



REAL ESTATE ROUND UP



Environment & Energy Insights



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Welcome to the inaugural edition of ***Environment & Energy Insights***, a monthly update of current trends in environment and energy law affecting Massachusetts.

This month we are covering:

- EPA's expected new stormwater requirements in the Charles River, Mystic River, and Neponset River watersheds
- EPA's new drinking water regulations for PFAS
- EPA's designation of two PFAS as CERCLA hazardous substances
- Continued local opposition on battery storage
- Offshore wind legal wins and continued rising costs

EPA will soon require NPDES permits for stormwater in the Charles River, Mystic River, and Neponset River Watersheds

The Clean Water Act (CWA) defines specific industrial, construction, and municipal stormwater sources that must be authorized by a NPDES permit. The CWA also permits EPA to regulate other sources on a case-by-case basis when stormwater has a localized adverse impact on water quality. This authority is known as EPA's "Residual Designation Authority."

In September 2022, EPA exercised this authority for the Charles River, Mystic River, and Neponset River Watersheds, which cover Boston, Cambridge, and over a dozen other communities (see slide 12 of this [EPA presentation](#)). EPA issued a [preliminary determination](#) that designated for NPDES permitting certain commercial, industrial, and institutional properties with one or more acres of impervious cover (e.g., parking areas, buildings, and other areas created using nonporous material). The agency is "considering all permitting options" and expects "to create a menu of stormwater control options," including "building green infrastructure and other measures that capture and treat runoff." EPA estimates that over 3,500 properties could be affected by its new permit. The agency is currently seeking stakeholder feedback and plans to release a draft of the Residual Designation Authority Permit in the fall of 2024. More information can be found on the [EPA website](#).

EPA's new drinking water regulations for PFAS

Last month, EPA finalized new drinking water regulations limiting the amount of PFAS (commonly known as "forever chemicals") allowed in drinking water at 4 or 10 parts per trillion (ppt), depending on the specific PFAS type. The prior Massachusetts standard was a combined 20 ppt for these same substances, but the Massachusetts Department of Environmental Protection (MassDEP) intends to change the regulation to match EPA's new standards. Public water systems have until 2027 to meet the new standards. MassDEP estimates that 181 state public water systems will be affected, including 95 systems that will need to address PFAS for the first time. We wrote about the new rules in more detail, [available here](#).

EPA designates two PFAS as CERCLA hazardous substances

Speaking of PFAS, last month EPA also [designated](#) two forms of PFAS (PFOA and PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA did so with the stated goal of expanding EPA's ability to address more contaminated sites, take earlier action, expedite cleanups, and increase transparency while ensuring polluters pay for the costs to clean up pollution threatening the health of communities. The rule requires entities to immediately report releases of PFOA and PFOS above a threshold amount. It does not require reporting of past releases if they are not continuing.

In a [related memorandum](#) on EPA's PFAS enforcement discretion and settlement policy under CERCLA, EPA stated that it would "focus enforcement on parties who significantly contributed to the release of PFAS chemicals into the environment," and that it "does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including, but not limited to, community water systems and publicly owned treatment works, municipal separate storm sewer systems," and others. This likely comes as little comfort to water agencies because the policy provides no protection against third party actions.

Continued local opposition to battery storage

It is well known that industrial-scale battery storage is essential to the implementation of clean energy, especially wind and solar. Batteries are needed to store surplus energy during bright sun and strong winds, and distribute that energy when needed. Ideally, these facilities are located near existing electric infrastructure, power plants, and/or end users. But despite this need, local communities are continuing to raise roadblocks. For example, residents in the Town of Wendell called "No Assaults and Batteries" are currently opposing a 105-megawatt storage facility, and the Wendell Conservation Commission denied the project because of "the noise disruption to wildlife." The project owner is making changes to address the commission's concern and, like other storage projects in Medway and Carver, has applied to the state Department of Public Utilities for exemptions to certain local zoning requirements (No. 23-05). However, these processes can take considerable time. (Approval from the Energy Facilities Siting Board is not currently needed for battery storage projects.) For example, the project owner first filed at the DPU in January 2023.

Offshore wind—court wins amid rising costs

It's one step forward, one step back on offshore wind. Last month, the federal First Circuit Court of Appeals [affirmed](#) the district court's rejection of a citizens group's challenge to the Vineyard Wind project off the coast of Martha's Vineyard and Nantucket, finding that federal regulators sufficiently analyzed the projects' effects on right whales. This continues a trend of legal victories for offshore wind and federal regulators, with courts thus far affirming the regulators' process and decision-making.

But these legal wins come against continuing concerns over the costs of these projects. In late April, three large projects in New York were [cancelled](#) after GE Vernova discontinued development of an 18-MW turbine model. The owners of the three projects (Attentive Energy One, Community Offshore Wind, and Excelsior Wind) said the projects were no longer economically viable at the previously contracted price of about \$150/MWh. (For reference, prices in ISO New England are typically about \$30-\$50/MWh). It remains to be seen whether the cancellation of GE's 18-MW turbines will affect the bids submitted for Massachusetts' latest offshore wind procurement completed in March. The submitted prices for those bids have not been disclosed.



This advisory was prepared by [Matthew Connolly](#) and [Matthew Snell](#) in Nutter's Environmental and Energy practice group. If you would like additional information, please contact any member of our practice group or your Nutter attorney at 617.439.2000.

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