



**Marc J. Goldstein**  
Principal  
(781) 416-5715  
mgoldstein@bdlaw.com



**Jeanine L.G. Grachuk**  
Principal  
(781) 416-5713  
jgrachuk@bdlaw.com



**Heidi P. Knight**  
Principal  
(410) 230-1344  
hknight@bdlaw.com



**Brian C. Levey**  
Principal  
(781) 416-5733  
blevey@bdlaw.com



**Stephen M. Richmond**  
Principal  
(781) 416-5710  
srichmond@bdlaw.com



**Brook J. Detterman**  
Associate  
(781) 416-5745  
bdetterman@bdlaw.com



**Virginie K. Roveillo**  
Associate  
(781) 416-5726  
vroveillo@bdlaw.com

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## MASSACHUSETTS ENVIRONMENTAL DEVELOPMENTS

### Off to Court We Go: Petitioners Challenge EPA’s Small MS4 General Permit for Massachusetts

*Authors: Marc J. Goldstein and Virginie K. Roveillo*

The storm of debate and criticism over the terms and conditions of the U.S. Environmental Protection Agency’s (EPA) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts (the [Small MS4 General Permit](#) or Permit) has shifted to the judicial arena. In July, the first of several petitions for review of the final Small MS4 General Permit was filed in the D.C. Circuit Federal Court of Appeals, followed by four more challenges filed in the First Circuit Federal Court of Appeals. Notwithstanding the initiation of litigation, Massachusetts municipalities should be continuing to develop their plans and organizing their resources to effectively implement the Small MS4 General Permit, which becomes effective in July 2017.

As we reported in [July](#), the Small MS4 General Permit imposes new and more stringent requirements on municipalities than the 2003 version of the Permit, which has been administratively continued since it expired in 2008. The structure of the new Permit is largely the same: municipalities must implement six minimum control measures, including public education, public involvement, illicit discharge detection and elimination (IDDE), construction site runoff, post-construction stormwater management, and good housekeeping. However, the new Permit requires significantly more effort and resources, particularly with respect to IDDE, post-construction stormwater management, and housekeeping practices. The new Permit also imposes for the first time water-quality based requirements for stormwater discharges to impaired receiving waters.

Of the various entities that have filed petitions for review challenging the Permit – i.e., the Center for Regulatory Reasonableness (CRR), the National Association of Home Builders together with the Home Builders Association of Massachusetts, Inc., the City of Lowell, the Massachusetts Coalition for Water Resources Stewardship, Inc. together with the Town of Franklin, and the Conservation Law Foundation – only CRR has filed a non-binding

statement of issues, pursuant to a court order. Among other grounds, the CRR is challenging the EPA’s statutory authority to adopt water quality-based limitations without site-specific data, impose best management practices based on a “maximum extent practicable” standard, categorize land use development changes as permit modifications, and regulate stormwater flow (as opposed to regulating pollutants in stormwater). The CCR also alleges that in promulgating the final Small MS4 Permit the EPA has expanded the compliance requirements of 40 C.F.R. Part 122 (the National Pollutant Discharge Elimination System (NPDES) Program regulations) without following rulemaking procedures.

In early September, EPA filed motions to consolidate the cases in the D.C. Circuit, where the first petition by CRR challenging the Permit was filed and where the administrative record for the rulemaking has been certified by EPA. On October 14, 2016, EPA’s motions to transfer were granted in each of the cases pending in the First Circuit Court of Appeals. With the number of petitioners and stakeholders involved, the litigation process is likely to follow a long road in the D.C. Circuit Court of Appeals, and the legal challenges are unlikely to be resolved prior to the Permit’s July 2017 effective date. Accordingly, Massachusetts municipalities should be continuing to develop their plans and organizing their resources to effectively implement the Permit.

*For questions on the Small MS4 General Permit or these challenges, please contact [Marc Goldstein](#) or [Virginie Roveillo](#).*

### **EPA Issues Update to Settlement Penalty Policy for Industrial Stormwater Violations**

*Authors: Jeanine L.G. Grachuk and Virginie K. Roveillo*

Some violators of federal industrial stormwater requirements will likely pay significantly higher penalties under new guidance issued by U.S. EPA. The new guidance, “Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements” (the [2016 Supplemental Guidance](#)), provides agency staff with guidance on how to calculate a minimum settlement penalty for unauthorized discharges of industrial stormwater, violations of EPA or state-issued NPDES industrial stormwater permits, and other violations of Clean Water Act stormwater requirements applicable to industrial activity. The 2016 Supplemental Guidance sets forth a more sophisticated and detailed approach to calculating settlement penalties as compared to the 1995 Interim Policy. While the effects of the new guidance are not entirely clear, it is likely that it will result in higher penalties for larger and more sophisticated companies compared to smaller companies for the same violations.

Under the [1995 Interim Clean Water Act Settlement Penalty Policy](#), the equation for calculating a settlement penalty was:

$$\begin{aligned}
 &\textit{Bottom Line Penalty} \\
 &= (\textit{Economic Benefit}) + (\textit{Gravity}) \pm (\textit{Gravity Adjustment Factors}) \\
 &\quad - (\textit{Litigation Considerations}) - (\textit{Ability to Pay}) \\
 &\quad - (\textit{Supplemental Environmental Projects}).
 \end{aligned}$$

While the 2016 Supplemental Guidance does not change this equation, it focuses on calculations for four of the six elements of the equation: Economic Benefit, Gravity, Gravity Adjustment Factors, and Litigation Considerations. Key changes from the 1995 Interim Policy for each of these components are described below.

#### **Economic Benefit**

The economic benefit component refers to the economic benefit of noncompliance that the facility owner experienced as a result of the owner’s noncompliance. Since at least 1993, EPA has been using the BEN computer model to calculate this value. The 1995 Interim Policy described how to calculate the economic benefit of certain delayed or avoided costs (monitoring and reporting, capital expenditure, operation and maintenance, and one-time acquisitions) using the BEN model. The 2016 Supplemental Guidance adds the following six subcomponents to the economic benefit calculation:

1. Failure to obtain a NPDES permit;
2. Failure to develop an appropriate Stormwater Pollution Prevention Plan (SWPPP);

3. Failure to implement stormwater controls or Best Management Practices (BMPs);
4. Failure to maintain stormwater controls or BMPs;
5. Failure to regularly inspect stormwater controls or BMPs; and
6. Failure to monitor or report.

The 2016 Supplemental Guidance describes each one of these subcomponents in detail including how to determine the dates of noncompliance and compliance and which costs are capital costs, one-time non-depreciable costs, or annually recurring costs. Where case-specific cost information is available, it should be used; but where it is not available, "best professional judgment" should be used to determine reasonable estimates of those costs.

