enforcement discretion for tenants seeking to use the BFPP defense if, for instance:

- A lease is designed to allow a landlord or tenant to avoid its CERCLA liability;
- A tenant is potentially liable for reasons other than its status as a tenant (e.g., it arranged for disposal of hazardous substances at the facility); or
- An owner is not in compliance with state or federal regulatory requirements or administrative or judicial cleanup orders or decrees relating to the leased property.

EPA generally will not participate in site-specific determinations of BFPP status or application of its enforcement discretion guidance. In limited circumstances, however, EPA may issue a comfort/status letter to a tenant. EPA issued three model comfort/status letters for lessees involved in renewable energy developments on contaminated properties. Although the letters are designed for a specific type of project, it is possible, given the broader applicability of the guidance, that EPA could revise the letters for use with tenants engaged in other activities.

A copy of EPA's guidance, titled "Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision," is available at http://www.epa.gov/enforcement/cleanup/documents/policies/superfund/tenants-bfpp-2012.pdf. Please contact Pamela Marks, pmarks@bdlaw.com, or Aladdine Joroff, ajoroff@bdlaw.com for further information.

EPA Proposes to Require 36 States to Revise Startup, Shutdown, and Malfunction Air Emission Provisions in State Implementation Plans

On February 22, 2013, the U.S. Environmental Protection Agency (EPA) published a proposed rule that requires 36 states to revise startup, shutdown, and malfunction (SSM) provisions in their State Implementation Plans (SIPs). The proposed rule responds to a rulemaking petition filed by the Sierra Club. The petition claims that previously approved SIP provisions are inconsistent with the Clean Air Act because they include emission limit exemptions during periods of SSM. If this proposal becomes final, the SSM protections that may facilities are relying on for excess emissions during times of startup, shutdown and malfunction may no longer be available.

In response to the petition, EPA proposes to grant in part the Petitioner's claim and find that 36 states have approved SIPs that include SSM provisions that do not meet the requirements of the Clean Air Act. EPA must make this "inadequacy" finding before requiring a state to revise and resubmit its SIP. EPA proposes to issue a SIP Call that would require the 36 states to correct and submit revised SSM SIP provisions no later than 18 months after EPA makes its final findings of inadequacy. A SIP Call would be issued for the District of Columbia and the following states: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia and Wyoming. Some local jurisdictions within Arizona, Kentucky, Nebraska, North Carolina and Tennessee are also impacted.

In addition, EPA is denying several parts of the petition. EPA proposes to deny the

petition's request to prohibit affirmative defenses to SSM violations in SIPs. EPA proposes to revise its previous policy to continue to allow affirmative defenses in SIPs for excess emissions that occur when a facility is experiencing a malfunction but not for excess emissions that occur during a planned startup or shutdown. EPA also proposes to deny the request in the petition that EPA discontinue reliance on interpretive letters from states to clarify any potential ambiguity regarding a state's SSM provision. EPA proposed that it may rely on adequate explanations from the state to determine that the SSM provision is sufficiently clear and complies with applicable Clean Air Act and regulatory requirements.

EPA will accept comments on this proposed rule until March 25, 2013.

If you would like to discuss EPA's proposed rule or if you have any questions about the regulation of SSM emissions, please contact David M. Friedland at dfriedland@bdlaw.com or (202) 789-6047, Steve Richmond at srichmond@bdlaw.com or (781) 416-5710, or Linda Tsang at ltsang@bdlaw.com or (202) 789-6073.

States Propose to Regulate Chemicals While Congress Debates TSCA

In the absence of legislation overhauling the federal Toxic Substances Control Act, 19 states have introduced bills in 2013 to regulate chemical exposures, primarily in consumer products. It is unclear which, if any, will become law. Nevertheless, these 41 bills show that states consider themselves full partners with Congress in addressing chemicals management issues.

Details on the bills appear in the attached chart. Among the bills are ones:

- Authorizing state authorities to identify chemicals of high concern and mandating the use of alternatives to chemicals of high concern when available;
- Requiring manufacturers to identify and disclose chemicals used in consumer and children's products;
- Banning chlorinated Tris from children's products;
- Phasing out and labeling the use of bisphenol A in children's products, receipt paper, and food packaging;
- Banning heavy metals such as cadmium, lead, and mercury in children's products;
- Requiring removal of specified flame retardants from children's products and home furniture;
- Banning formaldehyde from cosmetics and children's products;
- Promoting green cleaning products in schools; and
- Banning asthma-causing or triggering cleaning products.

