

May 2014 Deadline for Completion of Remedial Investigations and NJDEP Non-Applicability Letters

You will recall that we wrote in October to alert you to the impending May 7, 2014 deadline for completion of remedial investigations in regard to certain types of environmental cases. Failure to meet that deadline could result in the application of direct oversight by the New Jersey Department of Environmental Protection ("NJDEP") which has a number of negative consequences. We have learned that there is a bill pending in the state Senate, sponsored by senators Bob Smith and Christopher Bateman, that would authorize NJDEP to extend the time for completion of the remedial investigation upon the demonstration of good cause before subjecting an open ISRA case to direct oversight. An application must be submitted to the NJDEP which would set forth, among other items, the basis for the request and a schedule for completion. The grant of the extension request is at the discretion of the NJDEP. The application must be submitted no later than March 7, 2014. The Department may grant an extension of up to two years for the completion of the remedial investigation upon a finding that there is "good cause" for the additional time. Any such approval would be published in the New Jersey Register.

Although not yet law, it is anticipated that this bill will quickly move through the lame-duck session which will end in mid-January.

More Developments

Good news for fans of NJDEP Letters of Non-Applicability, which were written confirmations from the NJDEP as to whether a particular site or transaction triggered the application of the Industrial Site Recovery Act ("ISRA") but which NJDEP ceased supplying a number of years ago. Letters of Non-Applicability may be back. The New Jersey State Bar Association has proposed legislative language that would resurrect Letters of Non-Applicability or, likely to become known as, ISRA Determination Letters. Those seeking such written confirmation would be required to submit an application, with, among other things, the rationale for the position that ISRA did not apply to the given transaction, and a fee of \$1,000. This proposed language would also essentially reinstate many of the criteria previously included in the ISRA regulations as guidelines for determining ISRA applicability. This would be a welcome development for those of us who may be involved in particularly complex transactions and for whom accurate determinations of applicability are critical. No legislative sponsor has been identified for this "bill" so it has not yet been officially introduced.

UPDATE

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