### **Gravity**

Under the 1995 Interim Policy, the gravity element was calculated for each month in which the violation continued by adding together the value for each of the four gravity components and multiplying by \$1,000. The four gravity components were: (A) Significance of the Violation; (B) Health and Environmental Harm; (C) Number of Effluent Limit Violations; and (D) Significance of Non-Effluent Limit Violations. The 2016 Supplemental Guidance substantially reworks this calculation by eliminating the gravity component for the "Number of Effluent Limit Violations" and revising the remaining components as described below.

#### The Significance of the Violation Component

Under the 1995 Interim Policy, a table was used to determine the value for this component based on the severity of the effluent limit violations for that month. The value would be zero if there was no effluent limit violation in that month. Although the 2016 Supplemental Guidance is consistent with this methodology and retains the original table from the 1995 Interim Policy, there are two clarifications: (1) numeric effluent limits should be treated as daily maximums unless otherwise specified in the permit and (2) exceedances of benchmark values are not exceedances of effluent limits and therefore are not addressed by this component.

#### The Health and Environmental Harm Component

Under the 1995 Interim Policy, the value for this component was determined by identifying the type of harm (impact to human health, exceeding a water quality based standard, fish kill, etc.) and selecting a number within a range from a table. The 2016 Supplemental Guidance does not change this approach, but provides more detailed guidance on how it should be implemented. Using several look-up tables, a range for this component is identified based on the quality of the receiving water, the duration of the noncompliance, and whether impacts to human health or the environment actually or could potentially have occurred. If there was no potential for impact to human health or the environment, this component is zero. The agency determines the specific value from within the range based on the magnitude of the actual or potential harm. The 2016 Supplemental Guidance identifies many factors on which the selection of the final value should be based, including whether the industry is a high priority industry, the number and magnitude of benchmark exceedances, duration of violations, rainfall, topography, and site conditions. If human health impacts could or did result, the agency may consider, among other things, the impact on drinking water supplies, risk to fisheries, risk to shellfish beds, and impact on contact recreation. If environmental risk could or did result, the agency may consider, among other things, types of pollutants, exceedances of water quality standards, and quantity of stormwater discharged.

Importantly, benchmark exceedances, which are not violations, can be considered in determining the Health and Environmental Harm component but are not used in determining the Significance of the Violation component.

#### The Significance of Non-Effluent Limit Violations Component

Under the 1995 Interim Policy, a range of values were identified for each of six types of violations. A value was chosen from within each range based on the extent of the violation. The chosen values for each of the six types of violations were then added to determine the value of this component for each month. The process under the 2016 Supplemental

Guidance is similar in approach; however, the 2016 Supplemental Guidance makes two fundamental changes. First, the value for each type of violation must be adjusted upward based on the duration of the violation. Second, after a total value for this component is determined, the value should be (1) increased by 25% if the facility discharged stormwater without a permit, and (2) adjusted upward or downward based on the size and sophistication of the owner or operator of the facility.

### ***Gravity Adjustment Factors***

The 1995 Interim Policy provides that the preliminary penalty amount (the economic benefit component plus the gravity component) may be adjusted based on four factors: (1) small facility with low flows; (2) recalcitrant behavior; (3) quick settlement and (4) on a case-by-case basis with approval of EPA Headquarters, performance of environmental audits. The 2016 Supplemental Guidance states that only two of these can be used for industrial stormwater cases: recalcitrant behavior and quick settlement.

### ***Litigation Considerations***

The 1995 Interim Policy explains that a penalty may be reduced when the facts demonstrate a substantial likelihood that a higher penalty would not be achieved at trial and provides a detailed description of how to estimate the penalty that would be achieved at trial. The 2016 Supplemental Guidance does not change this approach.

The 1995 Interim Policy describes a further adjustment for municipalities and other public entities that made good faith efforts to comply, referred to as the national municipal litigation consideration. The 2016 Supplemental Guidance states that this municipal policy does not apply to industrial stormwater violations because it was “developed primarily for cases where large capital expenditures were to be made,” which is not the case for stormwater control measures.

### ***Concluding Thoughts***

Notably, the 2016 Supplemental Guidance provides support for the use of information not directly related to the identified violation (*e.g.*, benchmark exceedances and the size of the facility operator) in calculating the penalty. It is not entirely clear why benchmark exceedances and the size of the operator (as opposed to the volume of the noncompliant flow) are relevant. And while the policy attempts to set forth a uniform methodology for calculating settlement penalties, the use of the 2016 Supplemental Guidance by agency staff is discretionary, therefore its application may vary from site-to-site based on individual circumstances and negotiations with agency staff.

The 2016 Supplemental Guidance assumes, except in the “Litigation Considerations” section, that the alleged violation actually took place. In evaluating any particular allegations by EPA, it is important consider whether the violation occurred and what evidence exists to support EPA’s allegation that it took place. In many cases, the best way to reduce a proposed penalty is to show that one or more of the alleged violations did not occur.

*For more information on defending stormwater enforcement actions, please contact [Jeanine Grachuk](#), [Marc Goldstein](#) or [Virginie Roveillo](#).*

## **Mass DEP Proposes Changes to Air Program**

*Authors: Jeanine L.G. Grachuk and Stephen M. Richmond*

In August 2016, the Massachusetts Department of Environmental Protection (MassDEP) proposed several changes to its air regulations as part of its efforts to streamline regulations and reduce unnecessary regulatory burdens under [Executive Order 562](#). These changes will affect a wide range of industrial and commercial facilities.

MassDEP has been holding listening sessions to gather public feedback on proposed changes across many of its program areas, including the air program. For more information on Executive Order 562 and MassDEP’s listening sessions, [click here](#). The proposed changes to the air regulations address numerous provisions in the lengthy collection of air rules;

many of the changes would conform the regulations to federal requirements, and others do, in fact, simplify provisions or eliminate sections that are no longer relevant.

The more significant proposals are described below. The comment period on this amendment package ended September 26, 2016 and final promulgation is expected by year end.

### **Greenhouse Gas (GHG) Emissions**

*Establish Threshold for Requiring a Plan Approval for GHG Emissions.* In Massachusetts, air construction permits are called plan approvals, and they authorize construction, substantial reconstruction, or alteration of emissions sources. Plan approvals are required unless project emissions are below thresholds established for specific pollutants or an exemption applies. Under current regulations, there is no specific threshold for greenhouse gases, and therefore, arguably, any project that exceeds the *de minimis* threshold of 1 ton per year for the potential emission of any air pollutant must obtain a Plan Approval.

