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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

Former Governor Corzine Signs Environmental and Energy Legislation Before Leaving Office

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In the final days of Governor Jon S. Corzine's administration, the outgoing Governor signed several environmental and energy-related bills, which included important changes to existing regulatory programs and requirements, that were passed by the 2008/2009 Legislature at the eleventh hour. The key provisions from some of these bills, which are now law, are summarized below:

ENVIRONMENTAL BILLS

A4265 (Site Remediation Covenant Not to Sue): Since 1997, every no further action letter issued by NJDEP under the site remediation program, included a covenant not to sue. The Site Remediation Reform Act (SRRA), as enacted on May 7, 2009, prohibited NJDEP from issuing any covenants not to sue after the issuance of the new LSRP licenses under SRRA. This bill amends SRRA to add a "deemed" covenant not to sue to any no further action letter issued by NJDEP after October 16, 2009, the date that the first LSRP licenses were issued, and authorizes the issuance of covenants not to sue in the settlement of litigation.

A4340 (Solid Waste A-901 Disclosure): This legislation creates a new exemption from the "A-901" fingerprinting and personal history disclosure obligations for certain officers, partners or investors in companies that are publicly traded corporations, secondary business activity corporations and institutional investors, all as defined in the law, that are named in a related entity's solid waste license/permit applicant's disclosure statement, provided they have no control or responsibility for the applicant's waste operations in New Jersey.

A4341 (Site Remediation/Renewable Energy Project Grants): Matching grants of up to \$5 million annually are newly authorized from the hazardous discharge site remediation fund for municipalities, counties or redevelopment entities to use for the redevelopment of sites for renewable energy generation. Previously, such grants, which may fund up to 75% of remediation costs, were limited to redevelopment for recreational or conservation purposes or affordable housing.

A4347 (Permit Extension Act): In 2008, the legislature enacted the Permit Extension Act of 2008 to extend the expiration date of many permits and approvals (including, but not limited to environmental permits) necessary for development projects in light of delays resulting from the economic slowdown. The extension affected eligible approvals scheduled to expire beginning January 1, 2007 and extended these approvals until July 1, 2010 (plus six months for certain approvals). This bill amended the Act to further extend the July 1, 2010 date to December 31, 2012.

Vetoed Bills: Before leaving office, Governor Corzine pocket vetoed two important environmental bills – one that would have narrowed the public notification requirements under NJDEP regulations for contaminated sites (**A3852, Site Remediation Public Notification**) and a second that would have extended the deadline for counties to submit new wastewater management plans and provided various procedural protections for landowners affected by changes in sewer service area designations. (**A 4345, Extension of Deadline to Submit Wastewater Management Plans**). It has been reported that these bills may be reintroduced by the new legislature.

ENERGY BILLS

A3520 (Renewable Portfolio Standards; Net Metering; RECs): Includes key amendments to the Renewable Energy Portfolio Standards intended to enhance, and provide long-term security for, the New Jersey solar market, including gradual increases in the solar generation requirements imposed on RPS-regulated entities that extend through the year 2026, and each year thereafter (previously, these solar generation requirements extended only through 2021), and new provisions that will automatically further increase the solar generation requirements by 20% if certain market conditions arise. Also included are provisions that eliminate the current cap on system size for net metering eligibility purposes, authorize the Board of Public Utilities (BPU) to adopt a 15-year Solar Alternative Compliance Payment schedule and extend the useful life of Class I Renewable Energy Credits (RECs) and Solar RECs from one and two years, respectively, to three years each.

A4293 (Prevailing Wage): On July 15, 2009, Governor Corzine signed legislation requiring the BPU to adopt rules governing the applicability of New Jersey's prevailing wage law to construction projects undertaken in connection with BPU financial assistance. A4293 amends this law by eliminating the rule-making requirement and legislatively requires the payment of prevailing wage on covered projects.

A3339 (Use of Thermal Energy; On Site Generation Surcharges; Co-Generation): Amends the Electric Discount and Energy Competition Act to promote the use of thermal energy by expanding the definition of on-site generation facilities, which are not considered public utilities under current law, to include facilities that sell thermal energy to certain off-site end use customers. The bill also mandates the imposition of certain surcharges (e.g., the societal benefits charge, market transition charge, etc.) on the power derived from these facilities that is also sold or delivered to off-site end use thermal energy customers and clarifies that these electricity sales are exempt from the state's sales and use tax. The bill further provides a new exemption from

the state's sales and use tax for the sale of natural gas and utility service that is used for co-generation purposes at a co-generation facility constructed after January 1, 2010.

A3740 (Small Wind Energy Projects): Prohibits municipalities from adopting ordinances that unreasonably limit or hinder the performance and operation of small wind energy systems. Under the law, unreasonable limits or hindrances include a municipality's adoption of a blanket prohibition or property boundary setback requirements that are greater than 150 percent of the system height, just to name a few.

A3218 (Solar and Wind Energy Commission): Creates an eleven member Solar and Wind Energy Commission to study the feasibility of constructing solar and wind energy facilities on state-owned property.

For further information on these bills and how they may impact your business, please contact Bruce Katcher at 484-430-2320 (bkatcher@mgkflaw.com), Brett Slensky at 484-430-2332 (bslensky@mgkflaw.com) or Christopher Ball at 484-430-2358 (cball@mgkflaw.com).