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Environmental Law Alert

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Remedial Investigation Extension Bill Adopted

The Site Remediation Reform Act (SRRRA) requires the New Jersey Department of Environmental Protection (NJDEP) to undertake “direct oversight” of the remediation of a contaminated site where the remediation obligation arose on or before May 1999 but the remediating party fails to complete the Remedial Investigation (“RI”) phase of the cleanup by May 7, 2014. Such “direct oversight” by the NJDEP strips remediating parties of cleanup decision-making power and, among other obligations, requires such parties to establish a trust fund in the amount of the cleanup.

On January 21, 2014, Governor Christie signed Assembly Bill No. 4543 into law. A-4543 extends the May 7, 2014 RI deadline for two years, until May 7, 2016. However, this extension is not automatic. To be eligible for an RI extension, a responsible party must submit a certification to the NJDEP confirming that:

- a Licensed Site Remediation Professional (LSRP) has been retained to conduct the remediation;
- mandatory timeframes set forth in the SRRRA have been met;
- technically complete submissions have been made to the NJDEP regarding several specific aspects of the investigation;
- a remediation funding source has been established if required or, if not required, a remediation trust fund for the estimated cost of the remedial investigation has been established; and
- all oversight costs known at the time of the certification and all applicable annual fees and surcharges have been paid.

In addition, parties awaiting funds from the Hazardous Discharge Site Remediation Fund to complete the RI phase of a cleanup may submit a similar RI extension application. Extensions granted in these situations may last up to two years after receipt of funding or no more than two years after the applicant is no longer eligible for funding.

The RI extension applications discussed above must be submitted to NJDEP by March 7, 2014 and will be deemed approved upon receipt. The NJDEP is in the process of creating the application form for the RI extension, which may be an electronic submission. Notably, NJDEP may revoke an extension and assume direct oversight of a remediation if it determines that the above criteria are not continuing to be met or that the applicant fails to meet a mandatory deadline set forth in the SRRRA after submitting the application.

The enactment of A-4543 represents an opportunity for a responsible party who is subject to the May 2014 RI deadline to avoid direct oversight of its remediation by the NJDEP. Any party responsible for a site that could be subject to the May 2014 RI deadline should check again to see if the deadline applies, and any party interested in securing an extension of the RI deadline should begin working immediately to prepare its RI extension application in order to meet the March 7 deadline.

* This Environmental Law Alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your specific situation or any legal questions you may have.

If you would like further information on the new Public Access Rules, including details on specific access requirements for certain types of facilities, please contact:

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