

New Jersey DEP Proposes Significant Overhaul of Remediation Standards Required for Contaminated Sites

The New Jersey Department of Environmental Protection (DEP) has published a proposal for an extensive regulatory overhaul of its remediation standards for contaminated sites, codified at N.J.A.C. 7:26D.

Although published on April 6, 2020, amid the disruption of the COVID-19 pandemic, this proposed regulatory amendment deserves a close review by the regulated community, particularly with respect to the DEP's extensive recalculation of the numerical remediation standards for soil. The initial deadline for submission of comments, June 5, 2020, has been extended until August 5, 2020.

Proposed Amendment Overview

The extensive changes proposed by the DEP include the following:

Extensive Recalculation of Soil Remediation Standards

The changes proposed by the DEP for the residential and nonresidential soil remedial standard tables is particularly interesting. Each chemical listed in the existing tables was reassessed using updated toxicity factors, exposure assumptions, and chemical and physical factors. The result is a mixed bag of changes to the numerical remediation standards.

A few of the proposed changes in numerical standards would be substantial. For example, the soil remediation standard for methyl ethyl ketone would be raised from 3,100 mg/kg to 47,000 mg/kg for residential properties and from 44,000 mg/kg to 780,000 mg/kg for nonresidential properties. The soil standard for benzaldehyde, on the other hand, would be lowered from 6,100 mg/kg to 170 mg/kg for residential properties and from 68,000 mg/kg to 910 mg/kg for nonresidential properties.

There would also be changes in the chemicals included in the soil remediation standard tables. The proposed amendment would remove fifteen of the chemicals listed in the existing soil remediation standard tables. According to DEP, some or all of these were removed because USEPA no longer supports the toxicity information upon which the existing standards are based, and reliable toxicity information is not otherwise available. Nineteen new chemicals would be added to the soil remediation standards table for residential properties and eighteen would be added to the nonresidential properties table. DEP advises that twelve of the additions to the proposed soil remediation standards tables were added because they are on the U.S. Environmental Protection

Agency's Target Compound List.

Order of Magnitude Changes

As a general rule, any new remediation standards approved by DEP in a final rule would apply to all remediation sites in New Jersey once the final rule becomes effective. Persons who are close to implementing a remedy, however, would be able to use pre-amendment remediation standards (instead of newly promulgated more stringent standards) if:

The DEP proposed amendment has seven contaminants for which at least one proposed remediation standard is an order of magnitude more stringent than an existing remediation standard. They are benzaldehyde, butylbenzyl phthalate, caprolactam, cobalt, 1,1-Dichloroethene, ethylbenzene, and hexachlorocyclopentadiene. These "order of magnitude" remediation standards would immediately apply to all ongoing remediation sites if the proposed amendment becomes effective, even if an approved remediation work plan or remedial action report had been submitted to DEP.

In some instances, sites where the remediation has been completed can be reopened to address subsequently promulgated order of magnitude remediation standards. The DEP requires the person responsible for the remediation to conduct an "order of magnitude" evaluation for completed remediation sites in two circumstances:

Other Proposed Changes

If finalized, the proposal will require practitioners to adapt to some changes in familiar terminology. For example, "practical quantitation limit" would be replaced by "reporting limit." "Vapor intrusion screening levels" would become "soil remediation standards for inhalation exposure pathway." The DEP would also have to update its existing technical guidance and develop new guidance to adapt to the multitude of changes.

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