



NJDEP Files Lawsuits As It Steps Up Environmental Justice Initiative

Client Advisories

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On December 6, 2018, New Jersey Attorney General Gurbir Grewal and New Jersey Environment Department of Protection (“NJDEP”) Commissioner Catherine McCabe announced the filing of eight separate lawsuits in an attempt to address pollution and environmental hazards at eight sites throughout the state. The lawsuits concern two sites in Newark, as well as sites in Camden, Flemington, Palmyra, Pennsauken, Phillipsburg, and Trenton.

According to the Office of the Attorney General, “[t]he lawsuits marked a new ‘environmental justice’ initiative designed to support communities that have historically suffered some of the worst environmental harms in the state.” Environmental justice is the idea that all people regardless of race, color, national origin, or income deserve fair treatment and meaningful involvement with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Although the concept of environmental justice originally emerged in the United States in the early 1980s, it has laid dormant for the better part of two decades. Despite the creation of the Office of Environmental Justice under the umbrella of the United States Environmental Protection Agency (“USEPA”) in 1992 and sweeping and ambitious requirements in Executive Order 12898 issued by the Clinton administration in 1994, substantive changes were sporadic and no new laws were enacted.

After receiving little attention over the past several years, environmental justice has become a focus of Governor Phil Murphy. On April 20, 2018, Governor Murphy issued Executive Order No. 23, which directs NJDEP, with support from other State agencies, to develop guidance on how all state departments can incorporate environmental justice considerations into their actions. Likewise, Attorney General Grewal announced that his office is creating an Environmental Enforcement and Environmental Justice Section in order to bring additional focus to environmental justice issues. The Section will be overseen by Kevin Jespersen while the office undertakes a nationwide leadership search.

The eight lawsuits filed by the NJDEP on December 6 appear to be part of the Murphy Administration's effort to advance environmental justice. Indeed, upon closer examination, each of the sites targeted by the NJDEP involve operations located in historically industrial areas.

The lawsuits seek a variety of enforcement actions. For example, the lawsuit involving the Puchack Wellfield Site in Pennsauken is a Natural Resource Damages ("NRD") case, following up on the three NRD cases the State previously filed earlier this year. The Puchack Wellfield Site is a series of six municipal supply wells that provided drinking water to residents of the City of Camden prior to being shut down in 1984. The complaint alleges that the defendant, SL Industries, Inc., was responsible for groundwater contamination that resulted in the termination of the wells. NJDEP is seeking NRD and recovery of cleanup and removal costs that have been and will in the future be incurred at the site, as well as other forms of statutory and common law damages.

Other lawsuits seek to force companies to cleanup soil and groundwater contamination for which they are alleged to be responsible. In some of the cases, the State is seeking to impose financial penalties because the defendants allegedly ignored prior orders to clean up the properties.

What is unclear, however, is how these lawsuits advance environmental justice. The theories of liability and damages sought in each complaint are identical to environmental lawsuits previously brought by the State outside of the environmental justice initiative. Each complaint relies on standard environmental statutes-such as the Spill Compensation and Control Act and the Water Pollution Control Act-regulations, and legal and damages theories. Thus, there are no new legal theories being advanced by the State in any of these cases.

Moreover, seemingly inconsistent with the goals of environmental justice, the majority of the defendants in these cases appear to be local entities that have operated on a relatively small scale, and some may have limited financial resources. Thus, the State's focus on these particular sites and group of defendants begs the question: where is the money to "improve the economic and environmental well-being" of the citizens of these communities going to come from? Of course, there exists the possibility that other entities that operated or otherwise had involvement with any of these eight sites could be brought into the lawsuits through third-party actions, but the State has left that responsibility to the named defendants, who may not have the resources to do so.

Ultimately, therefore, while these lawsuits may be premised on the laudable goal of facilitating the cleanup of contaminated sites in lower income communities, it is not clear why the State has focused its initial efforts on these particular sites or group of defendants. If the State's goal is to merely make examples out of the defendants at these sites and signal that improper environmental practices will not go unpunished, that message is loud and clear. However, that message is no different than NJDEP's message to industry for the past several decades. If the goal is truly to improve the economic and environmental well-being of the citizens of each of these communities, the question remains whether the State has chosen the proper targets for advancing its environmental justice initiative.

Whatever the motivation, we will continue to monitor closely the NJDEP's activity in this arena. Companies that may have operated or were otherwise involved at the sites that are the subject of the existing lawsuits are



encouraged to seek the advice of an attorney.

For more information, or if you have any questions regarding this advisory or environmental matters in general, please contact **Marc A. Rollo** at 856-354-3061 or mrollo@archerlaw.com, **Christopher R. Gibson** at 856-354-3077 or cgibson@archerlaw.com, or **Charles J. Dennen** at 856-673-3932 or cdennen@archerlaw.com, or any member of Archer's Environmental Law Group in Haddonfield, N.J. at 856-795-2121; Princeton, N.J. at 609-580-3700; Hackensack, N.J. at 201-342-6000; Philadelphia, Pa. at 215-963-3300, or Wilmington, Del. at 302-777-4350.

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