



ENVIRONMENTAL PRACTICE

ALERT

WITHIN NEXT SEVEN DAYS, NJDEP WILL LAUNCH “REMEDIAL PRIORITY SYSTEM” THAT WILL RANK CONTAMINATED SITES

By David Restaino

The time is finally upon us. Several years ago, the Site Remediation Reform Act required the New Jersey Department of Environmental Protection (NJDEP) to establish a ranking system that places contaminated sites into one of five categories and thereby ranks them from best to worst; the ranking must account for things such as public health and safety.¹

Within the next seven days, the NJDEP will begin posting its final program documents onto the NJDEP website (<http://www.state.nj.us/dep/>). More importantly, the NJDEP will begin sending letters to thousands of responsible parties, and those letters will enclose “draft” site scores.

The letters will provide recipients with one chance – and one chance only – to provide feedback on the ranking of a particular site.

The Scoring Process

All sites will be ranked, except for those involving (a) homeowner heating oil tanks of 2,000-gallons or less, (b) sites for which the NJDEP’s Bureau of Operations and Maintenance Monitoring is overseeing long-term operations, and (c) sites with unknown sources. With respect to those sites for which there are multiple responsible parties, each party will receive a letter.

Sites will be ranked into Categories 1 through 5, with Category 5 being reserved for those sites with a higher potential risk to public health or the environment. Only a few hundred sites are expected to fall within Category 5.

The scoring process involves a computer model that utilizes geographic data bases and layers, receptor information and site-specific data. Scoring factors include the contaminants present at a site, whether or not they are located in soil and/or groundwater, the proximity of receptors (such as drinking water wells), and the distance/pathway between the site and any identified receptors. The scoring model will also assume that all potential receptor pathways are “open” unless analytical data demonstrates that a pathway is closed.

The NJDEP intends to utilize the scores to prioritize and target its direct oversight capabilities only to the state’s worst sites and only to those sites which are not being remediated. If a site is being actively handled by the responsible party, then the NJDEP will not seek to invoke its direct oversight powers.

What Should I Do When I Receive My Letter?

All recipients will be given approximately 60 days in which to provide feedback on the scoring, using a specially developed NJDEP web portal. The portal will allow parties to register and begin a “feedback loop” with NJDEP staff. In this context, responsible parties will have the ability to bring certain additional data to the NJDEP’s attention in an effort to reduce the site score. However, the NJDEP has made it clear that it will only accept data that has been collected in the normal remedial investigation process. In other words, it will not accept data that constitutes only a partial or incomplete remedial investigation.

Responsible parties already have an incentive to be proactive. For example, all responsible parties are required to have hired a “licensed site remediation professional” (LSRP) by May 2012.² In order to satisfy the 60-day feedback window that will be established for the RPS scoring program, responsible parties need to be intimately familiar with a site’s environmental condition. Coupling

the RPS feedback deadline with all existing site remediation requirements, parties that put off the inevitable will only create additional headaches in the near future.

If you have questions about this Alert, please contact David Restaino at 609.895.6701 or drestaino@foxrothschild.com or any member of [Fox Rothschild’s Environmental Practice](#).

¹ See N.J.S.A. 58:10-23.16.

² Contracts with an LSRP should be reviewed by counsel to ensure, for example, that adequate liability protection is available.



David has served as a member of the NJDEP’s “RPS” Stakeholders Group. He has more than 20 years of experience representing clients in regulatory compliance and complex commercial litigation matters, including environmental and health care disputes, before multiple federal and state courts and agencies. He is well-respected in the environmental bar and helps corporations, individuals and financial institutions comply with the ever-changing regulations concerning contaminated sites, air emissions, hazardous and solid waste, water quality and land use. He evaluates the compliance and liability that may affect business transactions and has represented numerous clients in complex litigation, including alternative avenues of dispute resolution and structuring creative settlements. David also advises the energy industry on developing environmentally sound operations. He is the immediate past chair of the New Jersey State Bar Association's (NJSBA) Environmental Law Section. David has also served as a member of the NJDEP’s “RPS” Stakeholders Group.

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