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ENVIRONMENTAL LAW

By Bruce S. Katcher, Manko, Gold, Katcher & Fox, LLP Major changes in New Jersey property cleanup process expected

By the end of 2008, the New Jersey program for remediating contaminated property could be transformed under a bill introduced in the state Legislature on June 5. Aimed at expediting the program, the bill significantly increases the degree of environmental consultant responsibility and generally reduces the degree of New Jersey Department of Environmental Protection (NJDEP) oversight. It also modifies remedy selection and financial responsibility requirements.

Most important would be a new program to license environmental consultants – referred to as licensed site professionals (LSPs) – including educational, training, experiential and insurance requirements, and an examination to certify qualifications. LSPs would be bound by a strict code of conduct and all submissions to NJDEP would have to be LSP-signed and certified. Non-compliance could result in penalties or license revocation.

Cases would be divided into four tiers, with varying degrees of NJDEP oversight. Tier



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1 includes cases with a history of significant non-compliance and delay. Tier 2 includes cases with significant detrimental impacts, cases in areas with economic development priority, cases affecting sensitive populations (e.g., day care, schools) or environmentally sensitive resources or cases under federal oversight. Tier 4 includes unregulated heating oil tanks and other cases that do not pose an immediate environmental concern and groundwater impacts are limited. Tier 3, where most cases would likely fall, includes all other cases.

Tier 1 and 2 require the submission to NJDEP of the full range of reports required in all tiers. NJDEP would select all Tier 1 remedies and remedy

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under the agency's Technical Regulations. Tier 4 only requires submission of checklists and certifications. Tier 3 requires submission of screening documents and reports documenting receptor evaluations, remedial investigations, remedial actions and workplans, although checklist review is envisioned. This system would greatly reduce the level of NJDEP review for tier 4 cases, and to a substantial degree for Tier 3 cases, resulting in quicker NJDEP action overall. Tier 1 and 2 cases would undergo intensive review, although the caseload would likely be small. Mandatory timeframes would be set for remediation and reporting

selection in all tiers would be restricted by requiring the use of the most restrictive cleanup standards or a presumptive or enhanced remedy at sites where there is new residential construction, a sensitive population or a change in use to residential, child care or school purposes. Where engineering controls are used and fail, NJDEP could require removal or treatment of acutely hazardous contaminated material.

The requirement to post a remediation funding source (RFS) to cover the estimated cost of remediation would be extended to non-Tier 4 sites in the voluntary cleanup program – presently only Industrial Site

Recovery Act and state-ordered remediations are covered. RFS mechanisms would expand to include letters of credit and surety bonds, however, the use of self-guarantees is restricted, including a \$1 million cap, a more restrictive financial test and elimination of the annual surcharge exemption.

The bill contains additional changes, including new reporting obligations and grants to innocent parties to address remedy modifications required by changes in remediation standards and failed engineering controls.

Overall, the changes are likely to affect the cleanup of contaminated sites in ways that save time and both save and cost money, depending on the nature of the site and, regardless of final form, will significantly change the state's cleanup program.

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