MassDEP proposes to establish a 100,000 ton carbon dioxide equivalent (CO<sub>2</sub>e) threshold for new facilities and a 75,000 ton CO<sub>2</sub>e threshold for modifications of existing facilities. According to [MassDEP's Background Document on Proposed Amendments to 310 CMR 7.00, Air Pollution Control](#), August 12, 2016 (Background Document), "only high-emitting facilities (e.g., power plants) are likely to trigger these thresholds."

*Remove Operating Permit Thresholds for GHGs.* The current regulations require an air operating permit for sources with air pollutant emissions above certain thresholds, including for GHGs. The GHG threshold was required to conform the state permitting program to U.S. EPA's GHG permitting program as it existed several years ago. However, consistent with the U.S. Supreme Court's 2014 decision in *Utility Air Regulatory Group v. U.S. EPA*, in which the Court held that U.S. EPA was not authorized to impose permitting thresholds for facilities that emitted GHGs, MassDEP has proposed to remove its GHG threshold for operating permits. This action is consistent with U.S. EPA's response to the Supreme Court decision and will conform MassDEP's rules to the federal rules for major source operating permits.

### **New Source Review (NSR)**

*Plan Approvals for Non-Major Modifications of Prevention of Significant Deterioration (PSD) Permits.* MassDEP proposes to clarify in the regulations that a Plan Approval is required for any modification of a PSD permit, regardless of emission impacts. Modifications of non-attainment NSR Plan Approvals and case-by-case MACT already require a Plan Approval regardless of emissions.

*Establish 30-day Public Comment Period for Comprehensive Plan Approvals.* Under current regulations, a 30-day public comment period is required for any Plan Approval that triggers review under the Massachusetts Environmental Policy Act (MEPA). However, MEPA review is required only for the largest projects. The proposed changes would require a 30-day public comment period for all Comprehensive Plan Approvals as well as for any Limited Plan Approval for which MEPA is triggered. According to the Background Document, this change will conform Massachusetts requirements to federal regulations which require a public comment period for certain permits. This is likely to substantially increase the opportunity for public comment on Plan Approvals.

**De minimis Exemption from Plan Approval Requirements.** Small projects, those with anticipated emissions less than one ton per year, are exempt from the requirement to obtain a Plan Approval. The current regulations specify that emissions shall be calculated based on the increase in potential emissions, and no changes are proposed to this language. However, the proposed amendment would modify the definition of "potential emissions" to clarify that recordkeeping by the source demonstrating that actual emissions are below one ton per year is sufficient to show eligibility for this exemption. The Background Document states that this is a "clarification" that "reflects longstanding MassDEP practice that facility records that demonstrate that actual emissions from a project are below 1 ton per year are sufficient for this exemption."

**Source Registration.** The source registration program requires sources above emissions thresholds to report emissions either on an annual or triennial basis. Several changes to this program have been proposed. First, MassDEP proposes to codify a long-standing exception for small natural-gas and distillate-oil combustion sources. Under the proposal, the facility-wide heat-input threshold for reporting will increase from 10 mmBTU to 40 mmBTU as long as no single source exceeds 10 mmBTU. Second, the lead reporting threshold will be reduced to 0.5 tons per year, consistent federal requirements. Finally, the deadline for triennial reports will change to March 1 from April 15 to allow MassDEP to meet its deadline to report to U.S. EPA.

**Emergency Engines.** In relation to emergency engines, MassDEP proposes to remove the existing 300-hour limit on operation during emergency conditions to conform to federal regulations. MassDEP proposes other clarifying and simplifying changes to its engine and combustion turbine rules.

**High Precision Products.** High precision products are products that must be cleaned with highly volatile solvents to ensure that the minimum residue remains on the products in order to meet military or commercial specifications. MassDEP's current air rules impose requirements on the use of solvents to clean metals including limits on the vapor pressure of cold cleaning degreasers and the pressure of the degreasing spray. MassDEP proposes to amend the regulations to exempt the cleaning of high precision products from these requirements upon case-by-case approval of MassDEP and U.S. EPA.

#### **Reasonably Available Control Technology (RACT) Requirements.**

*VOC RACT Requirements.* MassDEP regulations include RACT requirements for VOC emissions in order to control ground level ozone formation. U.S. EPA published new Control Techniques Guidance for various VOC source categories in 2006, 2007 and 2008. MassDEP is now proposing changes to address the following source categories: flexible package printing materials; lithographic printing materials; letterpress printing materials; industrial cleaning solvents; flat wood paneling coatings; paper, film and foil coatings; metal furniture coatings; large appliance coatings; miscellaneous metal products coatings; plastic parts coatings; and fiberglass boat manufacturing materials. In addition, MassDEP proposes to delete the requirements for automobile surface coatings as there are no Massachusetts facilities subject to this category and any new facility would be subject to best available control technology (BACT) not RACT requirements.

*Nitrogen Oxides (NOx) RACT Requirements.* MassDEP is proposing amendments in order to fulfill its NOx RACT obligations under the 2008 and 2015 National Ambient Air Quality Standards for ozone. MassDEP is adopting as RACT emissions standards for large boilers, stationary combustion turbines and stationary reciprocating internal combustion engines (RICE) that currently are in place or proposed in New York or Connecticut. As described in the Background Document, MassDEP estimates that there are 17 facilities with large boilers, 21 facilities with combustion turbines, and 15 facilities with engines that will be affected. MassDEP anticipates that several of these will need to install NOx controls unless they qualify as low capacity or seek a facility-specific alternative RACT. The compliance date for these requirements is proposed to be 2 years from promulgation.

**Massachusetts Clean Air Interstate Rule (MassCAIR).** MassDEP proposes to replace the current MassCAIR regulations with a new rule called Ozone Season Nitrogen Oxides Control (MassNOx). MassDEP adopted MassCAIR to comply with the 2007 EPA Clean Air Interstate Rule which established a multi-state cap-and-trade program. That program ended in 2015, and was replaced with the Cross State Air Pollution Control Rule (CSAPR). CSAPR does not apply to Massachusetts because EPA determined that Massachusetts sources were not significantly contributing to ozone in other states. However, MassDEP is required to maintain the NOx budget established under MassCAIR in order to avoid backsliding. MassNOx would not apply the cleaner, more efficient units that previously received more NOx tons to emit than they could emit (8 facilities), as there no longer is the ability to sell the excess tons outside the state. The other units that had been subject to MassCAIR will be subject to MassNOx (24 facilities). The proposed NOx budget exceeds the anticipated emissions based on the past five years of data and therefore MassDEP is not expecting any additional emissions reductions or controls. However, as MassDEP stated in the Background Document: "In the event that the

state-wide budget is exceeded, facilities would be required to purchase 2017 vintage or late CSAPR NOx Ozone Season Allowances at a cost that will be made under a future market-based determination.”

