

Hackensack River Expected to be Named Superfund Site

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The U.S. Environmental Protection Agency's (USEPA) investigation into the lower Hackensack River is continuing. Indeed, the USEPA is likely to name this river a Superfund Site sometime this year. If this occurs, the USEPA will send out notices of liability to parties deemed to have a connection to discharges to the Hackensack River.

New Jersey Congressmen Josh Gottheimer and Bill Pascrell, Jr. have been urging the agency to add the Hackensack River to the federal Superfund program. Under USEPA's Superfund program, the agency is authorized to force responsible parties to perform cleanups or reimburse the government for its costs of investigating and cleaning up the River. The first step under Superfund is for the agency to perform a Preliminary Assessment to determine if a site poses a threat to the human health and the environment. Next, a Site Investigation is conducted to determine whether hazardous substances are present and being released into the environment. Collectively, this information will determine if the Site qualifies for cleanup under the Superfund program and whether the Site should be added to the National Priorities List, a list of the most serious sites identified for a long-term cleanup.

In response to a petition in early 2015 by the non-profit environmental group known as the Hackensack Riverkeeper, the USEPA undertook a Preliminary Assessment of the lower Hackensack River from the Oradell Dam to the River's mouth in Newark Bay, which was released in September 2015. Initial sampling results indicated a wide range of contaminants were present in the River, including both heavy metals and organic compounds. These results were highlighted in Congressmen Gottheimer and Pascrell's correspondence to the USEPA where they stated that:

sediment samples collected by the [USEPA] and DEP contained as many as 20 or more contaminants affecting 22 miles of the Hackensack River. These alarming samples confirm your agency's previous finding of elevated levels of cadmium, lead, mercury, dioxin and PCBs in the river. We are concerned about the high levels of contaminants that have been detected throughout the riverbed because they have been found in recreational areas.

The nearby Passaic River and Hudson River have already attained Superfund status and are undergoing extensive cleanup efforts. The USEPA's chosen remedy for the Passaic River is estimated by the agency to cost \$1.38 billion, however, some suspect the costs could be much higher. Parties with a nexus to the discharges to the Passaic River are expected to bear the costs of the remedy, which are in addition to amounts already expended by the responsible parties to investigate and perform removal actions at hot spot locations and perform the Remedial Investigation and Feasibility Study, which precede remedy implementation. Similarly, if the Hackensack River is named a Superfund Site, the USEPA will likely look to identify companies and governmental agencies whom they believe are responsible for the contamination and require them to fund the investigation and cleanup efforts, the scope of which will be determined by the USEPA. Entities will be tagged with joint and several liability for the Hackensack River due to a variety of nexuses, including historical discharges to sewer systems and corporate successor liability.

If you have questions about the USEPA's investigation into the Hackensack River or your potential liability for cleanup costs, please contact this firm and ask for Timothy Duffy, Heidi Minuskin, or Michelle McCarthy.