

BBA ENVIRONMENTAL LAW SECTION STEERING COMMITTEE

Tuesday, October 2, 2007

8:30 a.m.

MINUTES

Attendees: Michelle O'Brien, Ben Ericson, Fred Augenstern, Michael Parker, Mike Koehler, David Cetola, Lisa Goodheart, Julie Taylor, Jeff Roelofs, Tina Wu, Carl Dierker, Karen McGuire, Art Kreiger, Pam Harvey, Steve Leonard, and Ken Whittaker, Ruth Silman, Laurel Mackay and Stuart Canton on the phone.

BBA Staff: Heather Leary, Karen Douglass

I. Section and Committee Reports

- A. Section: The Section will hold a reception on October 16 at 5:00pm for new MassDEP Commissioner Laurie Burt. On October 30, the Section's luncheon meeting will feature Kurt Gaertner, Director of Land Use Policy for the Mass. Executive Office of Energy and Environmental Affairs, Ed Himlan, Executive Director of the Massachusetts Watershed Coalition, and Mark Racicot, Government Services Manager for the Metropolitan Area Planning Council to discuss their experiences working with municipalities using the EOEEA's Smart Growth Toolkit. It is expected that EOEEA Secretary Ian Bowles will be November's luncheon speaker.
- B. Air Quality and Climate Change: MassDEP's Assistant Commissioner of the Waste Prevention Bureau, Jim Colman discussed MassDEP's priorities and initiatives regarding air issues at a well-attended September luncheon. The October luncheon will be jointly presented with the Environmental Litigation Committee. NGO counsel Matt Pawa and Kevin Leske of the Vermont Attorney General's Office will discuss the recent landmark Green Mountain decision where a federal district court judge acknowledged the right of Vermont to regulate greenhouse gas emissions emitted from automobiles. It is hoped that someone representing the auto industry will join via teleconference. The November meeting is scheduled to have Tim Williamson and Dave Conroy from USEPA Region 1 discuss current Region 1 initiatives.
- C. Hazardous and Solid Waste: The September meeting featured Steve Richmond (Beveridge & Diamond) and Siu Tip Lam (Mass AG's Office) where they provided the status of case law and pending rail based solid waste facilities in the Northeast. The Surface Transportation Board recently released a split decision giving local authorities some control over such projects. The October meeting will be a discussion on the Massachusetts Safe Neighborhood Chemical Initiative (SNCI). The SNCI was developed in response to last year's Danversport explosion and especially impacts facilities located in densely populated areas.

- D. International: The October meeting featured discussion of the European Union Directives and the Asian Material Content Regulations. These regulatory regimes impact imported goods and there has been recent litigation involving contract suppliers and their compliance with the international regulations.
- E. Litigation: As discussed the October luncheon will be a joint presentation with the Air Quality and Climate Change Committee. The November luncheon will be a discussion on the new EOEEA proposals to make significant changes regarding MEPA review of major projects. The changes are intended to streamline the approval process by coordinating MEPA approval with the permitting authority for concurrent review. There are plans for a December luncheon to discuss the aggregation of plaintiffs in complex federal litigation.
- F. Wetlands, Waterways and Water Quality: The new MassDEP wetlands adjudicatory appeal changes will be the subject of future lunches as well as the December CLE. Potential luncheon topics are Chapter 91, stormwater discharges and MassDEP changes in stormwater policy.

II. CLEs

- A. Developments in Wetlands Law: Jeff Roelofs reported that the CLE is scheduled for December 6, 2007 and that brochures should be distributed shortly. Karen McGuire will co-chair the CLE with Jeff. The CLE will focus on the regulatory changes regarding Wetlands Permit appeals. Speakers include: Peg Stolfa, MassDEP General Counsel; Salvatore Giorlandino, Acting Chief Presiding Officer of the MassDEP Office of Appeals and Dispute Resolution, Lisa Goodheart (Sugarman, Rogers, Barshak & Cohen); and Chip Nylen (Lynch, DeSimone & Nylen).
- B. Green building: This CLE is scheduled for February 13, 2008 and will be co-sponsored with the Real Estate Section's Land Use Committee. The concept of homeowner litigation over whether the developer lived up to its "green" representations was discussed as a potential topic as well as insurance, the construction process, local permitting and siting of buildings. It was suggested that the new Genzyme building, as the latest example of a green office building, might be a good venue for the CLE.
- C. Chapter 21E Update: This CLE will likely take place in mid-May, 2008. It is hoped that by then the *Bank v. Thermo Elemental* case will be decided. The *Bank* case involves whether strict compliance with the MCP is an element of a G.L. c. 21E, § 4 private cost recovery action and whether non-litigation attorney's fees are recoverable.

III. Public Policy Issues

- A. Homeowner heating oil spill legislation update: Julie Taylor reported that the group had a meeting with Rep. Smizik to discuss ideas for pushing the legislation along.
- B. Other legislation of interest: The legislature was granted a 60-day extension by the SJC to provide a Tidelands bill as mandated by the *Moot* case. The Tidelands bill is still in conference committee. It was reported that the Speaker's energy bill has not moved either. The e-waste bills have had no activity. Tina Wu suggested they might be a good topic for a hazardous and solid waste committee meeting. The resignation of Jarret Barrios from the senate was discussed, leaving a potential void of environmental justice advocates in the state senate. Art Kreiger suggested that a BBA staffer could track all bills of interest for the Section. Michelle indicated she would contact Maria Fernandes of the BBA government relations staff.
- C. Proposed Green Office Program: Julie Taylor discussed her idea of creating a BBA-sponsored program to encourage recycling and other energy-saving measures. Art Kreiger mentioned that there was a recycling initiative approximately 8-15 years ago that he, Tom Mackie and Nancy Kaplan were involved in. They attempted to force the SJC to require the use of recycled paper (this attempt failed). Tina Wu noted that the MBA is coming out with something similar – a “best practices” program. Julie agreed to bring more information to the next meeting for continued discussion.

IV. ANNOUNCEMENTS/UPDATES

- A. Governor's permit streamlining initiative: reports from liaisons of work groups (DALA/wetlands appeals, air, groundwater discharge, c. 91): The wetlands committee completed its work and the changes to the Wetlands Protection Regulations and DEP Adjudicatory Hearing Regulations are scheduled to become final by the end of October. The air workgroup is waiting for DEP to issue draft regulatory changes in response to the group's findings. The groundwater discharge regulations are expected out within a month. The Ch. 91 workgroup is in the process of making recommendations involving stricter standing requirements for 10 citizen group appeals.
- B. BBA Leadership Retreat: Michelle and Ben will attend the retreat in Chatham and will report back when they return.

V. OTHER BUSINESS

None