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“Questions & Answers”

Q *I'm cleaning up a NJ property with contaminated soils. What standards apply to those soils?*

A On June 2, the NJ Department of Environmental Protection (NJDEP) finalized regulations prescribing standards for the remediation of contaminated soils. The new standards were immediately effective and replace NJDEP's previous soil cleanup criteria (SCC). The new regulations set the minimum standards for residential direct contact, and non-residential direct contact soil remediation, and will have a potentially significant impact on past, present and future site cleanups throughout NJ.

The new regulations set standards for 136 contaminants commonly found in NJ. While there are



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several contaminants for which the new standards are less restrictive than the old SCC, for many compounds the standards are more restrictive. Most notably, for certain compounds regularly found at NJ contaminated sites including chloroform, 4 methylphenol and naphthalene, the new standards are at least an order of magnitude lower than the SCC. The new regulations also eliminate the old standard for total

petroleum hydrocarbons (TPH) that had been used to address fuel oil contamination, possibly requiring an onerous assessment of the individual petroleum constituents until NJDEP comes up with a new TPH standard. Finally, the regulations include a procedure to develop site-specific alternative remediation standards.

There is a narrow opportunity to conduct a pending cleanup under the SCC. Cleanups for which a remedial action work plan satisfying the NJDEP regulatory requirements is submitted within six months of the effective date of the new standards may use the SCC rather than the new standards. An exception to this opportunity exists where a site is contaminated with one of the contaminants for which the new standards are an order of magnitude lower than the SCC levels. A

cleanup of those sites must meet the new standards regardless of a work plan submission before the six month deadline.

Even closed sites—where NJDEP has issued a letter saying that no further action is required—may not escape the reach of the new standards. Where a contaminant's standard is lowered by an order of magnitude in the new regulations, NJDEP may “reopen” closed sites involving that contaminant and require additional cleanup. Also affected are closed sites where engineering and institutional controls are used as part of a cleanup. Responsible parties at those sites will need to consider the impact of the new standards on their ability to make the required biennial certification to NJDEP regarding the continuing protectiveness of the cleanup.

Important questions

regarding the new regulations remain including how difficult it will be to secure approval of alternative standards, and how NJDEP will handle its authority to reopen closed sites. NJDEP has promised to address several of these issues in future guidance or changes to the agency's regulations governing cleanup procedures. In the meantime, it is clear that individuals involved in both ongoing and past cleanups would be well advised to consider the new regulations to determine how they may be impacted.

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