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## New Environmental Cleanup Notification Requirements

By David R. Pierce, Esq.

In August, 2006, the New Jersey Legislature enacted a new law, P.L. 2006, c. 65, which creates additional notification requirements for the remediation of any contaminated site. Proposed regulations to implement this legislation were due to be adopted by February, 2007, but have not yet been proposed.

The new law, N.J.S.A. 58:10B-24.1 to 24.5, requires that "any person who is responsible for conducting a remediation of a contaminated site" provide written notification of the remediation to the Clerk of the municipality in which the contaminated site is located. This notice must include the address, the tax block and the tax lot number of the contaminated parcel as well as a description of the activities that are to take place at the site. If the remediation takes longer than two years to complete, the notice to the municipality must be renewed every two years.

The new law also specifies that if the municipality makes a request for a copy of the Remedial Action Workplan or any updates or status reports to the person responsible for conducting the remediation, that documentation must be forwarded to the Clerk of the municipality.

In addition to the written notice required to be given to the municipality, written notice of the remedial activity must also be provided to the public as called for in the regulations to be adopted by the New Jersey Department of Environmental Protection. This requirement of notice to the public is potentially very burdensome to the party conducting the remediation. The notice must contain a summary of site conditions and information about the actions being taken to remediate the property. This notice must be provided to all property owners and tenants who reside within 200 feet of the subject property. Moreover, the regulations may also require other written notification to the public, which may include a requirement for the posting of a sign visible to the public.

The only exceptions to the new notice requirements are for emergency response actions and the remediation of underground storage tanks used to store heating oil for on-site consumption in a one-to-four family (*cont'd* ➔)

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residential building. The regulations establishing the notice requirements will contain important requirements that any party conducting a remediation should be aware of and monitor closely. Under applicable law, the maximum penalty for a violation of the notice requirements could be as high as \$50,000 a day, with each day that a lack of notice continues being considered a new violation.

In January, 2007, the New Jersey Legislature passed additional legislation (“S2261”) that impacts the cleanup notification requirements. Buried in a bill aimed primarily at addressing problems encountered at a day care center that operated in a building formerly used for the manufacture of thermometers were changes to the notification requirements under the Industrial Site Recovery Act (“ISRA”), N.J.S.A. 13:1K-6, et seq. As called for in this new legislation, the initial notice of an ISRA triggering event, the General Information Notice, must be forwarded by the responsible party to the Clerk of the municipality in which the industrial establishment is located. Similarly, the responsible party must provide notice to the municipality of the filing of a Negative Declaration, Remedial Action Workplan or a Remediation Agreement. As with P.L. 2006, c. 65, S2261 also requires the responsible party to submit a copy of the Negative Declaration or Remedial Action Workplan to the municipality upon request. Additionally, S2261 requires that, if requested by the municipality, the responsible party must provide a copy of the information submitted in support of a request for a Remediation Agreement, including:

1. an estimate of the cost of the remediation;
2. a certification of statutory liability of the owner or operator to complete the remediation under ISRA;
3. evidence of the establishment of a suitable remediation funding source;
4. a certification that the owner or operator is subject to the provisions (including the penalty provisions) of ISRA; and
5. evidence of payment of all applicable fees

Moreover, S2261 establishes a specific time limit of five days for providing such information to a municipality after receipt of a written request from the municipality.

Going forward, more public notice of on-going remediations will be disseminated. This information will include some detailed information about site conditions and can be expected to result in increased public participation and possibly more claims for diminution in value of neighboring properties or toxic tort exposure litigation. These notices are essentially admissions or statements against interests being made by a responsible party and can be used against the responsible party with devastating effect in a litigation if not properly drafted. Because of that potential, it is critical that every public notice required under these new laws be carefully reviewed in order to avoid a costly misstatement.

Additionally, with the adoption of the Grace Period regulations late in 2006, enforcement actions regarding minor paperwork violations will be much more rigid and can be expected to increase. Accordingly, parties responsible for remediating a contaminated property should make certain that their consultant’s scope of services includes providing the necessary notices. In addition, the consultant’s form of contract should be reviewed carefully because many of those agreements contain language attempting to limit the consultant’s liability to the amount of the contract. If the consultant is taking responsibility for, and receiving payment for, satisfying the notice requirements, then the consultant should be responsible for any penalties arising out of a failure to provide proper notice.

**DISCLAIMER**

*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact David R. Pierce of the Environmental Law Group at [dpierce@lindabury.com](mailto:dpierce@lindabury.com).*