For more information, please contact Mark Duvall at Beveridge & Diamond PC, mduvall@bdlaw.com, (202) 789-6090. This alert was prepared with the assistance of Linda Tsang.

TSCA Implementation at EPA: Looking Ahead

Following the reelection of President Obama and the departure of Administrator Lisa Jackson, the Environmental Protection Agency will continue to aggressively implement its Enhanced Chemicals Management Program under the Toxic Substances Control Act (TSCA). While EPA will be able to continue and build on its recent policies,[1] there will also certainly be opportunities to rethink and refine certain policy elements going forward. EPA's plans under existing TSCA authority are important even in light of the ongoing discussions in Congress regarding legislation to modernize TSCA. Such legislation is not likely to pass in calendar year 2013,[2] but its shape and prospects will be strongly influenced by EPA's contemporaneous actions and strategies, and by how successful those actions and strategies are perceived to be by various stakeholders. This report assesses EPA's announced plans as well as unofficial predictions and general trends to paint a picture of some of the top issues and actions that are likely to

affect U.S. chemicals management in the upcoming year.[3]

A. New EPA Administrator

Lisa Jackson left her post as Administrator effective February 14, 2013. Since then, EPA has been headed by Acting Administrator Bob Perciasepe (also the Deputy Administrator). President Obama is expected to nominate Gina McCarthy, the current Assistant Administrator for Air and Radiation, to the top post at EPA. Prior to her current position, McCarthy served as the Commissioner of the Connecticut Department of Environmental Protection. Her choice is widely seen as an indication that EPA will continue a fairly aggressive plan of regulatory and policy action on a number of fronts, presumably including chemicals management. McCarthy also has a reputation for working relatively well with state regulators, an asset as EPA's relations with states has become an issue of concern.

If nominated, McCarthy will likely face a heated confirmation battle, with Republican opposition to various EPA policies and actions highlighted at her confirmation hearing. If confirmed, McCarthy can be expected to continue or increase EPA's prioritization of climate issues, in light of her strong climate policy background. However, the regulated community and other stakeholders should be prepared for management of chemical risks to continue as a focus under the new Administrator as well. Even with a protracted confirmation process, EPA's operation and issuance of new rules can continue without hindrance under Acting Administrator Bob Perciasepe for as long as needed.

The Acting Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP) is Jim Jones. His nomination for the Assistant Administrator position has been pending before the previous Senate since early 2011. He is likely to be re-nominated. His continuation would reinforce expectations for generally more of the same in terms of EPA's chemicals management policies and priorities.

B. Work Plan for Chemical Risk Assessment

Stakeholders are closely watching EPA's first five work plan chemical risk assessments, drafts of which were released in January 2013 (with a comment period open through March 11, 2013).[4] The drafts, focusing either on human health or ecological hazards for specific uses, tentatively concluded the following:

- Antimony trioxide as a synergist in halogenated flame retardants: low concern for ecological health;
- 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8,-hexamethylcyclopenta-[γ]-2-benzopyran as a fragrance ingredient in commercial and consumer products: low concern for ecological health;
- Methylene chloride or dichloromethane in paint stripper products: potential concern for human health;
- N-methylpyrrolidone in paint stripper products: potential concern for human health; and
- Trichloroethylene as a degreaser and a spray-on protective coating: potential concern for human health.

EPA plans to begin finalizing the risk assessments in fall 2013, following the public comment period and peer review process. If the final assessments indicate significant risk, EPA will evaluate and pursue appropriate risk reduction actions; the nature of those actions is unclear. If no significant is risk indicated, EPA will conclude work on the chemical. EPA is also expected to release additional draft risk assessments in 2013, including ones for long-chain and medium-chain chlorinated paraffins as well as some of the 18 chemicals selected for assessment in 2013-2014. [5]

EPA's work plan will drive review and decision-making on existing chemicals for the foreseeable future, absent a new chemicals management framework imposed by new legislation. It is therefore a top priority for OCSPP, as well as for a broad range of stakeholders who manufacture, process, or use chemicals that are in the 83 initially

selected or that could be candidates for addition to the work plan in the future. However, concerns have been raised about the work plan, such as the level of peer reviews that the draft assessments will be given. In December 2012, a number of Senators recommended that the draft assessments be classified as "highly influential" in order to raise the level of rigor of the peer review.[6]

C. Action Plan Chemicals and Other Chemical Risk Management Actions

Despite the shift to the work plan strategy, EPA will still be implementing its earlier Chemical Action Plans in 2013.

