

Environment & Energy Insights

January 2026 Edition

Welcome to the January edition of Nutter's *Environment & Energy Insights*, a periodic update of current trends in environment and energy law. This month we cover:

- **Massachusetts Department of Environmental Protection reports on PFAS in treatment plants**
- **Proposed regulations from the Energy Facilities Siting Board and revised guidelines from the Office of Environmental Justice and Equity**

MassDEP Issues Report on PFAS in Waste Streams for Municipal Wastewater Treatment Plants Across Massachusetts

The Massachusetts Department of Environmental Protection ("MassDEP") has published a report on its study of per- and polyfluoroalkyl substances ("PFAS") in wastewater treatment plants across Massachusetts. PFAS is a class of emerging contaminants that has gained notoriety in recent years for their potential health hazards and longevity in the environment. PFAS monitoring and reporting has also become a more common requirement included in wastewater facilities' National Pollution Discharge Elimination System ("NPDES") permits issued under the federal Clean Water Act.

The MassDEP study encompassed testing of PFAS in the influent, effluent, and sludge of all 114 publicly owned wastewater treatment plants ("POTWs") in Massachusetts. While POTWs do not use or produce PFAS when treating or disposing of sanitary waste, the purpose of the study was to better understand where and how PFAS is present in and affecting waste streams.

In its findings, the study found that PFAS concentrations tended to be highest in facilities' sludge and that influent and effluent demonstrated similar concentrations that were consistently lower. However, at POTWs with the highest influent PFAS concentrations, MassDEP detected relatively lower effluent PFAS concentrations. MassDEP also tested for adsorbable organic fluorine ("AOF") to gain a broader understanding of all fluorinated compounds in the facilities' waste streams. AOF concentrations tended to be lower in effluent than influent, likely due to the plants' ability to treat some non-PFAS fluorinated compounds into the plants' internal solids.

Looking forward, the study recommended that MassDEP conduct a longer-term study "to examine seasonal and regional variation of PFAS concentrations and mass loads." MassDEP also recommended evaluating "the use of AOF as a potential PFAS screening tool." Lastly, MassDEP suggested developing more firm guidance for sampling and testing PFAS (which will become more common at POTWs as PFAS testing requirements become more prevalent).

Because POTWs do not use or produce PFAS, and serve the public through the collection and treatment of sanitary waste, any future PFAS-related rules will need to take into account this public service, financial assistance for communities and operators of POTWs, and protections for the ratepayers who ultimately fund these critical services.

Cumulative Impact Analysis: Energy Facilities Siting Board Releases Final Decision to Open Rulemaking and the Office of Environmental Justice Releases Guidelines

As discussed in our prior posts, the Energy Facilities Siting Board ("Siting Board") has been tasked with implementing aspects of the 2024 Climate Act—namely, to create and oversee a unified permitting process for clean energy projects. In September 2025, the Siting Board proposed broad revisions to existing regulations to implement the statute's general requirements.

More recently, on December 19, 2025, the Siting Board opened another rulemaking, this time implementing the cumulative impact analysis and site suitability criteria requirements of the Climate Act. Cumulative impact analyses, as defined in M.G.L. c. 164, § 69G, are written reports on "any existing environmental

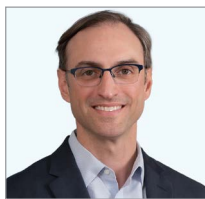
burden and public health consequences impacting a specific geographical area” where a clean energy facility is intended to be sited. If such analysis reveals that the area “is subject to an existing unfair or inequitable environmental burden or related health consequence,” then the report must additionally identify 1) the environmental and public health impacts of the proposed project; 2) the potential impact the project would have on climate change as it affects that area; and 3) potential remedial actions that may be taken with regards to the project’s adverse impacts.

The proposed regulations from the Siting Board’s December decision, to be promulgated at 980 CMR 15.00, implement this requirement and address other siting suitability factors. These proposed regulations outline how the Siting Board will determine which areas are burdened by a clean energy facility, identify disproportionate adverse effects, and evaluate potential remedial actions that may be taken. Applicants for Siting Board consolidated permits will need to prepare cumulative impact analysis reports that address these ends. The Siting Board will then consider whether the applicant gave due consideration to the cumulative impacts of the proposed project in its final decisions.

Relatedly, on January 23, 2026, the Office of Environmental Justice and Equity (“OEJE”) released a revised draft of the Standards and Guidelines for Cumulative Impact Analysis (the prior draft was released on October 31, 2025). These guidelines establish a framework for consistent cumulative impact analysis to be integrated into the Siting Board’s regulatory and decision-making processes. As the Siting Board notes in its December 19 decision, OEJE is tasked with providing these guidelines under the 2024 Climate Act’s statutory framework. The proposed regulations at 980 CMR 15.01(4) confirm and restate that OEJE’s guidelines will serve as the underlying guidance for its analyses. These revised guidelines will inform the Siting Board’s rulemaking process for cumulative impact analyses. The guidelines emphasize the role of environmental justice and outline the importance of OEJE’s environmental justice screening tool, MassEnviroScreen.

Two public comment hearings are scheduled for the Siting Board’s rulemaking on February 2, 2026 at 1:00 p.m. and 6:00 p.m., respectively, at One South Station, Boston, MA (3rd Floor, Large Hearing Room). The Siting Board will also be accepting written comments by email attachment to dpu.efiling@mass.gov and sitingboard.filing@mass.gov until February 13, 2026. The public comment period for OEJE’s revised draft guidelines is also open until February 13, 2026 at 5:00 p.m., and written comments may be submitted to ej.inquires@mass.gov.

Authors



**Matthew
Connolly**



**Alexander
Franzosa**



**Matthew
Snell**

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This advisory was prepared by [Matthew Connolly](#), [Alexander Franzosa](#) and [Matthew Snell](#) in Nutter’s [Environmental, Regulatory and Compliance 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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