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COURT CLARIFIES THE RIGHTS OF TEN CITIZEN GROUPS TO APPEAL SOLID WASTE SITE ASSIGNMENTS

MassDEP's Solid Waste Site Assignment Regulations, 310 CMR 16.00, give groups of ten citizens of the Commonwealth special rights to participate as "parties" in site assignment hearings. Until recently it was unclear whether those same groups also had special rights to appeal a site assignment decision. The decision in *Sturbridge Board of Health v. Southbridge Board of Health*, 461 Mass. 548 (2012) now makes it clear that a ten citizen group may only appeal if it is "aggrieved" in the traditional sense.

Generally speaking, the only persons entitled to be "parties" to site assignment hearings are those who can show that they will be "specifically and substantially" affected by the hearing. This ensures that only persons who have a legitimate interest will be afforded the opportunity to present evidence and fully participate in the hearing. However, the MassDEP Site Assignment Regulations provide that any group of ten persons may register as a "party" in a hearing in which damage to the environment or public health and safety might be at issue, without demonstrating such a specific and substantial affect. As a result, ten person groups regularly participate fully in site assignment hearings through counsel or an authorized representative to present their own witnesses; cross examine the applicant's and board's witnesses and file briefs on the issues of environmental damage, public health and safety.

In the *Sturbridge* case, multiple ten citizen groups obtained party status in the site assignment hearing on the Southbridge Recycling and Disposal Park landfill in Southbridge, Massachusetts. The Southbridge Board of Health issued a site assignment modification that changed type, origin and amount of waste that SRDP can landfill. The Town of Sturbridge Board of Health and the ten citizen groups appealed the decision. The applicant and the Southbridge Board moved to dismiss the groups' appeal on the ground that the groups were not "aggrieved", but the superior court ruled that they had the right to appeal because they had been "full parties" to the hearing. On appeal, the SJC overturned the superior court, holding that ten citizen groups must be "aggrieved" in the traditional sense (i.e., show "substantial injury" or "prejudice to their individual rights") in order to appeal a site assignment decision under G.L. c. 111, § 150A.

For more information contact Thomas A. Mackie, who submitted a "friend of the court" brief on behalf of the National Solid Wastes Management Association in the case.