



Insights & Updates

Spring 2009

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MSO Celebrates Milestone

While other law firms are now joining the trend and going "green," we're going "silver." Mackie Shea O'Brien, PC is celebrating its 25th Anniversary.

In 1983, when environmental law was in its infancy, our founders, Francis S. Wright and Anton T. Moehrke, envisioned a law firm that concentrated on providing high quality, personalized legal service to businesses and industries dealing with this emerging practice area. Since its incorporation in 1984, our firm has been a leader in the field. Today we are referred to in publications as a "respected boutique" and a "firm of choice." Although the names and faces have changed in 25 years, we remain true to our founders' mission. For us, being "green" is not a new trend. We have been providing legal solutions to help businesses and the environment since our beginning.

Environmental law and, consequently, our practice, have evolved significantly over the years. Meanwhile, two core areas of the firm's practice in 1984 continue to be important practice areas. They have taken on new "looks," however, with the changing times. We have worked on cleaning up contaminated sites for decades; now many call it "Brownfields redevelopment." Since the firm's creation we have helped communities dispose of their solid waste; now we are helping the Commonwealth find new ways to reuse materials and generate energy from waste. These "green" concepts have been a part of our firm's work for 25 years.

The following are a few examples of how environmental law has evolved and we have, too.

Superfund

The early 1980s brought us the Superfund law and its state counterpart, G.L. c. 21E. For years it seemed as though the only ones benefiting from these laws were environmental lawyers and consultants. Today, some federal Superfund sites have finally been cleaned up and put back to use and there are few additions to the site list. Progress on the state side is

even more remarkable. Since the creation in 1992 of a "privatized" program for addressing contaminated sites, more than 20,000 sites have been closed out. Real estate transactions



involving contaminated properties are taking place and the cleanup regulations now have measurable end points. Property owners, prospective purchasers, potentially responsible parties, and environmental consultants all seek our assistance in dealing with contaminated sites.

Solid Waste

The so-called "solid waste crisis" of the mid-1980s brought changes to the laws and regulations governing siting of solid waste facilities. The creation of siting criteria was supposed to ease the permitting path for new or expanded facilities. To this day, however, solid waste siting remains difficult and expensive whenever there are opponents of a project. Because our firm has worked on these projects for 25 years, we know the pitfalls and can help developers address the technical and policy issues proactively.

New Uses for Waste

Even before the recent focus on "sustainable" and "green" projects, we were helping our solid waste clients convert landfill gas to energy. We also assisted clients with the reuse of mildly contaminated soil as grading and shaping material for landfill closures, keeping soil from taking up

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Firm Activities

IN THE NEWS

Tom Mackie and **Gail Magenau Hire** toured Thomson Brothers Industries' new, state-of-the-art recycling center and transfer station in North Andover. Billy Thomson and his son Bill Thomson, who manages the new facility, and Tom began pursuing permits for the project more than 12 years ago.



Tom Mackie, Gail Magenau Hire, Billy Thomson on February 19, 2009

In December, **Noreen Ruggiero** and **John Shea** granted veterans' wishes by delivering holiday gifts from MSO to the New England Shelter for Homeless Veterans for the Adopt-A-Vet program.

PROFESSORS AT LAW

John Shea hosted a Stormwater Colloquium Executive Breakfast on December 4, 2008. He explored the evolving legal regimes for stormwater management and Sandy Brock of Nitsch Engineering explained the new MassDEP regulations.

Tom Mackie, with Dale Raczynski of Epsilon Associates, co-chaired the Environmental Business Council of New England's Biomass Seminar on May 5, 2009.

On January 16, **Tom Mackie** moderated a panel discussion of New England region state officials at EBC's Third Annual Regional Construction and Demolition Debris Summit.

Michelle O'Brien co-taught a course on Environmental Law for the Licensed Site Professional Association which provided continuing education credits to LSPs who attended.

