

Stormwater Permits Extended to Unregulated Properties

By Michael Glover and Valerie Gwinn

On November 17, 2008, the United States Environmental Protection Agency (the "EPA") and the Massachusetts Department of Environmental Protection ("Mass DEP") announced plans to apply more stringent controls to pollution caused by stormwater runoff from impervious areas such as parking lots, roofs and roadways.

The EPA took action under the federal Clean Water Act's National Pollution Discharge Elimination System (NPDES) permit program. Under the EPA's proposal, certain industrial, commercial and residential facilities in the towns of Milford, Franklin and Bellingham that have two or more acres of impervious area will be required to seek coverage under a yet to-be-issued NPDES general permit. The EPA focused on Milford, Franklin and Bellingham due to their proximity to the headwaters of the Charles River. The draft general permit, expected to be released for public comment in the coming months, will outline the process for seeking coverage. Notably, the requirements will apply to both new and existing developments.

In a separate action, Mass DEP has proposed regulations which mirror the expected EPA standards for Milford, Franklin and Bellingham and add state-wide regulations governing facilities with five or more acres of impervious area. Owners of such facilities would be required to file an initial certification with Mass DEP and to implement a stormwater management plan which will provide, among other things, a schedule for sweeping all paved surfaces, plans for minimizing the polluting effects of snow removal and deicing, and measures to ensure that any spilled waste materials are not discharged into waters of the Commonwealth. The proposed regulations, which were published in November, will not take effect until approximately six months after Mass DEP issues a general permit. Mass DEP expects to make a draft general permit available for comment in December.

The EPA and Mass DEP intend to coordinate efforts so that an entity covered by the Mass DEP general permit can easily obtain coverage under the federal general permit. Additionally, certain categories of facilities, such as recreation vehicle parks, campsites, detached single-family homes, apartment buildings and townhouses will be exempt from both the EPA and Mass DEP regulations. The proposed Mass DEP regulations and information about public hearings can be found at www.mass.gov/dep.

The authors, Michael Glover and Valerie Gwinn, are associates in the real estate group and can be reached at mglover@goulstonstorrs.com and vgwinn@goulstonstorrs.com.

If you have questions about the applicability of these new requirements to a particular project, please contact:

Marilyn Sticklor 617-574-4077
msticklor@goulstonstorrs.com

Andrew Zelermyer 617-574-4152
azelermyer@goulstonstorrs.com

You may also contact any of the members of our Environmental Law Group, Real Estate Group or your usual Goulston & Storrs attorney.

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