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## Remedial Priority Scoring System Goes Live in December

*Legal Alert*

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December 14, 2012

What Owners Need to Know

Cherry Hill, NJ

Late December (or shortly thereafter) will mark a sea change in the public listing of contaminated sites in New Jersey with the roll out of the New Jersey Remedial Priority Scoring (RPS) System. While the New Jersey Department of Environmental Protections (NJDEP) will only use the system to better guide it in allocating its limited resources, the outcome is that many contaminated sites will be ranked according to the threat pose to human health and the environment – and those ranking will be made public.

When posted, the site listings on the “Active Sites with Confirmed Contamination” list will now include, for the first time, the following:

- A draft “category” ranking based upon a score generated by the new Remedial Priority Scoring System for many of the 9,200 sites on the “Active” lists of sites with confirmed contamination;
- Information designating whether a Licensed Site Remediation Professional (LSRP) has or has not been retained by the person responsible for remediation for each site; and
- Whether the site is contaminated with certain hazardous substances of particular concern, including mercury, arsenic, dioxin, PCBs and chromate.

The RPS System is an automated model that gathers electronic data from different sources, including electronic data supplied to the NJDEP from remediating parties, analyzes the data under the model, and generates a relative categorical ranking between 1 and 5 for each site, with 5 indicating the greatest potential risk to human health and the environment (and thus the highest cleanup priority). The NJDEP’s goal is to create a more efficient and data-driven system that will allow it to focus its limited resources most effectively. RPS categories will not be created for homeowner cases, unknown source cases, cases that are in an operation and maintenance phase, or for properties which have been issued site-wide No Further Action letters or Remedial Action Outcomes.

The NJDEP created the RPS System pursuant to the mandate of the Site Remediation Reform Act’s amendments to the Spill Compensation and Control Act (N.J.S.A. 58:10-23.16). The Department will use the RPS System only as a tool to be used in evaluating contaminated sites. If a high category is assigned to a certain site, it does not necessarily mean that the site will be subject to NJDEP oversight. More information is available on the NJDEP’s website, and on the “Site Remediation” homepage.

Responsible parties may want to keep a few things in mind as this system is launched. These include:

- Owners and responsible persons need to consider working with LSRPs who understand the system, and can help effectively manage site risks and clean-up , resulting in a potentially lower ranking.

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- Owners and responsible parties need to make sure that all historical data and information has been provided to the retained LSRP and has been sent electronically to the NJDEP in the required format, as it may improve your category ranking and the LSRP's ability to assist you. Please note that information not received in the correct electronic format will not be input into the RPS system.
- If you don't like your category, work proactively with your LSRP to identify and recognize opportunities for improving it. One example is to close contaminant migration pathways. Categories will change as the LSRPs electronically submit additional data and as remediation steps are completed, documented and submitted to the NJDEP.
- The NJDEP is planning to update the online information infrequently while it works out the system. The first update is scheduled for December, 2013. The NJDEP hopes to move to a semi-annual basis in 2014, and beyond. While new electronically submitted data will be added as it is submitted and reviewed by the NJDEP, updates will not appear on the website in real time.
- The NJDEP has not yet announced a process to identify the exact electronic data and information the NJDEP has entered into the RPS System resulting in a particular category ranking. The Department is looking into formalizing a process so that responsible parties can question data inputs and category rankings. At the present time, category rankings are being issued in 'draft' form.
- Along with building the database using existing GIS and other records, the NJDEP sent mailings to responsible parties of 6,500 contaminated sites earlier this year. The initial list includes data correctly submitted related to those sites. They will issue the next and final round of letters in late December to persons responsible for remediation of another 2000 sites.

The RPS System represents a move toward streamlining an often arduous and complex process of site remediation reporting and tracking. While it isn't perfect, the RPS provides far more transparency regarding the potential degrees of health and environmental risks of each contaminated site to the public. We believe that the program represents a sea change in the decision-making process by persons responsible for managing the remediation of contaminated sites. For example, sites with high rankings that fail to retain LSRPs or fail to meet regulatory or mandatory remediation deadlines will be much more easily targeted by the NJDEP for compliance enforcement. In addition, quickly addressing the "lowest hanging fruit" at a contaminated site may significantly reduce an RPS category ranking, which in turn would decrease the potential of a category ranking to be misunderstood and misused by a third party, for example, a prospective purchaser, lender or bank, litigation plaintiff, or insurance company. Obviously, the tasks involved in managing the remediation of contaminated sites will also need to include identifying, addressing and managing a whole host of likely attempts by others advancing various interests to intentionally or unintentionally misuse the RPS rankings.

For additional information, please contact any members of the Environmental Law Department at Flaster Greenberg.

#### **ATTORNEYS MENTIONED**

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