

Amid COVID-19 Pandemic, NJDEP Publishes Key Remediation Standard Proposal

By **Richard F. Ricci** and **Mark S. Heinzelmann**

On April 6, 2020, the New Jersey Department of Environmental Protection (NJDEP) published to the New Jersey Register, 52 N.J.R. 566(a), a rule proposal which, if adopted, will make expansive changes to New Jersey's remediation standards, as codified at N.J.A.C. 7:26D, *et seq.* The following changes have been proposed:

- The replacement of site-specific soil remediation standards for impact to groundwater with codified soil and soil leachate remediation standards for migration to groundwater
 - The addition of indoor air remediation standards for vapor intrusion
 - The replacement of direct contact soil remediation standards with separate soil remediation standards for the inhalation exposure pathway and the ingestion-dermal exposure pathway
 - The expansion of the NJDEP's process for establishing interim remediation standards, codified at N.J.A.C. 7:26D-5, to include soil and soil leachate for migration to groundwater and indoor air
 - The expansion of the NJDEP's process for updating remediation standards, codified at N.J.A.C. 7:26D-6, to include soil and soil leachate for migration to groundwater and indoor air
 - The expansion of the process through which a person responsible for conducting remediation may request an alternative remediation standard, codified at N.J.A.C. 7:26D-7, to include soil and soil leachate for migration to groundwater and indoor air
- The deletion of remediation standards for certain existing chemicals, and the addition of remediation standards for certain new chemicals
 - The establishment of numerical changes to some existing remediation standards
 - The addition of definitions for "residential" and "nonresidential" based on property use

This rule proposal promises to have sweeping impacts on New Jersey's site remediation program. Among other things, it would (1) expand the NJDEP's ability to establish binding, albeit "interim," remediation standards without formal rulemaking; (2) expand the universe of regulated contaminants in New Jersey; and (3) alter the way that site-specific remediation standards are established. Notably, in some instances, the NJDEP's stated purpose behind these changes is to enhance its ability to take enforcement action. As such, it would behoove members of the regulated community to review this rule proposal carefully and timely submit to the NJDEP in writing any comments. Comments are due by June 5, 2020, and an in-person public hearing is scheduled for May 11, 2020, at 10:00 AM at the NJDEP's headquarters in Trenton.

No doubt, the NJDEP's decision to publish this rule proposal in the midst of a public health crisis will come as a shock to some and a source of confusion to others. This proposal has been in development for the past six years, ever since the first stakeholder meeting took place in March 2014. Yet the NJDEP has decided to publish it now, when many members of the community are either working remotely, shut down entirely or simply dealing with the unique challenges posed by COVID-19. The regulated

community's ability to provide cogent and unified comments is severely impaired. Further exacerbating the uncertainty in the regulated community, the NJDEP has yet to respond to pleas for guidance on looming remediation deadlines that the pandemic will undoubtedly impact.

For these reasons, industry groups have already expressed to the NJDEP their displeasure with the timing of this rule proposal. They have requested that the agency either stay the public comment period until the pandemic

has subsided or, at the very least, extend it by an additional 60 days. The NJDEP has yet to respond to that request. As such, interested parties should be prepared to submit comments by June 5, and they should evaluate whether attendance at the May 11 public hearing is necessary and can be done utilizing proper social distancing guidelines.

To see our prior alerts and other material related to the pandemic, please visit the Coronavirus/ COVID-19: Facts, Insights & Resources page of our website by clicking [here](#).

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

RICHARD F. RICCI

Partner

Chair, Environmental Law & Litigation

T: 973.597.2462

rricci@lowenstein.com

MARK S. HEINZELMANN

Associate

T: 973.422.2946

mheinzelmann@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

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