

Environmental Law & Litigation

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New Jersey Appellate Division Decision Creates Risk That NJDEP May Be Able To Revive Time-Barred Claims for Investigation and Remediation

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On April 25, the New Jersey Superior Court Appellate Division [reversed](#) a trial court's order dismissing the New Jersey Department of Environmental Protection's (NJDEP) complaint as time-barred in *NJDEP v. Desai*. The ruling means that if any aspect of the remediation of a contaminated site is not completed, all of NJDEP's claims for remediation and associated costs and damages may be timely.

Background

In 1987, International Customer Corp., a company owned by the defendants (former owners of the company), closed its operations at the site and, in turn, triggered the investigation and remediation requirements of New Jersey's Environmental Cleanup Responsibility Act, now known as the Industrial Site Recovery Act (ISRA).¹ In 1994, the defendants and NJDEP entered into a memorandum of agreement (MOA) to govern the defendants' investigation and remediation of contamination at the site.² Ultimately, NJDEP terminated the MOA due to the defendants' failure to adequately address certain contamination. The MOA subsequently was reinstated in 1996 and terminated again by NJDEP in 1998, again due to the defendants' failure to fulfill their obligations. All remediation efforts at the site ceased completely prior to January 1, 2002.³

In April 2023, NJDEP filed suit against the defendants under ISRA and the New Jersey Spill Compensation and Control Act (Spill Act) to compel remediation of the site and to recover costs and damages NJDEP incurred and will incur due to the defendants' alleged failure to remediate the site.⁴ The defendants filed a motion to dismiss, arguing NJDEP's claims were time-barred because NJDEP must assert "any civil action concerning the remediation of a contaminated site" within three years after the cause of action "shall have accrued."⁵ The statute expressly provides that "no accrual" of a cause of action is deemed to occur prior to January 1, 2002, "or until the contaminated site is remediated," whichever is later.⁶

The trial court granted the defendants' motion to dismiss, holding that remediation of **any portion** of the site gave rise to NJDEP's causes of action and started the three-year limitations period. As the defendants undertook some remediation efforts prior to January 1, 2002, the trial court held that NJDEP's claims became time-barred on January 1, 2005.⁷

Appellate Division Reverses the Trial Court's Decision

The Appellate Division reversed the trial court's decision. Applying the plain language of N.J.S.A. 58:10B-17.1, the court held the "common-sense understanding" of the phrase "until the contaminated site is remediated" is that the remediation must be completed in its entirety before NJDEP's causes of action accrue.⁸ The court reasoned that use of the phrase "remediated" as opposed to "remediate" indicated the Legislature's desire to run the limitations period from completion of the remediation, not some earlier point in the remediation process.⁹ The Appellate Division also rejected the trial court's decision to "resort to intrinsic aids to glean the meaning of the statute."¹⁰

Potential Implications

The Appellate Division's decision may significantly limit a company's ability to rely on the statute of limitations as a defense to NJDEP claims. To the extent investigation and remediation requirements are modified or NJDEP decides that prior "completed" remediation is no longer sufficient to protect public health and the environment, parties that previously "completed" remediation may be required to perform additional remediation. In both situations, the changed circumstance of needing more remediation has the potential, under the Appellate Division's ruling, to reset the statute of limitations in NJDEP's favor, including revival of previously time-barred claims. Companies should proactively assess and develop a strategy to most effectively memorialize the completion of remediation work in New Jersey to mitigate this risk.

For more information about Spill Act liability and defense, please contact the authors of this Client Alert.

¹ N.J.S.A. 13:1K-6 *et seq.*

² Slip op. at 4.

³ *Id.* at 5.

⁴ *Id.* at 6.

⁵ *Id.* at 6-7; N.J.S.A. 58:10B-17.1(a)(1).

⁶ N.J.S.A. 58:10B-17.1(a)(2).

⁷ Slip op. at 7-9.

⁸ *Id.* at 12-13.

⁹ *Id.*

¹⁰ *Id.* at 14.

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