

Environment & Energy Insights

November 2024 Edition

Welcome to the November edition of Nutter’s Environment & Energy Insights, a monthly update of current trends in environment and energy law. This month we will be discussing what a second Trump presidency could mean for Massachusetts’ energy and environment goals.

With Donald Trump winning the presidency on Tuesday, everyone is bracing for major changes across the federal government. Here are three quick takes on how the new administration could affect Massachusetts’ energy and environment policy and goals.

EPA and the Army Corps will likely amend their “Waters of the United States” Rule, further limiting the wetlands subject to federal jurisdiction.

In August 2023, EPA and the Army Corps issued new regulations defining which wetlands will be covered by the Clean Water Act. (We previously [wrote about the new rules.](#)) The regulations were issued in the wake of the Supreme Court’s May 2023 *Sackett* decision, where the Court held that jurisdiction extends only to those wetlands adjacent to traditional waters of the United States (such as oceans and rivers) and “with a continuous surface connection” to those waters requiring the wetlands to be “indistinguishable from those bodies of water.” Under the new rule, the definition of “adjacent” wetlands now means “having a continuous surface connection” without reference to a geographic proximity between the wetland and the covered water.

Industry groups have challenged the rule as being too broad under *Sackett*. Project 2025, a conservative policy manual written by former Trump staffers, has recommended narrowing the rule’s scope. Even though Trump distanced himself from Project 2025 during the campaign, a Trump-led EPA may revisit the rule. If so, there could be far fewer federally-protected wetlands in Massachusetts (and nationwide), leaving MassDEP and local conservation agencies as the sole overseers of these wetlands.

Potential changes to EPA’s draft Clean Water Act general permit for the Charles, Neponset, and Mystic River watersheds—if it is not withdrawn altogether.

As an additional water-related impact, expect changes to EPA’s draft permit for the Charles, Neponset, and Mystic River watersheds under the Clean Water Act’s NPDES program. EPA, on October 31, issued the draft general permit, which would apply to commercial, industrial, and institutional properties with at least one acre of impervious surface in 65 municipalities within the Charles, Neponset, and Mystic River watersheds. Under the draft rules, the permit would apply to stormwater and other runoff from covered property owners, and these owners will need to achieve a 60–65 percent phosphorous reduction in the three rivers. EPA estimates that over 3,500 properties could be affected. EPA is issuing this permit under its “residual designation authority” under the Clean Water Act, which permits EPA to regulate certain contaminant sources on a case-by-case basis when stormwater has a localized adverse impact on water quality.

Similar to the “Waters of the United States” rule discussed above, a new Trump Administration may not view EPA’s Clean Water Act authority as broadly as under President Biden. If that is the case, the NPDES permit for the Charles, Neponset and Mystic River watersheds could be pared back, if not withdrawn altogether.

An uncertain future for federal incentives of clean technologies, electrification, and offshore wind.

On the campaign trail, Trump promised a “drill baby drill” approach to U.S. energy policy. This is a marked departure from the Biden Administration and could impact Massachusetts’ climate goals and its clean energy industry.

For example, Massachusetts has already benefited from billions of dollars in clean energy grants, tax credits, and other incentives under the 2022 Inflation Reduction Act. The Commonwealth could receive billions more in the coming years, but during the campaign, Trump pledged to repeal authorization for any “unspent” money. Project 2025 has also proposed repealing “climate change and green subsidies”, and Trump has repeatedly criticized electric vehicle incentives among other green initiatives. There is debate as to how far Congress would be willing to go to repeal these initiatives, which will significantly depend on who controls the House of Representatives (currently undecided).

There is also concern for new offshore wind facilities. It would not be surprising to see federal leasing and permitting of new sites to stall, as it did under the first Trump Administration. And the possible repeal/revision to federal incentives for offshore wind projects—as well as possible tariffs for overseas parts—could make it harder to economically build these projects and secure needed financing. Massachusetts has already had to cancel and rebid earlier offshore wind projects because of inflation, supply issues, and other economic conditions. It may prove to be even more difficult to move these projects forward under the second Trump Administration.

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