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Public Outreach Rule Deadline Approaching

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The New Jersey Department of Environmental Protection (“NJDEP”) passed its Notification and Public Outreach Rule, N.J.A.C. 7:26E-1.4 et seq., in September of 2008. This regulation requires parties responsible for remediating sites to notify the public of ongoing remedial investigation and remedial action at sites in New Jersey. Although the regulation was adopted on September 2, 2008, the NJDEP provided a one (1) year grace period to parties responsible for cleanups that were ongoing at that time. Therefore, the deadline for compliance is September 2, 2009.

The regulations require that the party responsible for the cleanup identify sensitive populations and resources within 200 feet of the site and notify the public regarding the cleanup. In order to identify sensitive populations and resources, which are defined in the regulations to include residences, schools, day care centers, potable wells and other similar types of facilities, environmental consultants will need to complete a “sensitive populations and resources” checklist. Once the sensitive populations and resources are identified, the consultant must generate a scaled map indicating the location of those sensitive populations and resources on the map. This information must be submitted to both the NJDEP and local agencies as required by the regulation.

As to the public notification requirements, the responsible party has two (2) options: 1) post a sign at the site, or 2) send letters to each owner of real property, as shown on the current tax map, and tenants of those properties located within 200 feet of the site boundary. The letters and sign are designed to alert the public of the ongoing cleanup at the site. The legislative goal is to promote faster cleanups while at the same time

furthering the state's economic well being and development by improving the state's business climate. The NJDEP justifies this process by stating the public requires complete information in order to properly understand risk and avoid speculation and undue concern and order their activities accordingly.

The notification letters must include the name of the responsible party, address, tax block and lot, NJDEP ID number, brief description of the type of contaminant and actions being taken, contact information and a statement indicating the municipality may request that the person conducting the remediation provide copies of all environmental reports. If a sign is chosen as the notification method, the sign must be 2 feet x 3 feet in size containing the phrase "Environmental Investigation/ Cleanup In Progress at this Site," contact information and a "posted-on" date. The sign must be readily visible to the public and remain until a No Further Action Letter is issued for the Site. As confirmation of compliance, a photograph of the sign and a letter, similar to the neighbor notification letter, must be sent to the NJDEP, Municipal Clerk and Health Officer.

In the event contamination is migrating off-site, in addition to the notification requirements discussed above, so called "Enhanced Public Outreach" is required. Enhanced Public Outreach entails the preparation of a fact sheet that must be distributed to owners and tenants within 200 feet of the site boundary, as well as published in a local paper. The fact sheet must include a brief industrial history of the site, a complete description of contamination, actions being taken, contact information and the date the fact sheet was prepared.

In reality, these public notification requirements will likely cause more delays and possibly litigation, but we have not yet seen any adverse impact. Regardless of its potential consequences, decisions must be made very quickly as to which type of notification will be made prior to the upcoming September 2, 2009 deadline.

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