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Environmental Update

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Florida Legislature Extends Expiration Dates for Various Permits and Approvals

Contact: Miguel (“Mike”) Collazo, III

In recognition of 2011 real estate market conditions, the Florida Legislature once again extended the expiration dates for various permits and approvals in the 2011 Session.

Specifically, Chapter 2011-139, Laws of Florida (2011) (enacted as H.B. 7207) includes provisions granting:

- A one-time four-year extension of “all commencement, phase, buildout, and expiration dates” for an approved development-of-regional-impact (“DRI”) with a valid development order;
- A two-year extension of “any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2014;” and,
- An additional two-year extension for any permits and authorizations that had already been extended under Section 14 of Chapter 2009-96, Laws of Florida (2009), as reauthorized by Section 47 of Chapter 2010-147, Laws of Florida (2009).

These time extensions also generally apply to the mitigation requirements associated with the permits or approvals. With respect to approved DRIs, the extension applies unless the relevant governmental entity notifies the developer before December 1, 2011, that “the local government has entered into a contract for construction of a facility with funds to be provided from the development’s mitigation funds” for a project phase which has commenced construction. With respect to other permit approvals, the commencement and completion dates for any required mitigation associated with a phased construction project are extended “so that mitigation takes place in the same timeframe relative to the phase as originally permitted.”

These extensions are in addition to all other extensions that may have been granted for the project, including any extensions previously granted by the Legislature, although some exceptions apply. For example, permits and authorizations that had already been extended for a total of four years under earlier legislation cannot be further extended by these provisions. In order to receive any of the above extensions, one must notify the relevant local government or state agency, in writing, of one’s intention to claim the extension prior to December 31, 2011. In some cases, one must also indicate the anticipated timeframe for acting on the authorization.

There is also a new statutory extension of certain governmental approvals when the Governor declares an emergency. Chapter 2011-142, Laws of Florida (enacted as S.B. 2156) grants an automatic six-month extension of “the rights under a permit or other authorization” for the duration of the emergency declaration and grants an additional six months for those rights beyond the end of the declared emergency. This provision expressly applies to the expiration of development orders, building permits, permits issued by water management districts and the Department of Environmental Protection, and build-out dates for an approved DRI. It also applies to “required mitigation.” Given the broad wording of the statute, this extension may even apply to other approvals.

There are certain qualifications and limitations for this extension, notably that it does not appear to apply “outside the geographic area for which the declaration of a state of emergency applies.”

The law’s enactment is particularly timely. On June 13, 2011, Governor Scott issued Executive Order 11-128, which declared a State of Emergency in the entire State of Florida due to widespread wildfires and the severe drought. The declared emergency will last until August 12, 2011, unless extended, and appears to cover all 67 counties. If this declared emergency ends as scheduled, it appears to provide the basis for yet another eight-month extension to DRI

development orders and other permits and approvals. Under the new law, one should notify the local government no later than three months after the end of the declared emergency of one's intention to claim this extension.

DEP Appoints Gary Colecchio as Director of Southwest District Office

Contact: Joseph Brown

Gary Colecchio has been appointed Director of DEP's Southwest District Office, effective August 9, 2011. Prior to this appointment, Mr. Colecchio served as Office Manager and Senior Project Manager for Cardno TBE's southwest office. Mr. Colecchio also has previous private sector experience with Stanley Consultants and public sector experience as an elected and appointed official.

EPA Increasing Information Collected on Commercial Chemicals from Chemical Manufacturers

**Contact: Carl Eldred
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The U.S. Environmental Protection Agency (EPA) is increasing the type and amount of information it collects on commercial chemicals from chemical manufacturers. The rule, known as the chemical data reporting rule (CDR), substantially updates the previous Inventory Update Reporting (IUR) Modifications Rule, promulgated under the Toxic Substances Control Act. Reporting is now required every 4 years, instead of 5. The rule also modifies certain reporting thresholds, updates various definitions, and revises industrial classifications. EPA claims the additional information will allow it to better identify and manage risks to the public and the environment.

In the next data submission period, February 1, 2012 to June 30, 2012, EPA will require electronic data submission. Claims of confidential business information must now present upfront substantiation at the time of submission. Information on reporting data about new and existing chemicals is available at www.epa.gov/iur.

EPA Proposes Amendments to Mandatory Reporting of GHG Rule

Contact: Joseph Brown

On August 4, 2011, the U.S. Environmental Protection Agency ("EPA") published proposed amendments to its Mandatory Reporting of Greenhouse Gases Rule ("GHG Reporting Rule"). The amendments correct certain cross-references, clarify compliance obligations such as standardized methods to be followed, amend certain equations to better reflect operating conditions, and correct data reporting requirements. However, EPA's proposed amendments do not address issues raised in several petitions for reconsideration regarding some of the GHG Reporting Rule subparts, which are still pending before EPA. Comments regarding the proposed amendments must be received by September 19, 2011. EPA intends to finalize the amendments by the end of 2011 so that the amendments will apply to 2012 reporting. 76 Fed. Reg. 47392.

EPA Proposes Revisions to Emergency Planning and Community Right to Know Act Forms

Contact: Joseph Brown

On August 8, 2011, EPA published proposed revisions to its Emergency Hazardous Chemical Inventory Forms (Tier I and Tier II) under section 312 of the Emergency Planning and Community Right to Know Act. EPA is proposing to revise the forms to include new data elements and to revise existing data elements to make the forms more useful for emergency planning. Proposed additional data elements include: (i) facility phone numbers; (ii) number of employees; (iii) facility identification numbers under the Clean Air Act and Toxic Release Inventory; (iv) parent company or owner/operator information such as name, address and phone number; (v) contact information for emergency coordinators and additional information contacts; and (vi) more narrow range codes for amounts of hazardous chemicals present on site. Comments regarding the proposed revisions must be received by October 7, 2011. 76 Fed. Reg. 48093.

EPA Proposes Excluding Certain CO₂ Streams from Definition of Hazardous Waste

Contact: Joseph Brown

On August 8, 2011, EPA published proposed revisions to regulations under the Resource Conservation and Recovery Act (“RCRA”) to conditionally exclude carbon dioxide (“CO₂”) streams from the definition of hazardous waste so long as those CO₂ streams are managed under certain conditions. Most importantly, the proposed regulations require that a CO₂ stream be captured from an emission source and geologically sequestered into a Class VI Underground Injection Control Well. EPA has not previously concluded that CO₂ streams qualify as hazardous waste under RCRA, but is addressing this possibility in an attempt to provide regulatory clarity for use of sequestration technology. Comments concerning EPA’s proposed rule must be received by October 7, 2011. 76 Fed. Reg. 48073.