EPA's most recent Regulatory Agenda[7] indicates that the Agency plans to finalize its controversial SNUR and test rule for certain polybrominated diphenylethers (PBDEs) in late 2013. As discussed in the companion report,[8] EPA proposed a significant new use rule (SNUR) in March 2012 to designate the manufacture (including import) or processing of the flame retardant decaBDE or articles containing decaBDE for any use which is not ongoing after the end of 2013 as a significant new use, requiring 90 days prior notification to EPA. Concurrently, EPA proposed a section 4 test rule to require any person who manufactures or processes commercial pentaBDE, octaBDE, or decaBDE, including in articles, for any use after the end of 2013 to conduct testing on their effects on health and the environment. EPA did not identify any ongoing uses, leaving that task to industry. The proposal is also notable in its focus on articles. PBDEs and other flame retardants are sure to continue to be a hot topic at EPA in 2013 and beyond, as are issues relating to the use of TSCA to regulate chemicals in articles.

EPA also intends to propose a SNUR in summer 2013 for the action plan chemicals nonylphenols and nonylphenol ethoxylates, which are used in detergents and other applications. EPA had previously proposed to issue both a SNUR and a test rule for these chemicals, in response to a citizens' petition under TSCA, but its SNUR-only action apparently replaces the previous plan in the Agency's Regulatory Agenda. Also in summer 2013, EPA plans to finalize SNURs for the action plan chemicals hexabromocyclododecane, glymes, and benzidine-based dyes, and a section 8(d) health and safety data reporting rule for diisocyanates including TDI and MDI. In fall 2013, EPA plans to finalize a SNUR for perfluoroalkyl sulfonates and long-chain perfluoroalkyl carboxylates used in carpeting.

A number of chemical management items from the Fall 2011 Regulatory Agenda were not present in the Fall 2012 Regulatory Agenda. Among the items dropped were a test rule for certain nanoscale materials; the proposal to place chemicals on the Chemicals of Concern list under TSCA section 5(b)(4); and long-term actions relating to short-chain chlorinated paraffins and long-chain perfluorinated chemicals.

EPA continues to issue SNURs for a variety of other chemicals (96 so far in fiscal year 2013), particularly for those that cover chemicals that recently entered commerce. Believing that such chemicals should be subject to the same manufacturing restrictions the original manufacturer has agreed to abide by, EPA is continuing to work through a backlog of SNURs based on TSCA section 5(e) consent orders.

Finally, EPA continues to analyze the potential use of TSCA section 6 to regulate chemicals. This authority has not been used since EPA's attempt to ban asbestos was overturned by the Fifth Circuit Court of Appeals in 1991, but actions more limited and tailored than outright bans could receive more favorable judicial treatment.

In addition to these and other regulatory actions, EPA is also exploring a number of voluntary and incentives-based initiatives to promote green chemistry. On February 21, 2013, EPA announced that it is seeking nominations for the 2013 Presidential Green Chemistry Challenge Awards for companies and institutions that can design chemicals or a new product that can help protect public health and the environment.[9] EPA's Office of Research and Development (ORD) also has a number of research projects relating to green chemistry, chemical safety and risk assessment, computational toxicology, and nanomaterials. ORD released its Chemical Safety for Sustainability Strategic Research

Action Plan for 2012-2016 in June 2012, aiming to better incorporate recent advances, address emerging concerns, and develop integrated chemical evaluation strategies and decision-support tools. [10]

D. Confidentiality and Transparency Policies

EPA's policies for confidential business information (CBI) are a focus of attention for both existing and new chemicals. A long-watched proposed rule change targeting confidentiality claims for chemical identities in health and safety studies is no longer in EPA's Regulatory Agenda, nor is there any direct replacement proposal. The former proposal would have built on a 2010 policy to increase review and limit CBI protections. A long-term action for reassertion and resubstantiation of CBI claims was also dropped from the most recent Regulatory Agenda. Going forward, it remains to be seen what CBI-related actions and strategies EPA will take instead.

