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QUESTIONS AND ANSWERS

Ask an attorney

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Understand that NJ recently changed the public notification requirements applicable to cleanups of contaminated sites. How will the new requirements affect my planned remediation?



Christopher Ball

The short answer is that if your remediation isn't already ongoing, the new regulations will likely require you to undertake additional public outreach steps to notify the community surrounding the contaminated property of your planned cleanup.

The new regulations, published by the NJ Department of Environmental Protection ("NJDEP") on September 2, 2008 were immediately effective (with the exception of some built-in delays for certain pending projects as further described below) and are designed to enhance public notification of cleanup activities throughout the state. The regulations mandate that a party responsible for cleaning up a contaminated site, whether voluntarily or by direction of NJDEP, must first complete and submit to NJDEP and certain local

officials a checklist identifying sensitive local populations and resources in the area surrounding the cleanup. The responsible party must next either post a sign or distribute notification letters informing surrounding property owners, tenants and municipal officials of the presence of contamination on the affected property and planned remediation activities.

Notification signs and letters are typically required to be posted or distributed two weeks prior to initiation of the field activities for a single-phase remediation or the remedial investigation of a multiphase remediation. In addition to complying with applicable local requirements, the signs and letters must

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also meet specific regulatory format and content requirements. These regulatory requirements dictate parameters such as the size of signs, the scope of letter distribution, and specific information needed in either public notification approach, and can even require notification to be conducted in multiple languages depending on the languages predominantly spoken in the surrounding community.

In certain circumstances, additional notification steps will also be triggered. For instance, where contamination migrates off-site, the responsible party may be required to formulate, distribute, periodically update, and locally publish a fact sheet on the cleanup. Additional notification letters are similarly required under the regulations where a planned remediation will bring contaminated

material (e.g., fill) on-site in excess of the amount necessary to complete remediation requirements or construct engineering controls. Finally, where NJDEP determines that site-specific conditions or substantial public interest warrants, supplemental outreach steps such as public meetings may be required of the party responsible for the cleanup.

Exceptions to the notification requirements and some uncertainties in the new regulations make consultation with an attorney a well-advised step for anyone planning a remediation. For example, a phase-in period for remedial investigations or remedial actions that were ongoing as of September 2, 2008 allows the remediating party until September 2, 2009 to come into compliance. The regulations also enable the remedi-

ating party to propose to NJDEP an alternative plan for public notification and provide for certain exemptions including exemptions for emergency response actions and remediation of leaking heating-oil tanks involving one to four residential units.

Despite the presence of certain exemptions and the possibility of NJDEP approval of alternative public notification plans, the new regulations seem certain to increase the notification burden imposed on most contaminated site cleanups in NJ. In a state with more than 17,000 known contaminated sites, it may not be surprising to see signs announcing remediation projects appearing throughout the state in the coming year.

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