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Streamlining the air permitting initiatives in Massachusetts and Connecticut

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The real estate development community has watched with interest recent efforts in Massachusetts and Connecticut to streamline environmental permitting. In recognition of the fact that increasingly complex permitting processes were impeding the balanced expansion of business, both states have launched initiatives designed to ensure a more business-friendly environment through expedited permitting. As long as assurance is in place that streamlined environmental permitting does not result in threats to the protection of natural resources or public health, the process of revamping environmental regulations and permitting processes can provide benefits to all stakeholders involved, including developers, regulators, the public and the environment.

The push to streamline permitting has been reflected within both the Massachusetts and Connecticut Departments of Environmental Protection (MADEP and CTDEP). Recently, both MADEP and CTDEP have proposed amendments to air permitting regulations with the goal of streamlining the review process and reducing permitting review timelines. A comparison of the two initiatives provides useful information about permit streamlining efforts in general.

State air quality permitting programs have a multi-layered mission. Their programs must ensure compliance with federal Clean Air Act regulations, manage relationships with the regulated community, and support statewide air quality initiatives. To achieve these goals, states traditionally have relied on labor-intensive and time-consuming processes to collect and analyze data. Such systems have been characterized as inefficient, expensive and inflexible, and have been seen as an obstacle to ensuring the integrity of air quality data.

In the spring of 2007, MADEP undertook a thorough evaluation of its air plan approval program used to approve new and/or modified sources of air emissions. According to MassDEP staff, the study revealed a lack of transparency in the air plan approval program that left permit applicants and industry uncertain about MassDEP's expectations. The study indicated that the greatest factors contributing to permit approval timelines were a lack of administrative completeness and confusion regarding the analysis of Best Available Control Technology (BACT), which is used to determine emissions levels.

Accordingly, MassDEP's proposed changes to the Air Plan Approval regulations at 301 CMR 7.00 include language that better describes the process for defining BACT emission limits and provides clarification on the administrative review process. MassDEP anticipates that the plan approval process will be less complex as a result of proposed changes. In addition, plan approvals will have a shorter review timeline and will save money in permit fees and preparation costs. The Department asserts that the regulatory amendments will not have a significant environmental impact, as BACT will continue to be the level of emission control required for all air plan approvals.

Connecticut has taken a different approach in its efforts to streamline air permitting through a

recently initiated LEAN analysis of its air modeling program. LEAN is an approach that seeks to eliminate all non-value added activity or "waste" from a process. While the LEAN process was developed for use in the private sector to target manufacturing processes, more people are adapting these approaches for use in service and administrative processes. Public sector interest in LEAN is increasing rapidly, fueled by strong improvement results.

According to the CTDEP, the Department's motivations for evaluating the air permitting process include improving air quality and minimizing regulatory uncertainty. The goals of the LEAN team were to reduce permit processing time by one-third, develop and track key performance indicators, and improve information transfer between applicants and regulators. CTDEP is not proposing any changes to their regulations, but instead is proposing to increase the level of guidance provided to applicants and change internal review processes. The project is anticipated to be complete in June 2009.

The experience of MA and CT shows that permit streamlining, which is often perceived negatively from the environmental community, can sometimes be no more than a regulatory agency "cleaning house": finding ways to improve information flow, the quality of applications, and increasing efficiency with regard to permit review. Any initiatives to make permitting and approvals more transparent and accessible such as those currently being undertaken by MADEP and CTDEP will bring considerable benefits. Minimizing regulatory uncertainty while continuing to ensure a high level of environmental review will incentivize development. Tighe & Bond stands ready to help you navigate the complex yet increasingly streamlined world of environmental permitting in New England.

Briony Angus, AICP is an environmental planner at Tighe & Bond, headquartered in Westfield, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540