MSO Celebrates Milestone (continued from page 1)

space in active landfills and providing revenue to complete long-overdue closure projects. In recent years we completed the permitting and siting of an innovative gypsum recycling facility. Today we are assisting the developer of the Commonwealth's first biomass facility to use recycled wood from construction and demolition debris to produce renewable energy. The evolution of our traditional solid waste practice into a renewable energy one is exciting and we look forward to the challenges ahead.

Wetlands and Wildlife

Real estate development projects are increasingly in need of permits under wetland laws. The majority of Massachusetts cities and towns now have wetland protection bylaws that go above and beyond the state law. In addition, in 2005 the state promulgated regulations under the Massachusetts Endangered Species Act, establishing criteria for determining impacts to rare species and their habitats and requiring significant mitigation. We continue to work with our developer clients to get projects built in spite of the increases in regulations.

Water

Water management for drinking water, storm water, and waste water has become increasingly complex and regulated. Water policies and regulations are now more focused on ensuring sufficient water quantity and quality not only to meet current needs but to sustain our environment and economy into the future. For example, water withdrawal limits are being enforced and storm water frequently must be recharged into the ground. We are dealing with water regulations and

guidance in all types of development projects. We have also assisted wastewater treatment facilities with their maintenance and upgrades to meet current standards.

The nature of our work may have changed in 25 years, but our firm remains true to its roots. As we celebrate our significant milestone, we look forward to the challenges ahead.



Closed landfills appear to be a perfect place for solar panels. MassDEP is exploring this use and other renewable energy options for landfills.



Renewables Corner

President Obama's budget calls for \$150 billion in spending on clean energy and efficiency over the next ten years. His plan is to double our renewable energy capacity through investments over the next three years. In tandem, he proposes a carbon cap and trading program, similar to RGGI, with the goal of reducing emissions 14 percent below 2005 levels by 2020 and 83 percent below by 2050.

Locally, new renewable energy projects are making progress. On December 20, 2008, the MassDEP issued a final air permit to Russell Biomass for its proposed 50 MW wood fueled power plant in Russell, Massachusetts. In May of this year, the Secretary of Energy and Environmental Affairs issued a certificate allowing the Pioneer Renewable Energy 50MW biomass power plant in Greenfield, Massachusetts to proceed without further environmental review under MEPA. That same month the Energy Facilities Siting Board unanimously approved the Cape Wind project which had earlier received a favorable Environmental Impact Statement from the federal Minerals Management Service. The Massachusetts superior court has upheld the DEP's issuance of a favorable final wetlands order to Hoosac Wind (since appealed by local opponents to the Appeals Court). Ze-Gen reports that its advanced gasification pilot facility, located in New Bedford, Massachusetts, is consistently producing synthesis gas yields with a combined carbon monoxide and hydrogen content exceeding 70 percent. Meanwhile, the City of Taunton has again extended the deadline for submitting proposals for a regional solid waste facility until June 23, 2009.

Effective March 31, the Department of Energy Resources issued emergency Class I and Class II Renewable Energy Portfolio Standard and "Alternative Portfolio Standard" regulations pursuant to the Green Communities Act.

Firm Successes

Hingham Church Expansion

John Shea represented the South Shore Baptist Church in Hingham before the Board of Health and Conservation Commission in permitting major renovations and a new sanctuary. The Church will protect in perpetuity five acres of white pine forest adjacent to public water supply wells and infiltrate 100% of storm water in a "low impact development" storm water system. Rod Gaskell of SITEC Environmental is the engineer and Vcevy Strelakovsky is the architect.

Landfill Lawsuit Settlement

Tom Mackie and Gail Magenau Hire represented the City of Northampton Department of Public Works in negotiating a settlement under which the City will acquire significant landfill buffer property and settle long standing neighbor complaints. City Solicitor, Janet M. Sheppard, represented the City Zoning Board of Appeals. Lauren Stiller Rikleen was instrumental in mediating the dispute.

