

September 20, 2011

**CHANGES TO SOLID WASTE LAW REVERSED:  
OTHER AMENDMENTS TO ENVIRONMENTAL LAWS  
ALSO ADOPTED IN STATE BUDGET**

Last year the Massachusetts Legislature, at the urging of the Department of Environmental Protection (DEP), amended the Solid Waste Disposal Act, G.L. c. 111, § 150A, effectuating two significant changes in the way solid waste facilities are permitted. In the Fiscal Year 2012 state budget passed this summer, the legislature reversed both changes.

The requirement for DEP to issue a site suitability report upon receipt of an application for a solid waste facility site assignment is back in the statute. The suitability report, a requirement since 1987, states whether a proposed site meets the siting criteria established under section 150A½ of chapter 111. It must be issued within 60 days of DEP's receipt of a site assignment application. A local board of health must commence a site assignment hearing within 30 days of its receipt of a positive site suitability report, as required prior to the 2010 change.

Responsibility for issuing permits for small refuse transfer stations is statutorily back at DEP. Last year the legislature transferred responsibility for issuing construction and operating permits for transfer stations handling 50 tons per day or less to local boards of health. The change was never effective, however, because of how DEP interpreted the Permit Extension Act.

A more subtle change to the statutory scheme for permitting solid waste facilities made in 2010 remains intact. DEP may restrict the types of waste taken in at a facility to promote recycling. Previously DEP was authorized by statute to limit or prohibit the disposal of particular types of solid waste to extend the useful life of a facility or reduce its environmental impact. The new statutory language also allows the permitting entities to limit or prohibit certain types of waste to “promote reuse, waste reduction and recycling” and to protect public health.

The Fiscal Year 2012 state budget also changed the audit requirements in Chapter 21E, the Oil and Hazardous Material Release Prevention and Response Act. The requirement for DEP to conduct an audit of 20 percent of all sites has been replaced. DEP must now audit a “statistically significant number” of sites to ensure compliance with Chapter 21E and the Massachusetts Contingency Plan.

The third DEP program affected by the state budget is the Chapter 91 waterways program. The legislature added a new section to the statute to allow DEP to issue a general license authorizing noncommercial small-scale docks, piers and similar structures that are accessory to a residential use in tidelands, great ponds, rivers and streams. Various other changes to the Chapter 91 permitting scheme were made to accommodate the new general license category.

*For more information contact Michelle O'Brien.*