

Alert

NJDEP Offers Guide to Obtaining Off-Site Access

May 15, 2015

The New Jersey Department of Environmental Protection (“NJDEP”) has unveiled an update to the agency’s Site Remediation Program online forms, now providing information and forms to assist responsible parties obtain access to off-site properties for the purpose of conducting remediation. The NJDEP webpage (available at <http://www.nj.gov/dep/srp/offsite/>) offers template access letters for responsible parties to request access to off-site properties for potable well sampling and vapor intrusion sampling. These new template letters expand on the NJDEP’s database of template forms and can assist parties in complying with site remediation laws. The NJDEP is also expected to offer template letters for use in collecting off-site soil or groundwater samples for the purpose of delineating contamination.

While the NJDEP has offered responsible parties template letters to initiate a dialogue with property owners, obtaining access to an off-site property involves additional considerations, which vary in complexity. For instance, even where the owner of the off-site property is willing to grant access, the parties will nonetheless need to negotiate an access agreement detailing, among other things, the limitations of access and the parties’ respective liabilities.

Importantly, under New Jersey’s Brownfield and Contaminated Site Remediation Act responsible parties are required to seek access to off-site property to conduct remediation. N.J.S.A. 58:10B-16. Where a third-party landowner ignores the request or otherwise declines access, the Administrative Requirements for the Remediation of Contaminated Sites establishes minimum requirements for responsible parties to seek property access. See N.J.S.A. 7:26C-8 et. seq. Depending on the third-party’s willingness to participate, responsible parties may be obligated to pursue legal action in court.

If you are conducting remediation and have questions regarding your obligation to seek access to the property of a third-party, please contact Heidi Minuskin, Deborah Kelly or Michelle Murphy.