**Adjudicatory Hearings.** MassDEP is proposing to resolve a long existing gap in its air regulations by clarifying how to request an adjudicatory hearing on certain permitting decisions of MassDEP, such as a decision to approve or disapprove a Plan Approval, and which parties have standing to file such a request. There has been substantial uncertainty about the appeal process for air permitting decisions, and this has resulted in unnecessary procedural litigation in the past.

The proposed changes provide for a 21-day appeal period, and limit the parties with standing to appeal to the applicant, an aggrieved person, and a ten-person citizens group that participated in the public comment period on the permitting action. The changes also propose to limit the scope of the review for an appeal to those matters addressed in the permitting decision.

*For more information on the air program in Massachusetts and MassDEP's air regulations, please contact [Steve Richmond](#) or [Jeanine Grachuk](#).*

### **Breaking News: MassDEP Issues Vapor Intrusion Guidance**

*Author: Jeanine L.G. Grachuk*

This week, MassDEP issued its long-awaited final “Vapor Intrusion Guidance: Site Assessment, Mitigation and Closure,” which is available [here](#). This 126-page document, which is based on the October 2014 draft that received substantial public comment, provides guidance on how to assess, remediate, and close vapor intrusion sites under state cleanup regulations that were substantially revised in June 2014, as we described in a [previous alert](#). Stay tuned: we will provide a full analysis in a future alert.

*For more information on site cleanup in Massachusetts, please contact [Jeanine Grachuk](#).*

### **EPA Region 1 Continues its Crackdown on Urban Storm Sewer Systems**

*Authors: Virginie K. Roveillo and Stephen M. Richmond*

U.S. EPA Region 1 has slowly pursued enforcement cases against a large number of Massachusetts municipalities subject to stormwater permitting requirements of the small municipal separate storm sewer system program, known as MS4 systems, and the City of Haverhill is the latest target to settle.

In August 2016, the U.S. Department of Justice, the Commonwealth of Massachusetts, and the City of Haverhill agreed to a proposed Consent Decree resolving claims alleged by the EPA that the City was violating the stormwater provisions in the federal Clean Water Act. The City agreed to pay a \$125,000 civil penalty, conduct a Supplemental Environmental Project at a cost of \$176,000 for restoration of the Merrimack River riverbank, and perform a number of remedial measures described more fully below. Assuming that the Consent Decree is finalized by the U.S. District Court as proposed, the settlement continues a long slow process by EPA Region 1 to force Massachusetts municipalities to take more robust steps to address stormwater pollution, particularly in the area of enhanced Illicit Discharge and Detection Elimination (IDDE) programs. This may be of particular interest to municipalities working toward implementation of the recently issued 2016 General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts (Small MS4 General Permit), scheduled to become effective in July 2017 but subject to four separate challenges currently pending in the D.C. Circuit and First Circuit Federal Courts of Appeals.

The Justice Department, on behalf of EPA, alleged that the City violated the terms and conditions of the City's Wastewater Treatment Facility Permit (WWTF Permit) and the 2003 Small MS4 General Permit, and violated the requirements of the federal Clean Water Act. The City's WWTF Permit authorized the discharge of wastewater from its wastewater treatment facility and from the City's combined sewer outfalls, known as CSOs, to the Little River and Merrimack River. The Small MS4 General Permit authorized the discharge of stormwater from the City's storm sewer

system, and required, among other things, the implementation of a storm water management program, minimum control measures and an IDDE plan to detect and address non-storm water discharges, such as illegal dumping into the storm sewer system. The Justice Department’s Complaint alleged the following, going back as far as 2008:

- Discharge of untreated combined sewage from CSOs with concentrations of bacteria that caused or contributed to violations of water quality standards in the Merrimack and Little Rivers.
- Discharge of wastewater from one CSO during dry weather, in violation of a permit prohibition on the discharge of wastewaters from CSOs during dry weather.
- Bypass of secondary treatment when a feasible alternative existed, such as the use of auxiliary treatment facilities or retention of untreated wastes.
- Failure to properly operate and maintain all facilities and systems of treatment and control used to comply with the WWTF Permit by failing to periodically clean the entire collection system.
- As a result of sanitary sewer overflows, discharge of untreated wastewater, including raw sewage, from point sources within its collection system to waters of the United States, in violation of the federal Clean Water Act.
- Discharges of untreated wastewater containing pollutants from MS4 outfalls. The Small MS4 Permit does not authorize the discharge of non-stormwater from MS4 outfalls.
- Failure to implement the Small MS4 General Permit by not (i) implementing an IDDE plan, (ii) adopting an ordinance or other regulatory mechanism to require sediment and erosion control at construction sites, and (iii) adopting an ordinance or other regulatory mechanism to address post construction runoff from new development and redevelopment.

The proposed Consent Decree seeks to resolve these allegations through payment of a civil penalty, implementation of a Supplemental Environmental Project, and an extensive list of remedial measures to be conducted by the City over the course of the next 15 years. As proposed, the term of the decree would run until at least June 1, 2031, provided that the City has at that time completed all remedial measures, completed the Supplemental Environmental Project, and maintained continuous satisfactory compliance with the terms of the Consent Decree, the WWTF Permit, and the Small MS4 General Permit for a period of one year.

The remedial measures incorporated into the proposed Consent Decree include the development of a number of plans and programs addressing compliance with the Small MS4 General Permit and the City’s WWTF Permit, timelines for implementing the approved plans and programs, upgrading of facilities and treatment controls, and reporting to EPA and MassDEP. For example, under the terms of the proposed decree, the City would be required to address the following:

- Illicit Discharge Prohibition and Removal
  - Submit a revised IDDE plan for the monitoring of MS4 outfalls and the investigation of sub-catchment areas.
  - Adopt an ordinance or other regulatory mechanism prohibiting non-stormwater discharges into the MS4, and submit to EPA and to MassDEP an IDDE Enforcement Manual to assist with the detection and removal of non-stormwater discharges.
- Storm Sewer Outfalls and Building/Private Party Backups
  - Comply with a 24-hour reporting requirement to EPA and to MassDEP for any storm sewer outfall and building/private party backup that occurs.
  - Submit to EPA and to MassDEP an updated assessment of the capacity, operation, and maintenance of its collection system, and based on the deficiencies identified in the self-assessment, submit to EPA and

MassDEP by January 31, 2017 a Capacity, Management, Operation, and Maintenance Corrective Action Plan.

