

# MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

## 2016 Environmental and Energy Law Forecast

### NEW JERSEY FORECAST

#### **NJ Legislature Fails to Pass Legislation Insulating Local Public Entities from Spill Act Claims, But the Effort May Continue in 2016**

***John F. Gullace, Esq.***

In the last legislative session, the New Jersey Senate and Assembly both passed bills that would have insulated local public entities from Spill Act claims for cleanup and removal costs brought by private parties, but the bills were not identical at the conclusion of the session and therefore did not go to the Governor. Similar legislative efforts to protect local public entities from Spill Act liability have failed in the past and the fate of any such legislation if sent to the Governor is uncertain. The Assembly has already reintroduced its version of the bill in the current session of the legislature and the progress of this legislation should be watched closely by anyone who might have a Spill Act claim against a municipal entity now, or in the future, including claims related to contaminated waterways.

#### **New Jersey 2016 Remedial Investigation Report Deadline**

***Christopher D. Ball, Esq.***

New Jersey's Site Remediation Reform Act (SRRA), enacted in 2009, requires any person responsible for conducting a remediation of a discharge identified (or which should have been identified) prior to May 7, 1999 contamination to complete an entire site remedial investigation (RI) within five years of the enactment of SRRA or be placed under the direct oversight of the New Jersey Department of Environment Protection (NJDEP). The five-year anniversary of the SRRA expired in May of 2014, and numerous older sites with incomplete RIs could have been subjected at that time to NJDEP direct oversight but for legislation that was passed in 2013 authorizing a two-year extension of the deadline for sites that applied for the extension by March of 2014 and met certain specified requirements. For NJ sites that previously applied for and received the extension, the RI deadline is now approaching again and will expire on May 7, 2016. This is a statutory deadline. Barring any additional legislative extension, failure to meet the deadline will result in NJDEP, rather than the Licensed Site Remediation Professional, overseeing all site remediation activities and selecting the remedial action, and will also require the responsible party to: (1) prepare a feasibility study evaluating alternative remedial actions; (2) establish a trust fund for the full cost of the remedial action, and (4) implement a public participation program for the site. Review past MGKF alerts for more information on the [RI deadline](#) and the [2014 extension](#).

## **Proposed NJ Flood Hazard Act Rules May Face a Legislative Veto**

***Christopher D. Ball, Esq.***

2015 saw major revisions proposed to New Jersey's Flood Hazard Area Control Act rules, Coastal Zone Management rules, and Stormwater Management rules. The rule amendments were billed by the New Jersey Department of Environmental Protection (NJDEP) as comprehensive changes to the rules to "reduce unnecessary regulatory burden, add appropriate flexibility, provide better consistency with Federal, local, and other State requirements, and address implementation issues." The rule changes consolidated permitting requirements between the three programs and removed certain regulatory burdens such as the 150-foot riparian zone regulatory standard for development in areas containing acid-producing soils. The proposal received criticism from State environmental groups, and on January 11, 2016, the Legislature voted to block the rule changes. The NJDEP Commissioner is currently working within a thirty-day window to amend or withdraw the proposed rules or the Legislature may, by passage of a concurrent resolution, invalidate the proposal. The resolution of this issue is worth watching as the proposed rule changes will have a direct impact on development throughout the State.

## **Proposed Revisions to New Jersey Water Quality Management Planning Rules Likely to Be Finalized in 2016**

***Bruce S. Katcher, Esq.***

Major revisions to New Jersey's Water Quality Management Planning (WQMP) Rules, initially proposed by NJDEP in October 2015, should be finalized during 2016. These revisions are aimed primarily at addressing problems associated with the requirements imposed by the 2008 version of the WQMP rules that required all wastewater management planning agencies to submit updated wastewater management plans by April 2009 (later administratively extended to 2011). Because many planning agencies were late in submitting or did not submit these plans and the rules did not allow for site specific plan amendments on a case-by-case basis, development which was required to be consistent with existing the existing WQMP as a precondition to issuance of other NJDEP permits and approvals could not proceed and existing wastewater sewer service area designations in areas covered by non-compliant planning agencies were withdrawn. This was partially rectified by the Legislature in 2012 and 2013, which enacted legislation allowing site specific amendments in areas where there up-to-date WQMPs did not exist, however that legislation expired on January 17, 2016. The newly proposed rules would update the WQMP planning process to facilitate the adoption of up-to-date plans and would allow site-specific amendments while this process was taking place. They would also make changes to other requirements, including provisions on threatened and endangered species habitat and natural heritage sites, which have been controversial. The comment period on these regulations ended in December and the regulations should be finalized by October 2016.

---

Please feel free to forward this information to your colleagues and encourage them to subscribe to our mailing list.

*This alert is intended as information for clients and other interested parties. It is not intended as legal advice.  
Readers should not act upon the information contained herein without individual legal counsel.*

*Portions of this email may contain attorney advertising under the rules of some states.*

Copyright © 2016. Manko, Gold, Katcher & Fox, LLP [www.mankogold.com](http://www.mankogold.com)