EPA has proceeded with a number of other initiatives relating to transparency of data, information, and activities at the agency. EPA released the data collected in 2012 under the Chemical Data Reporting program on February 11, 2013, a quick turnaround enabled in part by the mandatory electronic reporting.[11] EPA claims that the most recent data set provides greater insight into chemical use patterns than previous chemical data reporting under the Inventory Update Rule, and that less information was claimed confidential.

EPA also plans to launch interactive online "dashboards" featuring data and modeling tools and annotated literature searches for chemicals.[12] The dashboards are intended to provide summary information derived from chemical exposure, hazard data, decision-rules and predictive models. Separate but related dashboard versions will be available for a number of different end goals, including TSCA prioritization and assessment (TSCA21), screening for potential endocrine disruption (EDSP21), and identification of priority chemicals for the EPA Office of Water's chemical contaminant list (OW21). The dashboards are a project of the Chemical Safety for Sustainability Research Program, launched in early 2011 by ORD.[13] EPA has ambitiously accelerated its target dates for the dashboards, recently calling for completion of data source identification and case studies by the end of December 2012, beta-testing in mid-2013, and public release in September 2013.

E. Conclusion

EPA's chemicals management efforts in 2013 are taking place in the shadow of several larger trends and events in the federal government. EPA has faced increasing budgetary pressure. Acting Administrator Bob Perciasepe wrote to the Senate on February 6 that the sequester slated to take effect on March 1 "will force us to make cuts we believe will directly undercut our congressionally-mandated mission of ensuring Americans have clean air, clean water and clean land."

More specifically for chemicals management, as described in an accompanying report,[14] TSCA modernization legislation is on the table once again in the current, 113th Congress, although it has not yet been introduced. While the absence of federal chemicals legislation continues, state-level regulations are proliferating. As of January 2013, the advocacy group Safer States counted at least 26 states considering new chemicals management policies in the near future. [15]

The regulatory developments described in this report are reshaping chemicals management in a variety of important ways, and they demand much of stakeholders to keep up with tracking, analyzing, and complying with them. Yet they are far from the only developments affecting chemicals and products along the supply chain across a wide range of industries and sectors. Other agencies at the federal and state level and their counterparts in other countries, international organizations, social and market trends, and even other businesses continue to apply pressures that affect companies' chemical decision-making regarding chemical inputs, uses, management, and disposal. Regardless of the prospects for TSCA legislation, 2013 looks to be another momentous year for chemicals management in the United States.

For more information about these and other TSCA developments in Congress and at EPA, please contact Mark Duvall, mduvall@bdlaw.com, or Alexandra Wyatt, awyatt@bdlaw.com.

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[1] See Beveridge & Diamond, P.C., "TSCA Developments at EPA: Looking Back at 2012" (Feb. 22, 2013), available at www.bdlaw.com/news-1445.html.

[2] See Beveridge & Diamond, P.C., "TSCA Modernization Proposals in Congress: Recent History and Prospects" (Feb. 25, 2013), avaialble at www.bdlaw.com/news-1447.html.

[3] See Beveridge & Diamond, P.C., "Update on TSCA Developments in Congress and at EPA" (March 22, 2012), http://www.bdlaw.com/news-1328.html; Beveridge & Diamond, P.C., "TSCA Developments in Congress and at EPA" (Aug. 11, 2011), http://www.bdlaw.com/news-1193.html.

[4] See generally EPA, TSCA Work Plan Chemicals, http://www.epa.gov/opptintr/existingchemicals/pubs/workplans.html.

[5] EPA, Work Plan Chemicals for Assessment During 2013 and 2014, http://www.epa.gov/opptintr/existingchemicals/pubs/workplanlist.html.

[6] Letter from Senators Vitter, Inhofe, Alexander and Crapo to EPA Acting Assistant Admin. James Jones (Dec. 21, 2012), available at http://www.scribd.com/doc/118863551/EPA-Senator-letter.

[7] EPA, Fall 2012 (Dec. 24, 2012), available at http://resources.regulations.gov/public/ContentViewer?objectId=090000648119910f&disposition=attachment&contentType=pdf. The Fall 2012 Regulatory Agenda was issued after a delay and there was no Spring 2012 Regulatory Agenda, despite legal requirements to publish semiannually.

[8] See *supra* footnote 1.

