



New Jersey Department of Environmental Protection Announces Enforcement Actions

Client Advisories

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On September 24, 2007, the New Jersey Department of Environmental Protection (“NJDEP”) announced that it will initiate enforcement actions against parties who have failed to monitor and report on the condition of CAPs, areas of groundwater contamination, and status of deed notices as required under department-approved remediation plans. NJDEP Commissioner Lisa P. Jackson stated, “We are committed to using every enforcement tool available to bring these responsible parties into compliance as promptly as possible.”

What are Biennial Certifications?

Under certain circumstances, the NJDEP requires responsible parties to delineate areas of groundwater contamination. The NJDEP requires regular monitoring of those areas to ensure site conditions have not changed over time. As a condition of the department’s approval of these cleanup remedies, the responsible parties agreed to evaluate site conditions and submit a report every other year through a document known as a Biennial Certification.

Who is the NJDEP Targeting?

In March 2007, the NJDEP issued notices to all responsible parties of record regarding these monitoring and reporting requirements and extended all parties an amnesty period to comply with the regulations without a penalty. This amnesty period expired on September 18, 2007. As a result, the NJDEP is now pursuing all parties who remain out of compliance. As of this week, approximately 950 parties have been targeted for not complying with the above standards. The NJDEP expects to send out Notices of Violation next week.

What Will Happen After I Receive a Notice of Violation?

The NJDEP is threatening penalties as high as \$8,000 for each day a responsible party is non-compliant. The penalty imposed may be adjusted upwards or downwards based upon a variety of factors, such as: the compliance history of the violator, the number, frequency and severity of the violation, the measures taken by

the violator to mitigate the effects of the violation, the deterrent effect of the penalty, or the cooperation of the violator in correcting the violation. The regulations also provide that the NJDEP shall include as part of a civil administrative penalty an amount that represents the economic benefit that the violator realized as a result of its noncompliance. N.J.A.C. 7:14-8.13(a). Economic benefit shall include: the amount of savings realized from avoided capital, the return earned or that may have been earned by the avoided costs, any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation, and any other benefits resulting from the violation.

What Should You Do?

If you are a targeted for a Notice of Violation by the NJDEP, it is imperative to understand your rights and obligations. All parties who may be impacted by this should submit the required certification and monitoring reports as soon as possible in an effort to limit their potential liability.

If you have questions concerning this or other environmental matters, contact Carlos M. Bollar, Esquire at 856-354-3073, or cbollar@archerlaw.com.

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Attachments

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