- Submit an Emergency Response Plan to EPA and MassDEP setting forth procedures for responding to storm sewer outfall and building/private party backup.
- GIS Mapping
  - Within one year, submit to EPA and MassDEP a GIS map of the MS4 system and other collection systems, including information on infrastructure, water resources and topographic features, operation and maintenance, investigations remediation, and capital projects.
- Construction Site Stormwater
  - Adopt an ordinance or other regulatory mechanism requiring sediment and erosion control at construction sites, and another requiring the management of stormwater runoff at post-construction development and redevelopment.
  - Develop a Construction Site program.
- CSO Monitoring
  - Equip CSO outfalls with continuous meters.
  - Submit notification within 24 hours of any CSO discharge to MassDEP, EPA, the Merrimack River Watershed Council, MA Division of Marine Fisheries, and Boards of Health for downstream communities.
  - Submit an annual CSO activation report to EPA and MassDEP.
- CSO Planning and Plan Implementation
  - Raise CSO regulator weirs.
  - Submit a Final CSO Long-Term Control Plan.
- Stipulated Penalties
  - Among others, for each day that a storm sewer outfall backup occurs, pay a stipulated penalty of \$6,500, unless the City can show that it stopped the storm sewer outfall backup as soon as reasonably practicable, the City is in full compliance with the Consent Decree, and the City has complied with all reporting requirements for the storm sewer outfall backup.

The compliance requirements highlight EPA's focus on key areas of concern in MS4 systems, all of which are addressed in the pending 2016 Small MS4 General Permit for Massachusetts: IDDE, management of construction sites, GIS mapping, and adoption of regulatory mechanisms by municipalities. The development and implementation of these compliance measures are certain to require extensive City resources and effort, not to mention substantial coordination with EPA and MassDEP.

*For more information on the proposed Consent Decree or the Small MS4 General Permit for Massachusetts, please contact [Steve Richmond](#) or [Virginie Roveillo](#).*

## **Governor Baker Signs Executive Order On Climate Change**

*Author: Brook J. Detterman*

Massachusetts has again stepped up its focus on climate change. On September 16, 2016—as the summer of endless drought drew to a close—Massachusetts Governor Charlie Baker issued [Executive Order No. 569](#) entitled “Establishing an

Integrated Climate Change Strategy for the Commonwealth.” The Order addresses a range of actions related to climate change, including greenhouse gas (GHG) emissions reductions, climate change resiliency and adaptation, and planning and assessment of climate change risks.

The Order comes on the heels of the Supreme Judicial Court’s [decision in \*Kain v. MassDEP\*](#), which compels the MassDEP to expand its regulation of GHG emissions under the Commonwealth’s Global Warming Solutions Act (the GWS Act). The Order provides guidance to various state agencies and requires them to step up their regulatory efforts in a variety of areas.

The Order begins by mandating that the Secretary of Energy and Environmental Affairs continue working with the GWS Act Advisory Committee to develop firm statewide GHG emissions limits for 2030 and 2040. The Order also requires MassDEP to promulgate final GHG regulations by August 11, 2017 that establish firm GHG emissions limitations, as required by the *Kain* decision.

In several places, the Order requires agencies to consider ways to reduce GHG emissions from the transportation sector. In particular, the Order requires the Secretary of Transportation to consider regional policies for reducing GHG emissions, which could impact mass transit and other transit systems in the region. The Order also requires revisions to GWS Act regulations to establish declining annual emissions limits from the transportation sector.

While not actually requiring any energy-specific actions, the Order addresses renewable energy by indicating that the Commonwealth will “continue to lead” on regional efforts related to wholesale power markets and obtaining “clean energy” in a “cost effective manner.” This provision is likely aimed at [legislative action taken earlier in the year](#), which requires Massachusetts to solicit long-term contracts to purchase 1,600 MW of offshore wind power and another 1,200 MW of other renewable power. The Order requires creation of a “comprehensive energy plan,” with a focus on meeting forecast energy requirements through energy conservation, efficiency, and demand reduction measures.

The Order also contains measures to advance Massachusetts’ resiliency to the impacts of climate change. In particular, the Order calls for development of a statewide climate adaptation plan within two years based on analysis of predicted climate change impacts. Pursuant to the Order, the plan must contain strategies for handling climate change impacts, along with “clear goals, expected outcomes, and a path to achieving results.” Within a year of the Order, the Secretary of Energy and Environmental Affairs is tasked with creating two frameworks to assess vulnerabilities related to climate change and develop adaptation strategies—with one framework for state agencies and another for cities and towns. Along with developing these frameworks, the Order calls for providing technical assistance to municipalities and supporting their efforts to identify and address anticipated climate change impacts. These measures indicate a new focus on climate change resiliency and adaptation, which may impact how state agencies, cities, and towns approach and manage infrastructure and development in the coming years.

Notably, the Order also requires MassDEP to establish a portal through which the public may propose regulatory approaches to any of the items addressed in the Order. This may provide an opportunity for businesses, institutions, and other interests to shape Massachusetts climate change policies.

While short on concrete mandates, the Order indicates two things. First, the current administration is taking steps to continue development of new regulations and strategies to reduce GHG emissions. Second, Massachusetts is beginning to develop a more integrated approach to managing the impacts of climate change. These efforts may spur new investment in transportation, energy, coastal, and other infrastructure across the state as Massachusetts looks to retain its leadership on climate change and prepare for a warmer future.

*For more information about the Governor’s Executive Order 569 or climate change regulation and adaptation, please contact [Jeanine Grachuk](#) or [Brook Detterman](#).*

**“Oh The Times . . . They are A-Changing:” EPA & DOJ Follow Through on Worker Endangerment Initiative**

*Authors: Peter C. Anderson and Stephen M. Richmond*

On October 12, 2016, the U.S. Department of Justice (DOJ) announced that four Texas companies agreed to plead guilty to criminal violations of the Clean Air Act at oil and chemical processing facilities, and to collectively pay \$3.5 million in fines to the government. While Clean Air Act criminal prosecutions are no longer rare events, and the total fines imposed set no new records, these cases are noteworthy for three critical reasons:

1. they confirm DOJ’s commitment to pursue the previously-announced Worker Endangerment Initiative;
2. they demonstrate the ability of OSHA and EPA to coordinate on significant enforcement cases; and
3. they reveal certain threshold factors that may trigger a criminal investigative response.