[9] EPA Press Release, "EPA Calls for 2013 Presidential Green Chemistry Challenge Award Nominations" (Feb. 21, 2013), http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/d66ab2c9ff283b0585257b19005d0395!OpenDocument.

[10] EPA doc. 601/R-12/006, Chemical Safety for Sustainability Strategic Research Action Plan for 2012-2016 (June 2012), available at http://epa.gov/research/docs/css-strap.pdf.

[11] EPA, Chemical Data Reporting, http://epa.gov/cdr/.

[12] EPA Office of Research and Development, Presentation on CSS Dashboard, available at http://epa.gov/ncct/download_files/chemical_prioritization/CSS_DASHBOARD_Nov2012.pdf.

[13] EPA, Chemical Safety for Sustainability Strategic Research Action Plan 2012-2016 (Doc. 601/R-12/006, June 2012), http://www.epa.gov/research/docs/css-strap.pdf.

[14] See *supra* footnote 2.

[15] Safer States, "26 States to Consider Toxic Chemicals Legislation in 2013" (Jan. 23, 2013), http://www.saferstates.com/2013/01/legislation.html.

EPA Releases State Enforcement Dashboards and Comparative Maps

On February 7, 2013, EPA released new interactive tools which are intended to provide enforcement performance data and comparative maps through its Enforcement and Compliance History Online (ECHO) service. These tools, available at http://www.epa-echo.gov/echo/stateperformance/, chart and map environmental compliance and enforcement trends on a state and national level in the topic areas of air, water, and hazardous waste.

EPA's new state dashboards show detailed data from the current and four previous fiscal years, although datasets are also available for previous years. The dashboards' charts and graphs allow easy visualization of compliance and enforcement trends, showing both activity levels and performance compared to goals or averages. Each chart and graph may be printed or exported in various formats.

The comparative maps allow the user to sort data by agency (EPA and/or state), facility size/type, and various endpoints such as facility counts, inspections, violations, enforcement actions, and penalties. Users may also choose to compare based on total counts or percentages. States and territories are shaded according to the numerical range in which they fall for each selected combination to enable a visual comparison of compliance and enforcement indicators across the country and over time.

EPA hosted a public webinar on Tuesday, February 12, at 3p.m. EST demonstrating how to use the new state dashboards and comparative maps. EPA is also seeking ideas from users on how to improve the dashboards and map and has provided a link on each website to send comments and suggestions.

For more information, contact Steve Herman, sherman@bdlaw.com, 202-789-6060, or Andie Wyatt, awyatt@bdlaw.com, 202-789-6086.

Firm News and Events

Former EPA General Counsel Scott Fulton to Join Beveridge & Diamond, P.C.

Washington, DC – Scott Fulton, the former General Counsel of the U.S. Environmental Protection Agency (EPA), will join Beveridge & Diamond, P.C. as a Principal in the Firm's Washington, DC office, effective March 25, 2013.

Mr. Fulton was designated by the President in January 2009 to serve as Acting Deputy EPA Administrator and Chief Operating Officer, and was subsequently nominated by the President and confirmed by the U.S. Senate as EPA General Counsel in August 2009. He left EPA in January 2013, after 22 years of distinguished service to the Agency.

Mr. Fulton will join the Firm's comprehensive environmental and natural resource practice, with an emphasis on providing counseling and strategic advice on domestic regulatory matters, international environmental regulation, and sustainability.

"Scott embodies our Firm's unique approach to assisting clients with complex global environmental and natural resource regulatory challenges and high-stakes disputes," said Benjamin F. Wilson, Beveridge & Diamond's Managing Principal. "Many of us have known and worked with Scott for years. His reputation and intellect are impressive. We are delighted to have him at our firm where we and our clients will benefit from his wisdom and good judgment."

"Scott is highly respected within EPA, throughout the government, and in the legal community as a whole," said Steve Herman, a Principal with Beveridge & Diamond and former head of EPA enforcement as the Assistant Administrator for Enforcement and Compliance Assurance from 1993-2001. "He brings tremendous legal talent and insight into the current activities and priorities of EPA on a wide range of environmental issues."

Mr. Fulton remarked, "I'm looking forward to using the rich experience I have had in government to help solve environmental problems for clients, and I can think of no better place to do that than with the nation's premier environmental law firm."

