

Environment & Energy Insights

December 2024 Edition

Welcome to the December edition of Nutter's Environment & Energy Insights, a monthly update of current trends in environment and energy law.

Commercial, Industrial, and Institutional Property Owners: Time is running out to comment on EPA's Draft Residual Designation Authority NPDES Permit for the Charles River, Mystic River, and Neponset River Watersheds

On October 31, the EPA issued its long-awaited draft permit ([Public Notice available here](#)) regulating stormwater discharges from commercial, industrial, and institutional (CII) properties in the three watersheds ([interactive maps of the watersheds are available here](#)) with one or more acres of impervious surface. When issued, CII property owners will be required to reduce phosphorous loads in stormwater by 60%-65% depending on the watershed through implementation of Best Management Practices and a Stormwater Pollution Control Plan with selected stormwater controls.

While the Clean Water Act (CWA) defines specific industrial, construction, and municipal stormwater sources that must be authorized by a NPDES permit, it 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, which has not previously been used by EPA to regulate a wide array of sources over such a broad area, is known as EPA's "Residual Designation Authority."

Who will the permit impact – As drafted, owners of CII properties (office/lab developments, universities, shopping malls) with over one acre of impervious surface (hardscape, parking lots, roofs). However, while the permit would not apply solely to multi-family residential developments, the draft permit uses Massachusetts Tax Assessor's Use Codes ([See Appendix H](#)) to identify the types of CII uses to which the permit will apply, including mixed use developments such as residential with first floor retail. EPA is also seeking comment on whether the permit should apply solely to property owners or the operator with control over a site (e.g., multiple tenants at a large office park).

What will the permit require – Properties subject to the new permit will need to:

- Develop an Onsite Chemical Application Management Plan to establish erosion controls, chemical/landscape management, trash management, and the reduction of chloride used to de-ice during the winter.
- Implement a training program regarding the Onsite Chemical Application Management Plan.
- Implement a Stormwater Pollution Control Plan to reduce phosphorus discharges through structural (for example, installation of infiltration basin/rain gardens, treatment structures) or non-structural controls (street-sweeping, housekeeping management).

Time to comment – Public comments are due by January 29, 2025. Due to the potential costs and complexities to implement potential controls necessary to meet the required phosphorous targets, property owners in these watersheds should carefully consider the need to comment on the costs and implications of issuance of this permit. EPA has scheduled remote public meetings (January 7 and 9, 2025) and public hearings (January 22 and 23, 2025) with final comments due by January 29, 2025. Property owners potentially impacted should consider submitting comments.

Authors



**Matthew
Connolly**



**Matthew
Snell**

About Nutter

Nutter is a Boston-based law firm that provides legal counsel to industry-leading companies, early stage entrepreneurs, institutions, foundations, and families, across the country and around the world. The firm's business and finance, intellectual property, litigation, real estate and land use, labor and employment, tax, and trusts and estates practice are national in scope. The firm was co-founded in 1879 by former U.S. Supreme Court Justice Louis D. Brandeis, before his appointment to the Court. For more information, please visit www.nutter.com and follow the firm on [LinkedIn](https://www.linkedin.com/company/nutter).

This advisory was prepared by Matthew Connolly and Matthew Snell in Nutter's Environment 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.

This update is for information purposes only and should not be construed as legal advice on any specific facts or circumstances. Under the rules of the Supreme Judicial Court of Massachusetts, this material may be considered as advertising.

