

## MASSACHUSETTS ENVIRONMENTAL AND LAND USE ALERT

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## Massachusetts Developments

### [Massachusetts EEA Issues Final MEPA Greenhouse Gas Policy and Protocol](#)

The Massachusetts Executive Office of Energy and Environmental Affairs (now known as EEA) has issued a final greenhouse gas (GHG) emissions policy and protocol for projects undergoing Massachusetts Environmental Policy Act review. The Policy incorporates substantive GHG evaluation requirements for several classes of projects and expectations of GHG project mitigation.

### [Mass Tidelands Licensing: Legislature Enacts Corrective Legislation for Landlocked Tidelands Permitting](#)

On November 5, 2007, the Massachusetts Legislature passed and forwarded to the Governor for signature a bill that addresses the invalidation of the landlocked tidelands exemption from G.L.c.91 ("Chapter 91") by the Massachusetts Supreme Judicial Court ("SJC") earlier this year.

On February 12, 2007, the SJC invalidated a regulatory exemption promulgated by the Department of Environmental Protection ("DEP") under Chapter 91, the waterways statute, relative to "landlocked tidelands". *Moot v. Department of Environmental Protection*, 448 Mass. 340 (2007). The decision appeared to invalidate the exemption relied upon for the construction of many existing projects on landlocked tidelands and prompted legislative action to quell the enormous uncertainty created for existing projects and for new projects proposed to be constructed in such areas. The legislation sent to the Governor for signature this week would resolve many of the problems created by the *Moot* decision.

### [MassDEP Finalizes Amendments to Best Available Controls for Consumer & Commercial Products](#)

Effective October 19, MassDEP has amended the air quality control regulations to amend 310 CMR Section 7.25 - Best Available Controls for Consumer and Commercial Products. The amendments lower the volatile organic compound (VOC) content limits for certain existing product categories and establish VOC content limits for several newly-defined product categories.

### [New Regulations Aim to Streamline Wetlands Appeals at MassDEP](#)

The Massachusetts Department of Environmental Protection (MassDEP) has approved regulatory changes effective October 31, 2007 aimed at streamlining wetland appeals administered by the agency. The effort is targeted at more expeditiously resolving appeals of MassDEP's various superseding orders and variance decisions by setting a presumptive six-month timeline for a decision.

### [MassHighway Issues Highway Access Regulations](#)

The Massachusetts Highway Department ("MassHighway") has adopted regulations governing permits for access the state highways, including both Non-Vehicular Access Permits and Vehicular Access Permits, also known as curb cut permits. The regulations, at 720 CMR 13.00, provide a timetable for review of applications, detail the required content of applications, provide criteria for review, and outline the administrative appeals process.

### [SJC Determines Conservation Commission's Failure to Timely File Produces a Null Decision but not Constructive Approval](#)

The Supreme Judicial Court recently held that a conservation commission decision denying an order of conditions under a local wetlands bylaw has no effect where the commission failed to act within 21 days as required by both state and local procedure rules.

### [Claim Against Abutters Filing Multiple Appeals Dismissed Under Anti-SLAPP Statute](#)

In *DePiero v. Burke*, Appeals Court No. 06-P-401 (Perretta, J., Sept. 18, 2007), a complaint for abuse of process filed by the developer of a two-lot subdivision against abutters who filed multiple unsuccessful appeals was dismissed under the anti-SLAPP statute, G.L. c. 231, § 59H.

### [Second Annual EBC/MassDEP Construction & Demolition Debris Summit](#)

Stephen Richmond is the program chair for this summit hosted by the Environmental Business Council of New England and the MassDEP. The summit takes place on Friday, January 25, 2008 and will feature a keynote address by the Commissioner of the MassDEP.

## **National Developments**

### [DHS Releases Final List of Chemicals to Implement Chemical Plant Security Rule](#)

On November 2, 2007, the Department of Homeland Security (DHS) released a final version of Appendix A of the Chemical Plant Security Rule, 6 CFR Part 27. Appendix A identifies chemicals of interest to DHS and corresponding screening threshold quantities (STQs) that may trigger regulation.

### [EPA Announces Plans to Develop Regulations for the Geologic Sequestration of Carbon Dioxide](#)

On October 11, 2007, EPA announced its plans to develop regulations for the geologic sequestration of carbon dioxide (CO<sub>2</sub>). Geologic sequestration is a key part of carbon capture and storage (CCS) technology, which many view as a critical element of any climate change regulatory regime.

### [EPA Proposes New Prevention of Significant Deterioration Fine Particulate Rule](#)

In September, EPA published a proposed rule to establish key elements of the Prevention of Significant Deterioration (PSD) program for the National Ambient Air Quality Standards (NAAQS) for particulate matter less than 2.5 micrometers in diameter (PM<sub>2.5</sub>).

### [EPA Issues Title V Flexible Permits Proposal](#)

EPA has made available a pre-publication copy of a proposal to allow Title V facilities to obtain "flexible air permits" that would provide advance approval for different operating scenarios.

### [City of Los Angeles Secures Victory Over Biosolids Ban](#)

Litigators from the firm's Washington, D.C. and California offices obtained a summary judgment ruling from the U.S. District Court in Los Angeles on behalf of the City of Los Angeles and the City's contractors and farmers.

California   Maryland   Massachusetts   New Jersey   New York   Texas   Washington, D.C.