

PUBLISHED BY



How Clean is Clean in New York

February 1, 2012 by Gerard M. Giordano

New York's highest court recently upheld New York Department of Environmental Conservation's ("NYDEC") regulations regarding cleanups at contaminated sites. In *New York State Superfund Coalition Inc. v. New York State DEC*, No. 189 (12/15/11), the New York State Superfund Coalition, a group of companies that own contaminated sites in New York, challenged NYDEC's regulations requiring responsible parties to cleanup contaminated sites to "predisposal conditions."

The Coalition argued that the regulations were not authorized by the applicable state statute, Article 27, Title 13 of New York's Environmental Conservation Law, contending that the statute only required environmental cleanups to eliminate significant threats to human health and the environment." The court rejected the Coalition's arguments and held that the regulations were a valid and reasonable exercise of NYDEC's powers. The Court determined that NYDEC's regulations, when read in conjunction with the entire statute, were consistent with the legislative intent and goals to require a complete cleanup of inactive hazardous waste sites.

The Court also addressed the Coalition's concern that NYDEC's regulations would require that every site be remedied to a pristine condition. The Court recognized that while NYDEC has the authority to order the cleanup of a site, such power is not unfettered. In determining the scope and nature of a cleanup, the Court noted that NYDEC must consider a number of factors including the technical feasibility and cost of the remedy, the danger to human health and the environment and the extent to which the remedy would reduce such danger. The Court concluded that NYDEC is not empowered to unilaterally impose a remedy without considering the practicalities of such remedies.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (201) 489-3000

900 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 752-8000

500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Phone: (302) 652-3131

300 East Lombard Street Suite 2000
Baltimore, MD 21202
Phone: (410) 230-0660

301 Commerce Street
Suite 1700
Fort Worth, TX 76102
Phone: (817) 810-5250