Coughlin Midlige & Garland LLP

Alert

Relief from the Remedial Investigation Deadline is in Sight

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There is good news for parties with cleanup obligations and a May 7, 2014, deadline to complete their remedial investigation ("RI").

The current deadline to complete an RI of a site where contamination was identified prior to May 7, 1999, is May 7, 2014. If a remediating party fails to meet this deadline, the law requires that the New Jersey Department of Environmental Protection ("NJDEP") assume direct oversight of the clean-up. The Assembly and Senate unanimously passed Assembly Bill No. 4543 on January 13, 2014, which extends the deadline until May 7, 2016. The bill provided for an extension of the deadline if (1) the applicant certifies that it meets specified conditions; or (2) the failure to complete the RI is due to a delay in the provision of financial assistance from the NJDEP's Hazardous Discharge Site Remediation Fund.

The bad news is that it's not an automatic extension. The extension is conditioned upon submitting an application by March 7, 2014, and satisfying certain conditions.

How to Extend the Deadline

In order to get the extension, an applicant must certify in a document submitted by the retained Licensed Site Remediation Professional ("LSRP") that the following conditions are satisfied:

- An LSRP has been retained to supervise remediation of the site;
- Any remediation requirements, including mandatory remediation timeframes for compliance for the site, have been met at the time of certification;
- Technically complete submissions have been made for the Initial Receptor Evaluation; Immediate Environmental Concern Source Control Report; Light Non-Aqueous Phase Liquid Interim Remedial Measure Report; Preliminary Assessment Report; and Site Investigation Report;
- Payment has been made to NJDEP of any oversight costs imposed by NJDEP, known at the time of the application and not in dispute on the date of enactment of the bill into law;

- Payment to NJDEP of the annual fees imposed by NJDEP in accordance with N.J.S.A. 58:10B-11; and
- A Remediation Funding Source ("RFS") has been established, if required by *N.J.S.A.* 58:10B-3, or, if not, a Remediation Trust Fund for the estimated cost of the remedial investigation has been established pursuant to *N.J.S.A.* 58:10B-3.

Notably, if an RFS was not established, an applicant cannot select from the list of approved forms for the RFS (e.g. line of credit, an environmental insurance policy, or a self-guarantee). Instead, the applicant can only use a Remediation Trust Fund.

NJDEP Approvals of Extension Requests

Extension requests are considered approved upon receipt by NJDEP. NJDEP will also provide notice on its website of any extensions. Notices will include (1) the name and location of the site; and (2) the length of the extension of time. Even after an extension is granted, NJDEP still reserves the right to undertake direct oversight of remediation if either: (1) the conditions previously certified to by an applicant are no longer met; or (2) the person responsible for conducting the remediation fails to meet a mandatory remediation timeframe after submission of a certification.

This bill, if signed by the Governor, will have important ramifications on current remediation projects and real estate transactions.

Coughlin Midlige & Garland LLP will continue to monitor the pending legislation while the Governor considers signing the bill into law.

If you have any questions about the current Remedial Investigation extension or the legislation discussed above, please contact Heidi Minuskin, Deborah Kelly, or Lawrence Bradford.