Navigating the New Jersey Ground Water Quality Standards Changes: Key Impacts and Considerations - *New Jersey Law Journal*

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The New Jersey Department of Environmental Protection (NJDEP) has adopted significant amendments to the Ground Water Quality Standards (GWQS) under N.J.A.C. 7:9C. These changes will have substantial implications for contaminated site remediation and redevelopment projects throughout the state and, in turn, are likely to have a direct impact on real estate transactions.

The revised rules, adopted on Jan. 2, 2025, and published in the New Jersey Register, took effect on Feb. 3, 2025. However, parties conducting a remedial investigation or remedial action may continue using most of the previous standards if, among other criteria, a remedial action workplan (RAWP) or remedial action report (RAR) is submitted to the NJDEP prior to Aug. 3, 2025. After Aug. 2, 2025, all remediation efforts must comply with the updated GWQS.

Compliance With Amended GWQS

The amendments changed the criteria for 73 Class II-A groundwater constituents, incorporating the latest methodologies and toxicological research from the United States Environmental Protection Agency (USEPA). With 50 of the 73 newly adopted standards stricter than before, these changes will significantly affect remediation projects.

More stringent limits now apply to common petroleum and chlorinated chemical constituents, including benzene, ethylbenzene, tetrachloroethene (PCE), trichloroethene (TCE), and polychlorinated biphenyls (PCBs). By way of example, the regulated community always considered it a burden to delineate PCE impacts on groundwater to 1.0 micrograms per liter standard. Now, under the new standard of 0.4 micrograms per liter, delineation will inevitably result in a greater area and volume of contaminated groundwater. Investigation and remediation will take longer and will be more costly. Thus, ongoing and future site remediation projects will be impacted by the more stringent standards that will increase the area of groundwater that comes under scrutiny, and countless sites, both active and closed, may be impacted.

Exception

A party may continue using the prior standards if all of the following conditions are met:

1. The previous standard is “not greater by an order of magnitude” (i.e., 10 times greater) than the new remediation standard. It is important to note that there are seven compounds, the concentrations of which are now more stringent than the prior standards by an order of magnitude or more. Accordingly, even if all of the following criteria are met, the new standard for these seven compounds must be applied.
2. A RAWP or RAR was submitted to NJDEP before Aug. 3, 2025.
3. The RAWP or RAR is either approved by NJDEP or certified by a licensed site remediation professional (LSRP).

4. The remedial action is completed within the applicable regulatory timeframe as per N.J.A.C. 7:26E-5.

Potential Implications for Existing No Further Action (NFA) Letters and Response Action Outcome (RAO) Determinations

The specter of the NJDEP reopening closed cases is real and concerning. What NJDEP has said in this regard in response to comments is that:

- The next biennial certification for sites with approved groundwater remedial action permits (RAPs) must include an order of magnitude analysis. The LSRP will have to determine whether additional remedial actions may be required.
- For those closed sites with an unrestricted RAO or NFA, the order of magnitude analysis would occur when or if that site, for some reason, comes back into the contaminated site remediation and redevelopment program. For example, a subsequent ISRA trigger will require this analysis.

The New Jersey Brownfield and Contaminated Site Remediation Act (Brownfield Act) and New Jersey administrative requirements for the remediation of contaminated sites (ARRCS) provide some safeguards for parties that have completed site remediation limiting the NJDEP authority to reconsider sites with an NFA or RAO determination solely due to changes in remediation standards. However, these safeguards preventing the requirement for additional remediation on a closed site do not apply if the concentrations to which the closed site may have been remediated exceed a new standard by an order of magnitude 10 times or more. As noted, under the GWQS amendments, seven constituents, including: 1,1-biphenyl; cobalt; cyanide (free); 1,3-dichlorobenzene (meta); heptachlor epoxide; methoxychlor; and vinyl chloride will become more stringent by an order of magnitude, which may require additional remediation.

While the Brownfield Act does prohibit a reopener if the responsible party can demonstrate that existing engineering or institutional controls prevent exposure to contamination on a site and that the site remains protective of public safety, health and the environment, this may be difficult to establish because the ARRCS provide that a remediation is not protective of public safety, health and the environment if the order of magnitude test is met. Accordingly, for the seven affected contaminants, additional delineation/remediation may be necessary. This is particularly concerning for vinyl chloride, which, according to public records, is involved in 1,810 active RAWPs. Further complicating matters, vinyl chloride can develop as a breakdown product from the degradation of other contaminants, even at sites where it was never originally present.

Moreover, under groundwater remedial action permits, the biennial certification process requires an LSRP assessment to identify whether contamination levels exceed the updated thresholds. Therefore, previously closed cases may be subject to further remediation obligations.

What Sectors or Industries Are Likely to Be Affected?

These regulatory changes will have far-reaching consequences for multiple sectors, requiring proactive adjustments in compliance strategies and risk assessments. Affected stakeholders include:

- **Property Owners and Real Estate Developers:** Environmental due diligence, including a preliminary assessment report (PAR) and, if necessary, a site investigation (SI) report, remains critical in commercial property transactions. Stricter groundwater quality standards may alter site development feasibility, increase due diligence requirements, and influence property values. Redevelopment projects could face additional remediation obligations before approvals are granted.
- **Environmental Consultants and Remediation Professionals:** Experts in site remediation must reevaluate their existing and planned projects and maybe even closed projects, modify RAWPs, and ensure compliance with the new regulatory framework to avoid costly delays or enforcement actions.

- **Industrial and Commercial Operators:** Facilities that handle or discharge regulated contaminants must reassess their waste management practices, groundwater monitoring programs, and treatment technologies to align with the revised GWQS.

- **Financial Institutions and Investors:** Lenders, insurers, and real estate investment firms will need to factor in the increased remediation risks and costs when underwriting loans, structuring investments, or assessing liability exposure related to contaminated properties.

Key Considerations

- **Evaluate existing site remediation cases to determine the applicability of grandfathering provisions**. Use of prior standards is permitted if the following conditions are all met:
    - The RAWP or RAR is certified by an LSRP.
    - The RAWP or RAR is submitted no later than Aug. 2, 2025 (six months after the effective date of the revised standard).
    - The old remediation standard is not greater than the new standard by an order of magnitude.
    - The remedial action complies with applicable regulatory timeframes.
- **Conduct Comprehensive Site Evaluations**: Property owners, developers, and remediation professionals should review historical and current contamination data to determine whether site conditions now exceed the updated GWQS and whether and how they will need to comply with the updated GWQS.
- **Update Remediation and Compliance Strategies**: Sites exceeding new regulatory thresholds may require additional investigation, revised cleanup plans, or enhanced treatment methods. For example, sites with RAPs must evaluate the potential for additional investigation/remediation in the next biennial certification.
- **Assess Financial and Operational Impacts**: The more stringent standards may lead to increased remediation costs, extended project timelines, and heightened regulatory scrutiny, necessitating proactive budget planning and stakeholder coordination.
- **Engage Legal and Technical Experts**: Environmental attorneys and remediation specialists can help navigate regulatory complexities, mitigate risks, and streamline compliance efforts.

Adapting to evolving regulatory requirements is essential to maintaining compliance and minimizing project disruptions. At Porzio, Bromberg & Newman, our experienced real estate and environmental teams have extensive experience in site assessments, remediation and regulatory compliance. We are prepared to help stakeholders navigate these regulatory changes efficiently.

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