Stimulating the Environment

President Obama's \$786 billion stimulus package contains \$71 billion in environmental and energy incentives. Even more broadly, the stimulus package includes transportation and infrastructure projects that will trigger some degree of environmental work, even though as shovel ready projects, design, engineering and permitting have likely been completed. MSO's environmental sector clients are already reporting that business is picking up.

The stimulus package includes \$6 billion to clean up former weapon production and energy research sites; \$6 billion for local clean water and drinking water infrastructure improvements; \$1.2 billion for EPA's nationwide environmental cleanup programs, including Superfund, and \$1.38 billion to support \$3.8 billion in loans and grants for water and waste disposal facilities in rural areas. The US EPA has allocated hundreds of millions to reinvigorate clean up of Superfund sites in Massachusetts and New England that have lain fallow because of a lack of funding. These sites include New Bedford Harbor, Silresim in Lowell, Hathaway & Patterson in Mansfield, Ottati & Goss in New Hampshire, and Elizabeth Mine in Vermont. A useful summary of the EPA Superfund stimulus spending can be found at <http://www.epa.gov/superfund/eparecovery/sites.html>.

Governor Patrick has awarded more than \$986 million in financing and subsidies to fund 127 drinking water and wastewater infrastructure projects in the State Revolving Fund (SRF) program. The Administration also has received an infusion of \$5 million to help clean up the Shpack Landfill in Norton and Attleboro.

Under the American Recovery and Reinvestment Act, the Department of Energy has allocated \$54.9 million to the Massachusetts State Energy Program. The Commonwealth intends to expend the funds on retrofitting state energy facilities to include biomass-based heating and solar hot water where appropriate; 15 to 30 MW of solar PV; and wind projects of one to two turbines at an advanced stage at a few state facilities.

Beacon Ocean Shores 40B Project

John Shea represented the Beacon Shores Marshfield, Massachusetts 40B project in defending permit appeals and approvals for 97 units of affordable, over-55 apartments, two market rate homes, and permanent conservation of 23 acres of eastern box turtle habitat.

Site Assignment for Waste Transfer Facility

Tom Mackie represented UWM Holdings, Inc. in contested proceedings before the City of Holyoke Board of Health that culminated in a unanimous site assignment modification for solid waste handling facility. Tom led a team including Greg Wirsén of Green Seal Environmental and several other technical experts.

Environmental Law Update

STORMWATER

The MassDEP expects to issue final storm water regulations (310 CMR 21.00) before the end of the year. Under the current proposal, owners will need to assemble a Stormwater Management Team, develop a Stormwater Management Plan, apply for coverage under a General Permit, submit an initial and annual Compliance Certification by a Stormwater Professional, and, on already impaired surface waters with Total Maximum Daily Loads, prepare and implement retrofit designs that meet stringent performance standards over the next 5 to 10 years. Additionally, developers will immediately need to comply with and design systems to meet baseline performance standards and use Low Impact Development techniques and Best Management Practices to maximize infiltration and reduce pollutant loads. One study estimates stormwater structure retrofits under the regulations could cost \$50,000 to \$100,000 per acre. Sites currently covered by an NPDES individual or general permit will still need a General Stormwater Permit from MassDEP.

OCEAN MANAGEMENT

The Massachusetts Oceans Act of 2008 established 15 requirements for an ocean plan, including identification of appropriate locations and performance standards for activities, uses, and facilities, such as renewable energy facilities, aquaculture, sand mining for beach nourishment, cables and pipelines. CZM is developing maps using marine spatial planning and ecosystem-based management techniques to analyze and overlay data. These maps will effectively “zone” the coast into two categories: special, sensitive and unique areas for exclusionary protection, and areas appropriate for development under certain performance standards. Since the Oceans Act does not create a new regulatory program, these polygon maps will be incorporated in the existing coastal zone management plan and enforced through regulatory and permitting programs: by the MEPA Unit in conducting ENF and EIR reviews, MassDEP in wetlands and waterways permitting, CZM in consistency reviews, and other state agencies.



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