**I. The Worker Endangerment Initiative**

Based upon a desire to prioritize and elevate criminal investigations and prosecutions of worker safety violations, the DOJ issued a policy memorandum on December 17, 2015, entitled “[Prosecutions of Worker Safety Violations](#),” that was accompanied by a [MOU between DOJ and the Department of Labor \(DOL\)](#). While these policy declarations received significant attention, many in the regulatory community remained uncertain about whether, and how much, actual worker endangerment enforcement would increase. Since this initiative was not accompanied by any increased funding, or any legislative or regulatory “teeth,” some viewed the announcement with skepticism. As noted in recent case announcements, the hype appears to be real. See [www.justice.gov/enrd/worker-endangerment](http://www.justice.gov/enrd/worker-endangerment).

**II. The Underlying Facts of the Texas Cases**

Based upon a review of the facts set forth in the Bill of Information, the Factual Basis, and DOJ’s [detailed press release](#), a number of factors brought heightened investigative attention and an aggressive enforcement response. More specifically, these triggering facts included:

- an explosion;
- worker fatalities;
- improper management of, or releases of hazardous substances;
- falsified documents or records; and/or
- a failure to comply with safety requirements.

More specifically, in one case involving KTX Limited and KTX Properties Inc., the underlying conduct involved the use of contractors to perform welding or “hot work” on the piping that was connected to a product storage tank at a chemical and petroleum processing plant in Port Arthur, Texas. According to DOJ, the companies falsified a hot work permit that was issued to the workers who were scheduled to conduct welding, and failed to properly drain, isolate and decontaminate the storage tank prior to the welding resulting in an explosion which caused a fatality and two serious injuries, and the release of the hazardous substances in violation of the Clean Air Act.

The other noted cases concerned the implementation of a leak detection and repair (LDAR) program at a chemical processing plant in Crosby, Texas, owned by Crosby LP and Ramsey Properties LP. In those cases, DOJ alleged, and the defendants reportedly admitted, falsification of LDAR records and reports required by the facility’s Clean Air Act Title V operating permit. DOJ alleged in its criminal information that the defendants failed to perform any LDAR monitoring of processing components for fugitive volatile compounds for four years. Despite involving facts and violations that did not appear to create the potential for significant worker endangerment, EPA and DOJ still took aggressive actions.

### III. Lessons Learned In This New Enforcement Paradigm

#### 1. OSHA and Environmental Violations Have Been Fused

In the months following the announcement of the Worker Endangerment Initiative, DOJ Assistant Attorney General Cruden spoke at two conferences to highlight the impact of the policy shift, and to list it among his Division's top priorities. As these (and other) cases confirm, the government's "bark" has a "bite," and the emerging enforcement connections between OSHA and EPA's air program administered under the federal Clean Air Act keep getting more interesting and more consequential. As noted above, the KTX criminal case arose from an OSHA investigation after a tank explosion, but was ultimately prosecuted as a criminal misdemeanor under Section 113(c)(4) of the Clean Air Act, which makes it a crime to "negligently" release certain hazardous air pollutants.

#### 2. Worker Deaths Will Bring Heightened & Criminal Scrutiny

In justifying DOJ's new prioritized focus on worker safety, Mr. Cruden recently noted that "we have long thought that those who mistreat their employees may also have environmental problems worth examining." This dual focus appears to be a reality. Accordingly, it has become increasingly important to view OSHA and environmental risks as linked and presenting similar enforcement profiles, and to avoid a risk management approach that segregates or "siloes" the historically lower OSHA enforcement risks from the traditionally heightened environmental enforcement risks. Since the recent Initiative blends the two disciplines, it is prudent for companies to take a similar approach.

#### 3. Be Aware of Your Paper Trails and Any False Statements

By shining a spotlight on regulatory violations that result in worker fatalities, DOJ has signaled with these cases that it won't hesitate to pull its criminal enforcement trigger when it can link worker safety issues with environmental incidents, or when it discovers false information or deception in the course of its investigations. This includes any perceived false information within required company records, permit applications, voluntary reports, certifications, and statements made during inspections. As with any serious environmental investigation, when false statements exist, they can immediately transform a case into a criminal matter. As we have previously noted, allegations of false statements can be very powerful tools for the government since they: (1) help to establish intent; (2) fuel the jury's interest and anger; (3) make the case more difficult to defend; and (4) increase the potential punishment to be imposed.

## MASSACHUSETTS LAND USE DEVELOPMENTS

### Recent Changes to the Massachusetts Zoning Act and Smart Growth Zoning

*Author: Brian C. Levey*

Recently, the Massachusetts Legislature enacted and Gov. Baker signed into law several important changes to the Massachusetts Zoning Act, General Laws chapter 40A, and the Smart Growth Zoning and Housing Production Act, General Laws chapter 40R.

Summaries of these amendments are as follows:

- **New Starter Home Initiative.** Sections 37 through 54 of Chapter 219 of the Acts of 2016, [St. 2016, Ch. 219](#), amend General Laws chapter 40R, Smart Growth Zoning and Housing Production, by creating a new "Starter Home" program. Municipalities can now create Starter Home Districts on land areas greater than three (3) acres with a minimum density of 4 units per acre and dimensional zoning requirements that may differ from the underlying zoning which emphasize cluster development, common open space and low-impact development techniques. Homes may be no larger than 1850 SF and at least 50 percent of the units must have three (3) bedrooms. Communities establishing a Starter Home district will be eligible for incentive payments from the state for the creation of the district and housing within the district. At least 20 percent of the homes in the district must be affordable and occupied by households with incomes at or below 100% of Area Median Income. [The](#)

new Starter Home law provides developers and communities with a much needed tool to provide desperately needed workforce housing. Under Section 140 of Chapter 219 the Starter Home law takes on January 1, 2017. Efforts are underway to create implementing regulations.

