

January 13, 2011

DEP DELAYS IMPLEMENTATION OF SOLID WASTE FACILITY PERMITTING CHANGES

As we reported in our July 7, 2010 Client Advisory, the Massachusetts legislature amended the Solid Waste Disposal Act, G.L. c. 111, § 150A, as part of the Fiscal Year 2011 state budget, shifting responsibility for issuing permits for small (not greater than 50 tons per day) transfer stations to local boards of health. MassDEP has now delayed the implementation of that change for existing transfer stations through its interpretation of the Permit Extension Act.

In a letter to members and agents of boards of health across the state, MassDEP stated that existing permits issued by MassDEP for small transfer stations will remain in effect until July 1, 2012. After that date, all operating transfer stations accepting 50 tons or less per day will need to have a permit from their local board of health. New small transfer stations will need to obtain their permits from the local board commencing immediately.

The Permit Extension Act (Section 173 of Chapter 240 of the Acts of 2010), described further in our Client Advisory of August 6, 2010, automatically extended for a period of two years most permits and approvals for the use or development of property that were in effect or existence in the period beginning August 15, 2008 and continuing through August 15, 2010. MassDEP interprets this Act as extending the term of solid waste facility permits issued by the agency,

which arguably would have expired on July 1, 2010 by virtue of the legislation requiring small transfer station operators to have a permit issued by the local board of health.

MassDEP intends to work with board of health members and agents throughout the coming months to develop guidance and technical assistance mechanisms to assist the boards with their new responsibilities. We believe the boards were probably not consulted before the statutory amendments were enacted, thus creating the need for additional time and communication concerning the implementation of the permitting change.

For more information contact Michelle O'Brien or Tom Mackie.