

Don't Ignore the Mail You'll Soon Receive from the NJDEP

April 5, 2012

As a current or prior owner or operator of a contaminated site in New Jersey, be on the lookout for important correspondence that will be coming from the New Jersey Department of Environmental Protection (NJDEP) over the next month or so. That correspondence will be directed to the person or company the NJDEP deems “responsible” for remediating contaminated sites and will rank or “score” your site as part of the NJDEP’s “Remedial Priority System,” otherwise known as the “RPS Model.” The ranking system will categorize your site along with all other contaminated sites in New Jersey based on, among other considerations, the site’s “level of risk to public health, safety or the environment.” According to the NJDEP, the letters have already started to go out in alphabetic order as listed in NJDEP’s records, and it will take three to four weeks to complete the mailing. The NJDEP is issuing these letters to fulfill a requirement in the recent Site Remediation Reform Act – the same law that created the Licensed Site Remediation Professional (LSRP) program.

As a result of the data which the NJDEP has used concerning your site, and other geographic information and factors which the NJDEP has assigned on a numerical basis, your site will be “scored” and cataloged in any one of five categories – Category 1 represents the lowest score and thus the least potential threat; Category 5 represents the highest score and thus the greatest potential risk.

You will have **60 days** within which to comment on the “scoring” and designated Category. It is important that you immediately review the NJDEP’s scoring carefully for several reasons:

- This ranking system will be a key tool for the NJDEP to evaluate sites for a host of issues, including direct NJDEP oversight of all remaining remediation activities (meaning, that should your site be deemed by the NJDEP to require direct oversight, the NJDEP will be directing all remediation work with you paying for it, and you will not be allowed to use an LSRP to complete the cleanup of your site), as well as determining areas to be further reviewed for environmental justice and communities-at-risk concerns.
- Based on recent explanations from NJDEP regarding how the RPS Model was developed and the quality of the facts being relied upon by the NJDEP, the data used by the NJDEP in categorizing your site may contain inaccuracies, or be incomplete or not even current, thereby potentially overstating, perhaps severely, the risk of contamination at your site. Indeed, in some cases, the NJDEP may use no site data at all, but may instead rely on a series of “default assumptions” which are part of the NJDEP’s model.
- The NJDEP intends to post the Category scoring for each site on the Known Contaminated Sites List sometime during the summer or fall of 2012, and of course, to make the Category scoring publically available. This, in turn, has the potential to involve your site in other adverse consequences, including devaluation of your property as an asset, interference with the potential sale of contaminated properties or the ability to use such properties as collateral for loans, “stigma” damage claims by nearby property owners, toxic tort litigation, a heightened risk for a natural resource damage claim to be asserted by the NJDEP against you, and even environmental citizen suits.

Continued

The sixty (60) day window is your opportunity to present corrections to the NJDEP, as well as any additional data that may have been overlooked by the NJDEP, all of which may lower and correct the Category scoring.

If you have questions about the information contained in this alert, contact a member of the [Environmental Practice Group](#) at [Flaster Greenberg PC](#).

ATTORNEYS MENTIONED

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