- **Lengthened Building and Special Permit Immunity to Zoning Change.** Prior to the recent approval of Section 29 of Chapter 219 of the Acts of 2016, [St. 2016, Ch. 219](#), General Laws chapter 40A, § 6, provided that the recipient of a Building or Special Permit who failed to begin construction or use within six (6) months must conform to subsequent zoning amendments. Typically, such zoning changes are aimed at undermining the proposed project which is the subject of the permit. The Act doubles the time within which the permittee can commence construction or operations under the Building or Special Permit from six (6) months to twelve (12) months. This lengthier period provides developers with additional time to obtain financing or secure other necessary approvals and begin construction or use without fear of a zoning change that might otherwise nullify the project. Since the Act was approved by the Governor with an Emergency Preamble, this law immediately took effect on August 11, 2016.
- **Longer Special Permit Term.** The approval of Section 30 of Chapter 219 of the Acts of 2016, [St. 2016, Ch. 219](#), broadened chapter 40A, § 9, governing Special Permits by extending from two (2) years to three (3) years the term of a Special Permit. This change now gives developers three full years to either commence construction or substantial use. This feature better allows owners and developers to adapt their construction schedule to economic, labor, and market conditions without having to seek an extension from the special permit-granting authority. Section 30 also took effect immediately on August 11, 2016.
- **Broader Protection for Non-Compliant Structures.** Previously, structures failing to meet zoning requirements were considered non-compliant with zoning even after the expiration of either the six-year statute of limitations in the case of structures complying with the original building permit or the ten-year limitations period in all other cases. As a result, non-compliant structures could not be altered, extended or reconstructed without a variance. Now, the Act Relative to Nonconforming Structures, Chapter 184 of the Acts of 2016, [St. 2016, Ch. 184](#), provides that non-compliant structures in existence for ten years without the recording of a notice of a lawsuit claiming a zoning violation in the registry of deeds “shall, for zoning purposes, be deemed to be legally non-conforming structures” subject to G.L. c. 40A, § 6, and any local provisions governing non-conformities. Property owners now have the ability to seek the less stringent relief of a § 6 finding or special permit rather than a variance in order to alter, extend or reconstruct non-compliant structures. Chapter 184 provides that the provisions of the law are applicable regardless of whether the structure was erected prior to or after the effective date of the Act. It also contains language that gives municipalities an additional six months to take action on certain non-complying structures. The bill was signed by the Governor on August 4, 2016 and takes effect 90 days later on November 2, 2016.

*For more information on recent changes to the Massachusetts Zoning Act and smart growth zoning, please contact [Brian Levey](#).*

## DEVELOPMENTS AFFECTING ACADEMIC INSTITUTIONS

### The Federal MS4 Permit: What Massachusetts Academic Institutions Need to Know

*Authors: Jeanine L.G. Grachuk and Virginie K. Roveillo*

In July 2017, the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, known as the [MS4 Permit](#), will become effective in 260 towns and cities in Massachusetts. The efforts by affected towns and cities to implement the permit, issued by U.S. EPA and MassDEP, will impact academic institutions, particularly those with development plans for the years ahead. This is what academic institutions need to know about the MS4 Permit:

**1. What is the MS4 Permit?** The MS4 Permit authorizes the discharge of storm water from urbanized areas to surface waters from small MS4s in Massachusetts under the federal Clean Water Act and its Massachusetts counterpart. "MS4" is an acronym for "municipal separate storm water sewer system." Only "small" systems are covered by this Permit because medium and large systems have been addressed by earlier permits. While the name of the permit suggests it applies only to municipalities, the permit also applies to state, federal, county and other publicly-owned properties as well as certain state transportation agencies. As a result, within urbanized areas, the MS4 Permit applies directly to 260 towns and cities, and certain public colleges and universities, among others. Information on what places are subject to the MS4 Permit can be found on [MassDEP's website](#) and on [EPA's website](#).

**2. My academic institution is private. Does the MS4 Permit apply?** The MS4 Permit will affect all private academic institutions located in urban areas within the 260 affected municipalities. However, the MS4 Permit does not apply *directly* to such institutions. The MS4 Permit applies directly to towns and cities and imposes strict mandates on these permittees. The towns and cities themselves will be required to update local ordinances or create other regulatory mechanisms that will in turn impact landowners within the community.

Note, the MS4 Permit applies directly to *public* institutions that fall within its eligibility criteria. These are identified on [EPA's website](#) under the heading "Non-Traditional MS4s."

**3. The MS4 Permit will affect new development and redevelopment projects at academic institutions.** The MS4 Permit mandates that new construction projects that affect one acre or more and that are located in areas subject to the permit must meet strict stormwater runoff management requirements during and after construction. (This is separate from the requirements under the [General Permit for Stormwater Discharges from Construction Activities](#)). For example, new construction projects will have to implement and maintain post-construction stormwater management systems designed to retain one inch of rainfall from a single storm event and/or reduce runoff of total suspended solids from the property by 90% and phosphorus runoff by 60%. Similar, but less strict, requirements would apply to redeveloped properties. "New development" in this context means projects that occur "in an area that has not previously been developed to include impervious cover" and results in total earth disturbances equal to or greater than one acre. "Redevelopment" is defined as "any construction, land alteration, or improvement of impervious surfaces" that is not a new development, and results in total earth disturbances equal to or greater than one acre.

To avoid circumvention of the permit's requirements, the permit also requires small projects to be considered together if they are part of a common plan of development to determine if the one acre threshold is met. This is especially likely to occur at academic institutions that engage in long-term facilities' planning.

**4. New, strict requirements will apply to some discharges to the MS4 – in some cases without new construction or redevelopment.** Additional requirements apply to MS4 systems that discharge into an impaired receiving water. A water body can be identified as impaired in relation to particular contaminants, such as nitrogen, chloride, phosphorus, bacteria/pathogens, oils and grease, and metals. Such systems are required to undertake additional steps to further eliminate the relevant pollutant from the discharge, in some cases triggered by new development or redevelopment, but in other cases without new development or redevelopment.

**5. The MS4 Permit may increase local taxes, fees, and other costs.** The MS4 Permit imposes many requirements on towns and cities that will cost money. It is not clear where municipalities will find the needed funding. Some towns or cities may decide to create a new funding source, such as a "storm water utility user fee" based on land area, or other criteria. Alternately, such funds could come from property taxes, grants, or a special assessment. Academic institutions may want to "be at the table" for these discussions.

**6. Academic institutions can work with their host municipalities to influence future requirements.** Local land use requirements in Massachusetts take many forms, and vary from city to city and town to town. Storm water requirements may be incorporated into planning board, zoning board of appeals, conservation commission and/or

board of health ordinances, bylaws, rules or regulations, and may be in the form of permits, approvals or direct mandates. Academic institutions may also want to “be at the table” for these discussions.

- 7. The deadline for implementation of the MS4 Permit has not been delayed by court challenges.** There have been several challenges to the permit filed in court, as we described in a [recent alert](#). These challenges are not a good reason to delay action to comply with its requirements because it is unlikely that these challenges will be resolved by the July 2017 effective date of the permit, and no court has issued an injunction staying the permit.

*If you have any questions on the Small MS4 General Permit or implementation of its requirements, please contact [Virginie Roveillo](#), [Marc Goldstein](#) or [Jeanine Grachuk](#).*

### **Practice Corner for EH&S at Academic Institutions: Raising the Stakes – EPA Increases Civil Penalties for Environmental Noncompliance**

*Authors: Jeanine L.G. Grachuk and Heidi P. Knight*

Colleges and universities could see huge increases in civil environmental penalties as a result of a recent update to the maximum civil penalties for federal environmental violations.

