

ENVIRONMENTAL LAW ALERT

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DEP Aims to Get Mercury out of Fish Imposing Limits on Sewage Sludge Incinerators

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Despite significant progress in removing mercury from the environment in recent years, the remaining level is still a problem. Of specific concern in Connecticut is the level of mercury in fish – a concern that has caused the state to issue advisories about limiting the number of fish consumed if caught in Connecticut. The Department of Environmental Protection (DEP) now proposes to address the mercury issue in a somewhat unusual way.

DEP will soon issue a draft abatement order to the eight sewage sludge incinerators in the state, compelling them to study their air emissions of mercury and find a way to reduce those emissions. The goal is a 90 percent reduction of mercury, but achieving that goal on a consistent basis may prove to be impossible. The order will include a schedule for compliance, but it is not clear at this time whether it will set absolute limits of mercury that must be met.

The structure and origin of the order is unusual. It will be an order to municipalities pursuant to Conn. Gen. Stat. §22a-428, which authorizes the DEP Commissioner to issue abatement orders to municipalities that are polluting waters of the state or when a “community pollution problem exists.” The sewage sludge incinerators that will receive the order are either owned by municipalities or are treated as municipal entities by virtue of their organization and operation. The regulation of their air emissions qualifies under a water pollution statute because the largest cause of mercury pollution in water – and therefore in fish – is from the atmosphere, when particles in the air fall into the water and cause contamination. Therefore air emissions can be controlled by referring to a water pollution statute. This initiative is part of the Northeast Regional Mercury Total Maximum Daily Load (TMDL), designed to reduce mercury contamination throughout New England, New York and New Jersey.

There will be many questions as this matter goes forward, not the least of which are whether significant reductions can be achieved by retro-fitting old equipment and whether there will be funding available to assist with the high costs likely to be incurred for both studies and technology changes. DEP is encouraging the entities involved to work cooperatively in an attempt to produce faster and less-expensive results than may otherwise be possible. As municipalities grapple with budget difficulties, this new requirement may be particularly difficult to fund.

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