

## What Will 2012 Bring?

By Lisa Alexander

All references to the Mayan calendar and various doomsday scenarios aside, the Bureau of Waste Site Cleanup anticipates some interesting changes in 2012.

First, we have a new Assistant Commissioner. Ben Ericson came to us from the Attorney General's Office where he worked in the Brownfields' Covenant-Not-to-Sue program. BWSC has always had connections to the Attorney General's Office. At times, the AGO serves as the Commonwealth's counsel in higher level enforcement (HLE) cases and in challenges to agency decisions; they assist us in Brownfields cases and issues the Covenants Not to Sue; and finally, the AGO has long held a role in negotiating Natural Resources Damages settlements on behalf of the Executive Office of Energy and Environmental Affairs, a role that continues with the NRD program having been delegated to MassDEP and BWSC.

"I had the pleasure of working with the LSPA when developing Brownfields policy at the AGO," Ben says, "so I know the valuable expertise and perspective that the LSPA brings. I now look forward to working with the LSPA on the broader range of issues BWSC is responsible for."

Next, Catherine Finneran (formerly the BWSC Brownfields Coordinator) has moved to the Commissioner's new agency-wide Clean Energy Coordinator position. The Brownfields program has also been moved to the Commissioner's Office under Associate Commissioner (of Brownfields and Environmental Justice) Kerry Bowie who will be looking to expand some Brownfields projects to include, not only clean energy, but possibly urban agriculture, a use that is (pardon the pun) growing in popularity. EPA is currently working on some guidelines for this form of reuse: [http://www.epa.gov/brownfields/urbanag/pdf/bf\\_urban\\_ag.pdf](http://www.epa.gov/brownfields/urbanag/pdf/bf_urban_ag.pdf).

Tom Potter, who many LSPs will remember from his Audits' Coordinator position, is now the BWSC Clean Energy coordinator and is working with a number of BWSC staff on solar and other clean energy projects. As noted by Commissioner Ken Kimmell, some of the short- and long-term goals include: "completion of the review of any potential health impacts associated with wind turbines by 2012; the permitting and operation of at least three anaerobic digestion/Combined Heat and Power projects by 2014; and achieving zero-net energy at 20 percent of drinking water and wastewater treatment plants by 2020." Massachusetts has goals of installing 250 Megawatts (MW) of solar projects by 2017, and 2,000 MW of wind energy projects by 2020. As of December 1, 2011, Massachusetts has installed 67 MW solar and 44 MW wind – with additional proposals in the works. Find out more on Massachusetts' clean energy projects at: <http://www.mass.gov/dep/cleanenergy.htm> and at <http://www.mass.gov/eea/grants-and-tech-assistance/guidance-technical-assistance/agencies-and-divisions/doer/>.

As part of the BWSC regulatory streamlining, Elizabeth Callahan's Policy group is working on some changes to the Activity and Use Limitation regulations, and to Tier Classification and Permit requirements. As part of compliance assistance, BWSC is exploring additional "anniversary" reminder letters for Potentially Responsible Parties to advise them of the need to meet key MCP deadlines. Meanwhile, now that the Vapor Intrusion Policy (WSC#-11-435) is

final, (see [MassDEP Interim Final Vapor Intrusion Guidance 12-20-2011](#)) watch for training on that important topic, plus potentially, AUL Training and some Clean Energy training in 2012.

Earlier this *fiscal* year (FY) 2012, the ever-popular Case Study training for LSPs was expanded to a larger venue. While there will likely be some format adjustments before the spring session, the ability to accommodate nearly 200 LSPs in one day was well-received. We will likely try the larger format again in the autumn of 2012, possibly focused on enforcement.

### ***And Speaking of Enforcement. . .***

It has been some time since this article has addressed our audit or enforcement findings. While all the numbers are not yet in, a preliminary survey of BWSC audit numbers for the first half of FY 2012 shows over 600 Level 1 “screening” audits statewide, 105 Level 2 “site inspection” audits and 35 Level 3 “comprehensive” audits to date. Meanwhile bureau-wide, of 41 cases that went to “higher level enforcement” (HLE) actions, nine cases were related to “failure to notify” or report regarding releases in the appropriate time frames; eight cases were related to Immediate Response Actions (either failure to follow up on submittals and/or actions to be taken or actions taken without appropriate approval); two cases involved Activity and Use Limitations; and the rest were failures to meet deadlines that were established in a Notice of Noncompliance or a Consent Order.

### ***BWSC and Clean Energy Projects***

Clean energy – from solar, wind, or simply produced with “less” emissions than the traditional sources (i.e., reducing carbon dioxide “equivalents”) is one of the Governor’s priorities and projects are going on throughout the state. While many people may have heard about projects that have been or will be installed on or near old solid waste landfills (e.g., Lancaster, 500kW solar facility on town land adjacent to the landfill; Scituate landfill, soon to be the location of a 3.6-MW solar generation facility to generate 4.5 million kilowatt (kW) hours of energy a year for the town – approximately half the needs of the town.; Kingston officials, meanwhile, recently broke ground for a 2 MW wind turbine, dubbed “The Independence” – which they anticipate will offset 100% of the annual municipal energy needs). But there are also a number projects taking place (and in the discussion stages) on BWSC sites. One of the earliest and more well-known 21e related projects is the “Brockton Brightfield” solar array (formerly a “Brownfield”) but there are several others already in the works – some being installed to run groundwater treatment systems at 21e or Federal Superfund sites, some to be incorporated into local or municipal utilities and others to add to the state’s solar energy portfolio. Some of the projects that have been in the news lately include:

- On upper Cape Cod, three large wind turbines have been installed at Mass Military Reservation (“MMR”) generating approximately 4.5 Megawatts (MW) of energy to run a large groundwater treatment system; the last two windmills were just completed;
- In Springfield, a 2.3 MW solar installation (Indian Orchard) has just been completed at a former foundry, a project that will power approximately 500 homes; and
- In Fall River, at the Lightolier facility (a 21e site with an AUL), officials have broken ground to begin construction on a 2 MW wind turbine.

As of this writing, there are almost 10 MW of other solar projects potentially in the works, still in various stages of exploration and sometimes delicate negotiations with reports of others being proposed.

For the record, while some of these projects are just “simple” redevelopment of closed 21e sites, with or without Activity and Use Limitations imposed and LSP involvement needed, others may be more easily redeveloped using BWP post-closure landfill use regulations and some come under the combined jurisdiction of BWP and/or BWSC and/or US EPA’s CERCLA program. For this reason, BWSC is working closely with other bureaus and with MassDEP legal counsel to find the best route through the complex and overlapping regulations. As is frequently the case, site specific risk and related issues may drive decisions in any given project, something LSPs may want to keep in mind for clients considering future use of their sites. Nevertheless, all parties are committed to beneficial reuse of sites, with clean energy as one type of reuse.