For example, the civil penalties that were originally set at \$25,000 under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act have increased to between \$44,539 and \$93,750. Because the penalties are per day per violation, a single noncompliance can lead to a demand for a massive civil penalty. Assuming a particular violation of rules implementing the Clean Air Act is eligible for a penalty of \$44,539 under the updated rules and that single violation is a continuing violation that lasts for one month, the penalty demanded could be as high as \$1.38 million.

The major federal environmental statutes authorize maximum penalties that can be imposed by the U.S. EPA for each violation for each day the violation continues. These penalty amounts are occasionally increased but have not kept up with inflation. Under a recent congressional mandate, EPA has increased its maximum civil penalties substantially for penalty assessments that occur after August 1, 2016 for any violation that occurs after November 1, 2015. According to EPA’s Federal Register notice, 81 Fed. Reg. 43091 (July 1, 2016), these increases are intended to be an initial adjustment to “catch-up” to inflation, and each January subsequent annual adjustments will be made.

Civil penalties for regulations and statutes enforced by the Occupational Safety and Health Administration and the Department of the Interior have also increased under separate rulemakings with different effective dates.

*For more information about the increased penalty provisions, please see Beveridge & Diamond’s news alert, [OSHA, EPA and DOI Increase Maximum Civil Penalties](#). For more information on defending enforcement actions in Massachusetts, please contact [Jeanine Grachuk](#) or [Heidi Knight](#).*

## **NATIONAL DEVELOPMENTS**

### **EPA is Extending Its Refrigerant Management Regulations to Non-Ozone Depleting Refrigerants**

*Authors: David M. Friedland and Virginie K. Roveillo*

The U.S. Environmental Protection Agency (EPA) has signed and is submitting for publication in the Federal Register an update to its Refrigerant Management Regulations under Section 608 of the Clean Air Act (CAA) to further reduce emissions of refrigerants from air conditioning and industrial refrigeration equipment. An advance pre-publication copy of the rule has been posted on the agency’s website, [here](#). With this rule, EPA is revising the existing safe handling and management requirements that are currently applicable only to ozone-depleting substances (ODS) and extending them to substitute refrigerants, such as hydrofluorocarbons (HFCs). The agency is also tightening certain provisions of the existing Refrigerant Management Regulations to include more stringent leak inspection and repair requirements and recordkeeping and reporting requirements. The rule will become effective beginning in January 1, 2017, with staggered

compliance deadlines for certain of the provisions newly applicable to substitute refrigerants. EPA's revised Refrigerant Management Regulations will not only impact owners and operators of refrigeration appliances and equipment and the technicians servicing such equipment, but will also impact refrigerant distributors and wholesalers, refrigerant reclaimers, and appliance disposal facilities. Each of these entities should begin to familiarize themselves with the updated regulatory requirements applicable to ODS and substitute refrigerants and begin preparing for their implementation early next year.

[Read the full article.](#)

### **Beveridge & Diamond Hosts TSCA Implementation Conference**

On October 6, 2016, Beveridge & Diamond hosted a conference, *TSCA Implementation: Opportunities and Challenges*, at the CEB Waterview Conference Center in Rosslyn, Virginia. The conference, which was attended by 40 industry leaders, featured six presentations by Beveridge & Diamond lawyers and panels of industry experts. Discussion topics included key changes to TSCA and EPA's expected implementation path; chemical industry perspectives on opportunities and risks under the new TSCA; preparing for compliance, enforcement, and litigation; TSCA impacts on product manufacturers and other downstream chemical users; and state chemical regulatory hotbeds, including California Prop 65 and green chemistry.

[Read the full article.](#)

### **DOT/PHMSA Proposes to Harmonize U.S. Lithium Battery Transport Requirements With International Standards**

*Authors: Elizabeth M. Richardson, Aaron H. Goldberg, and John G. Cossa*

Summary: The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration issued a proposed rule that would harmonize U.S. hazardous materials regulations with international hazardous materials transport standards. Among other things, the proposal would change certain proper shipping names, hazard classes, packing groups, special provisions, packing authorizations, air transport quantity limitations, and vessel stowage requirements and incorporate by reference various international technical standards. Significantly, PHMSA proposes to adopt into binding U.S. regulation the updated hazard communication requirements for the transport of lithium batteries (including equipment containing such batteries) contained in the [19<sup>th</sup> Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations](#). Once finalized, these requirements will be mandatory for all U.S. shippers and transporters of lithium batteries. Although PHMSA has for the moment declined to incorporate into the U.S. Hazardous Materials Regulations the [enhanced safety provisions for lithium batteries transported by aircraft contained in the 2015-2016 Edition of the International Civil Aviation Organization's \("ICAO"\) Technical Instructions as of April 1, 2016](#), the preamble to the proposed rule indicates that the Agency is considering adopting these provisions in a separate rulemaking. Comments on the proposed rule are due November 7, 2016.

[Read the full article.](#)

### **Comments Due November 1, 2016 on Proposed Update to Framework for Biotechnology Regulation**

*Authors: Alan J. Sachs, Kathryn E. Szmuszkovicz*

On September 18, 2016, the Obama Administration issued two major documents in connection with its ongoing efforts to modernize the federal Coordinated Framework for the Regulation of Biotechnology. The [first document](#), a proposed update to the 1986 framework, intends to clarify the current roles of the U.S. Environmental Protection Agency (EPA), U.S. Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA) – the three primary agencies involved in the regulation of biotechnology products. Members of the regulated industry, other stakeholders, and members of the broader public may submit comments on the proposed update until November 1,

2016. The [second document](#) presents a national strategy outlining future steps that the Agencies intend to take to ensure that the regulatory system addresses novel biotechnology product types going forward. As directed by the Executive Office of the President last year, the Agencies have also commissioned development of a third document by the National Academies of Sciences, Engineering and Medicine (NAS) to address future biotechnology products and opportunities to enhance capabilities of the regulatory system. The NAS expects to release its report at the end of 2016.

[Read the full article.](#)

## FIRM NEWS & EVENTS

### ***Super Lawyers* Recognizes Four Wellesley Office Principals**

Beveridge & Diamond, P.C. proudly announces that *Super Lawyers* recognized four principals in the Firm's Wellesley office as top lawyers in their fields of practice in Massachusetts.

The 2016 Massachusetts *Super Lawyers* list includes:

- [Marc J. Goldstein](#) (Environmental Litigation)
- [Jeanine L.G. Grachuk](#) (Environmental)
- [Brian C. Levey](#) (Land Use & Zoning)
- [Stephen M. Richmond](#) (Environmental)

*Super Lawyers* is a rating service that identifies lawyers in 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. *Super Lawyers* recognition is limited to no more than five percent of the lawyers in a given geographic area.