

NJDEP Overhauls Remediation Standards for Contaminated Sites in New Jersey

Client Alert

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On May 17, 2021, the New Jersey Department of Environmental Protection (DEP) promulgated a comprehensive amendment of the remediation standards that determine when remediation of New Jersey contaminated sites has been completed. Initially proposed in April 2020, the finalized regulatory amendment includes:

- A contaminant-by-contaminant recalculation of the soil remediation standards based on current toxicity information and other factors. 65% of the resulting standards are less stringent, 10% are more stringent, and the remaining 25% either involve no change in the standard or are new standards.
- A codification of remediation standards for indoor air and soil or soil-leachate migration to groundwater, both of which were previously determined on a site-by-site basis by Licensed Site Remediation Professionals (LSRP) using guidance published by DEP.
- An expansion of the pre-amendment process for establishing site-specific alternate remediation standards for soil to allow that process to be used for other exposure pathways such as soil migration to groundwater and vapor intrusion.
- A modification and expansion of the pre-amendment process for establishing interim soil remediation standards for contaminants without an established remediation standard to allow that process to be used for all exposure pathways.
- A documentation of DEP's assessment of the chemical and physical properties of contaminants and the toxicity factors for the contaminants.

The regulatory amendment does not change the current numerical groundwater or surface water quality standards.

Key Issues

Order of Magnitude Changes. The regulatory amendment makes the remediation standards for several contaminants more stringent by an order of magnitude, which may require some reassessment and reopening of

previous cleanups. Contaminants identified by DEP as having an order of magnitude change are benzaldehyde, bis(2-ethylhexyl)phthalate, butylbenzyl phthalate, caprolactam, cobalt, copper, 4-4'-DDE, 4,4'-DDT, 1,1-dichloroethene, ethylbenzene, and hexachlorocyclopentadiene.

Remediation standards involving an order of magnitude change must be applied at all remediation sites where the remedial action has not been completed as of May 17, 2021, the effective date of the regulatory amendment, even if the remedial action workplan had been previously approved. In addition, sites where the remediation has been completed require an evaluation against order of magnitude changes in remediation standards whenever a biennial certification is required for the remedy previously implemented for the site, or whenever the remediated site "re-enters" DEP's Site Remediation Program, such as when an industrial property is sold, triggering a review under New Jersey's Industrial Site Recovery Act (ISRA).

The need to address an order of magnitude change in a remediation standard during the late stages of a remediation can make it difficult to meet the applicable mandatory timeframe for completion of the remediation. In response to that concern, DEP noted that it has the authority to extend a mandatory timeframe, and that a newly promulgated remediation standard involving an order of magnitude change could be the basis for a request to DEP for an extension "provided an adequate justification can be provided on a site-specific basis."

In comments received on the proposed amendment, DEP was asked whether the order of magnitude evaluation should be applied to the new indoor air and soil or soil-leachate migration to groundwater remediation standards, which did not previously have codified remediation standards. In response, DEP clarified that the "order of magnitude evaluation is conducted by comparing the site-specific soil-water partition remediation standard for a given contaminant and the site-specific indoor air remediation standard for a given contaminant against the current default soil-water partition remediation standard for the applicable contaminant and the default indoor air remediation standard for the applicable contaminant."

Phase-In Options. For all revised remediation standards not involving an order of magnitude change, the regulatory amendment allows the person responsible for conducting the remediation to use the pre-amendment standard instead of the new remediation standard as long as the remedial action workplan or remedial action report containing the pre-amendment standard is submitted to DEP by November 17, 2021, approved by DEP or an LSRP, and completely implemented within the applicable timeframe.