As EPA's chief legal counselor and the United States' lead environmental lawyer, Mr. Fulton counseled EPA on the Agency's most pressing domestic and international legal issues, played a major role in its advocacy efforts, and led one of the world's largest environmental law offices.

Highlights of Mr. Fulton's EPA career include:

- Engaging in and supervising numerous regulatory and policy initiatives related to the Clean Air Act, Clean Water Act, TSCA reform, chemicals of concern, Superfund, FIFRA/pesticides, and RCRA/hazardous waste.
- Spearheading EPA's Export Promotion Initiative to stimulate economic development and job growth by promoting for export the $4 billion U.S. environmental goods and services sector.
- Playing a leading role in multilateral international negotiations on regulatory coherence, pollution control, and other critical topics impacting numerous industry sectors.
- Managing U.S. engagement on environmental governance issues with the United

Nations and other international stakeholders at the 2012 Rio+20 proceedings.

- Leading the creation of the legal framework for, and the successful defense of, the United States' program for regulating greenhouse gas emissions (GHGs).
- Developing "Environmental Justice Legal Tools" in 2012, setting EPA on a course to enhance environmental quality for hundreds of thousands of low-income Americans.

A dedicated public servant, Mr. Fulton has devoted his career to various roles within EPA, including as the head of the Office of International Affairs and as a Judge on the Environmental Appeals Board. He also served as Assistant Chief of the Environmental Enforcement Section of the U.S. Department of Justice Environment and Natural Resources Division.

Mr. Fulton will be the second former EPA General Counsel to actively practice at Beveridge & Diamond. Jonathan Cannon, EPA General Counsel from 1995 to 1998, is a Senior Counsel with the Firm.

About Beveridge & Diamond, P.C.

Beveridge & Diamond has 100 lawyers in 7 U.S. offices dedicated to environmental, natural resource, and land use law and litigation. Our team includes former senior officials with the U.S. Environmental Protection Agency, U.S. Department of Justice, U.S. Department of the Interior, and other federal and state environmental and natural resource agencies.

U.S. News-Best Lawyers rates Beveridge & Diamond as a Tier 1 nationwide firm for Environmental Law and Environmental Litigation. Chambers USA Guide to the Legal Profession lists the firm among national leaders in Environmental practices. The firm was named in 2011 and 2012 to the National Law Journal's "Midsize Hot List," a ranking of law firms with 50 to 150 lawyers that maintain exceptional records of accomplishment and respect from clients and peers. Learn more at www.bdlaw.com.

For more information, please contact Nathan Darling at ndarling@bdlaw.com, (202) 789-6142.

Members of Beveridge & Diamond's Massachusetts Office Receive "Super Lawyers" Recognition

Five members of Beveridge & Diamond's Massachusetts office have been recognized by the Super Lawyers rating service as being among the top lawyers in their areas of practice in Massachusetts.

Jeanine Grachuk was named in the 2012 Massachusetts Super Lawyers list in the Environmental practice area, ***Brian Levey*** was named to the list for his work in the Land Use/Zoning, Environmental, and Environmental Litigation areas, and ***Stephen Richmond*** was recognized for his work in the Environmental and Energy and Natural Resources practice areas. ***Marc Goldstein*** was named as a Rising Star for his work in the Land Use/Zoning, Environmental Litigation, and Real Estate areas, and ***Aladdine Joroff*** was recognized as a Rising Star for her work in the Environmental, Land Use/Zoning and Energy & Natural Resources areas. Messrs. Goldstein, Levey and Richmond have been named to the annual list multiple times in the past. Fourteen attorneys from the Firm's other offices were also recognized in their geographic areas as Super Lawyers or Rising Stars.

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations, and peer evaluations.

For more information about Beveridge & Diamond or any of the attorneys mentioned above, please see www.bdlaw.com or contact Janine Militano at jmilitano@bdlaw.com.

Marc J. Goldstein Named Managing Shareholder of Beveridge & Diamond's Massachusetts Office

Beveridge & Diamond recently named Marc J. Goldstein as the Managing Shareholder of its Massachusetts Office. Mr. Goldstein takes over from Stephen Richmond, who has served as the Managing Shareholder since the Firm's Massachusetts office opened in 2004. Mr. Goldstein's practice focuses on environmental litigation and land use and development.

For more information about Beveridge & Diamond, please see www.bdlaw.com or contact Janine Militano at jmilitano@bdlaw.com.

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