October 7, 2013

New Connecticut Environmental Legislation

The Connecticut General Assembly passed environmental legislation in effect as of October 1 in the following areas:

Reduced Mercury Emission Testing Requirements

Public Act No. 13-58 reduces the frequency of mercury emissions testing for certain emissions units that generate electricity, combust coal and comply with the applicable requirements for eight consecutive calendar quarters.

CEPA Intervention

Public Act No. 13-186 requires that intervention petitions filed pursuant to the Connecticut Environmental Protection Act, C.G.S. Section 22a-14, et seq., plead specific facts setting forth the claimed unreasonable pollution, impairment or destruction of a natural resource. These factual allegations must be sufficient to allow the decision-making authority to determine whether it has jurisdiction over the claims asserted.

Coastal Management

Public Act No. 13-179 mandates that the Connecticut Department of Energy and Environmental Protection (the DEEP) issue certificates of permission for certain coastal activities completed prior to January 1, 1995, without a permit, certificate or emergency authorization, if they are substantially compliant with applicable standards and criteria. In addition, the act authorizes the DEEP's issuance of certificates for substantial maintenance of, and minor alterations or amendments to, activities completed prior to January 1, 1995, when there is substantial compliance with applicable standards and criteria; C.G.S. Section 22a-363b had previously limited this authority to activities completed prior to June 24, 1939. The act also allows for the fortification of certain coastal properties in the event of hurricane or tropical storm warnings, adds a provision encouraging the use of confined aquatic disposal cells for dredged materials, expands the statutory statement of policies concerning coastal land and water resources to include structural erosion and sedimentation solutions protecting commercial and residential structures, and addresses the availability and use of sand and gravel for beach nourishment and habitat restoration.

Public Act No. 13-179 invalidates DEEP civil penalty orders for certain violations, when they have been in place for more than 15 years without the DEEP taking judicial action to enforce them.

Dam Safety

Public Act No. 13-197 shifts the burden of dam inspection from the DEEP to the dam owner and requires that dam owners register with the DEEP before October 1, 2015, if the dam's failure may endanger life or property. The act requires that the DEEP be notified upon transfer of ownership of any dam and mandates that owners of high- or significant-hazard dams and similar structures develop and implement an emergency action plan to be filed with the DEEP.

Solid Waste Removal and Recycling

Public Act No. 13-285 adds additional reporting requirements for scrap metal processors seeking exemption from solid waste facility permitting, provides certain exemptions from requirements imposed on collectors of solid waste, imposes deadlines by which certain commercial food wholesalers and distributors must recycle organic materials, and allows municipalities to exempt certain recycling equipment from property tax.

Clean Water Fund Priority List

Public Act No. 13-15 modifies the criteria for the DEEP's prioritization of water quality projects to include consideration of measures mitigating impacts from a rise in sea level.

Radiation and Radioactive Materials

Public Act No. 13-205 allows the DEEP to issue cease and desist orders, to suspend or revoke certain registrations, to issue orders to correct or abate violations, and to seek an injunction for certain violations of laws governing radiation and radioactive materials. The act establishes a hearing process for parties aggrieved by an order to correct or abate a violation. The act allows for the imposition of fines and/or imprisonment for criminally negligent violations of certain laws pertaining to radiation and radioactive materials.

Felony Violations of Environmental Laws

Public Act No. 13-258 classifies certain hazardous and solid waste violations as class D felonies; classifies violations of certain water pollution control, gasoline discharge and mercury emissions requirements as class C felonies; and subjects municipalities to perjury and false statement charges for false representations regarding a water diversion.

Environmental Land Use Restrictions

Public Act No. 13-308 establishes a Notice of Activity and Use Limitation, a new category of land use restriction intended to be self-implementing and to facilitate the completion of remediation activities. The DEEP is to develop forms and regulation specific to this category of land use restriction.

Miscellaneous Revisions of Environmental Laws

Public Acts Nos. 13-205 and 13-209 make technical revisions to specified environmental statutes, removing obsolete provisions, revising certain notice requirements, removing certain DEEP reporting obligations, repealing the Mid-Atlantic States Air Pollution Control Compact and revoking the DEEP's statutory mandate to promulgate certain regulations.

In addition, Public Act No. 13-42 requires that mattress producers form a mattress recycling council, whose purpose, in part, is to create a recycling plan for discarded mattresses in Connecticut. The plan must be submitted to the DEEP for its approval no later than July 1, 2014. Of potential relevance to municipalities authorities, Public Act No. 13-222 designates certain municipal stormwater authorities as quasi-public, and Public Act No. 13-247 allows municipalities to authorize a statutorily created water pollution control authority to recommend to the municipality a levy on taxable real property to defray costs relating to stormwater control systems.

The Connecticut General Assembly is next in session in February 2014.