

ASK AN ATTORNEY

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Q *I understand that the NJ Department of Environmental Protection (NJDEP) adopted amendments to subchapter 10 of the Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C (Oversight Rules), which, among other matters, specify grace periods for responsible persons to come into compliance with violations of certain NJ environmental rules and regulations. Do these amendments provide a grace period for responsible parties to comply with an outstanding obligation to submit a biennial certification, a certification that institutional and/or engineering controls, such as deed notices or caps instituted as part of a remedial action at a brownfields redevelopment project, have been*



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monitored, maintained and remain protective of the public health and safety and of the environment?

A Recently, NJDEP adopted amendments to the Oversight Rules, to set forth penalties for violations of certain NJ environmental regulations (e.g. the Underground Storage Tank Rules, the

Industrial Site Recovery Act Rules, the Oversight Rules, and the Technical Requirements for Site Remediation Rules), and to categorize said violations as either minor or non-minor for the purpose of providing grace periods to come into compliance (commonly known as the Grace Period Rules). Under these new Grace Period Rules, the failure to file a biennial certification is considered to be a non-minor violation, and thus is not subject to any of the prescribed grace periods.

NJDEP has recently initiated an effort to prompt compliance with the biennial certification requirement by sending notices to responsible parties advising that the failure to evaluate site conditions and submit a timely biennial certification is a non-minor violation subject to penalty assessment in accordance with the Oversight Rules. Before

assessing penalties for such violations and notwithstanding that the Grace Period Rules do not provide a grace period for such violations, NJDEP is providing responsible parties who have failed to submit timely certifications in the past until September 18, 2007 to evaluate site conditions and submit the required biennial certification.

The September 18, 2007 compliance date, in essence, provides responsible parties a "grace period" to come into compliance with the biennial certification requirement. Nonetheless, given that the biennial certification process itself can be both cumbersome and costly depending on the type and number of institutional and/or engineering controls at issue at a particular site, responsible parties would be well served if they respond diligently to meet their obligations within the newly

allotted time.

Nicole Moshang is a partner at Manko, Gold, Katcher & Fox's Bala Cynwyd office where she focuses her practice on environmental litigation. She previously worked as an associate with Schnader Harrison Segal & Lewis in Philadelphia. Additionally, she has served as an assistant metropolitan attorney for the Metropolitan Department of Law in Nashville, TN and as a law clerk for the Philadelphia Court of Common Pleas. She is admitted to practice in PA, NJ, the eastern district of PA, and the district of NJ. Moshang is a member of the Philadelphia Bar Association and PA Bar Association and both a member and Board of Director of the Society of Women Environmental Professionals of Greater Philadelphia. ■