

BROKERAGE DIRECTORY

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Proposed Changes to NJ soil standards could drastically increase brownfield cleanup costs

In an action that could have serious repercussions for brownfields redevelopment in New Jersey, the New Jersey Department of Environmental Protection (NJDEP) recently released new proposed soil cleanup standards for public comment. The proposed standards lower the existing cleanup levels for many prevalent contaminants (including petroleum constituents and common solvents) drastically, meaning that investigation and cleanup costs will increase and some previously cleaned up sites may have to be revisited.

The proposed standards include residential, non-residential and impact to groundwater cleanup standards for 136 common contaminants found in New Jersey soils. There are several contaminants for which the new proposed standards are less



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restrictive, however, for the organic compounds that are most prevalent at New Jersey brownfield sites - benzene, trichloroethylene (TCE), tetrachloroethylene (PCE) and toluene - there is a change in the direction of much greater stringency, reducing the standards by two orders of magnitude, from parts per million to parts per billion.

In cases pending when the new standards are

adopted, if a satisfactory remedial action workplan or remedial action report is submitted within six months after the standards' effective date, the old standards will still apply; however, cleanups involving contaminants for which there is an order of magnitude or greater change in the standard will have to meet the new standards when they become effective.

For ongoing or future projects where excavation or soil treatment was the planned remedy, the change in standards could substantially increase cleanup costs, although commercial sites using capping remedies are less likely to be affected. Even so, where a site is still in the investigatory phase or has completed the investigation, but does not qualify for use of the old standards because of the timing, additional investigation may be required to

delineate contamination, also increasing costs and delays.

As to closed cases, state law bars NJDEP from applying new standards to site for which a no further action letter has been issued, except where standards change by an order of magnitude, NJDEP may require additional cleanup by a party that is liable under the Spill Compensation and Control Act. Many, though not all, brownfield developers who acquired and cleaned up properties after they were contaminated may be protected from this type of reopener under statutory defenses, however, the party who contaminated the property (regardless of whether they cleaned it up) would not.

The extent to which NJDEP will seek to reopen cases is unclear. Those that are reopened could be exposed to changes beyond

more extensive investigation and cleanup. For example, vapor intrusion requirements and more conservative analytical procedures have been applied to more recent cleanups that were not in effect for older projects. This could result in the discovery of vapor problems and more extensive soil contamination that will need to be addressed.

For all of these reasons, the proposed changes could have serious implications for future redevelopment in the state and the outcome of the current rulemaking bears close watching by the real estate community.

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