



# Enforcement Alert

*Making You Aware of Anticipated Enforcement Activities*

Compliance and Enforcement

Issued: September 2007

#2007-12

## Site Remediation Program to Enforce Monitoring and Reporting Requirements

### Who is affected by this initiative?

Parties that are subject to planned enforcement actions are those who are responsible for monitoring the effectiveness of a remedial action that includes an engineering and/or institutional control, and submitting a biennial certification and report to the Department, but who have failed to do so. The parties include the following:

- Parties in any way responsible for the discharge pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.
- Property owner(s) at the time of the remedial action
- Property owner(s)/facility operator(s) that triggered the Industrial Site Recovery Act, N.J.S.A. 13:K-6 et seq.
- Property owner(s)/system operator(s) of a regulated Underground Storage Tank, N.J.S.A. 58:10A-21 et seq.
- Holder of security interest who actively participated in the management of the site or underground storage tank
- Holder of security interest who negligently caused a new discharge after the date of foreclosure
- Each owner, lessee or operator after the Declaration of Environmental Restriction or Classification Exception Area was in place, limited to their period of ownership

### Why is DEP targeting this violation?

Engineering controls include any physical mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action, including but not limited to caps, signs, fences, ground water containment systems, slurry walls and ground water pumping systems. Institutional controls include mechanisms used to limit human activities at or near a contaminated site or to ensure the effectiveness of the remedial action over time when contaminants remain at levels above the applicable remediation standards that allow for the unrestricted use of the property. Institutional controls may include structure, land, and natural resource use restrictions, well restriction areas, ground water classification exception areas, deed notices, and declarations of environmental restrictions.

The Department's receipt of biennial certifications and monitoring reports is the only means through which the Department can ensure that long-term monitoring and maintenance occurs and that the implemented remedy remains protective over time. The Department must rely on self-monitoring and reporting by those responsible due to the volume of such sites with respect to available Departmental resources. Monitoring the protectiveness of the remedy is critical particularly in light of potential exposure in the event that the property use changes to one that is inconsistent with the restrictions specified in the remedy.

### What is DEP doing?

Beginning in October 2007, the Department will issue enforcement actions, to those parties who failed to meet their obligations relative to monitoring and reporting on institutional and engineering controls. In March 2007 the Department sent letters to all responsible parties of record concerning these obligations and

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provided an amnesty period until September 18, 2007, during which they could come into compliance and no penalty would be assessed. Enforcement actions will be directed against those parties who did not take advantage of the amnesty period and are still non-compliant. Pursuant to the Grace Period rule, N.J.A.C. 7:26C-10, these are non-minor violations subject to \$8000/day in penalties for every day out of compliance.

## What should I do?

Even though the compliance deadline has passed, parties who have not submitted the required certification should do so as soon as possible in order to limit their penalty liability. These requirements can be found at N.J.A.C. 7:26E-8. In addition to the required certification and monitoring report, those parties seeking to lift their Classification Exception Area should submit the information required at N.J.A.C. 7:26E-8.6(a)7 along with an application for a Memorandum of Agreement (MOA). An MOA application can be obtained at <http://www.nj.gov/dep/srp/volclean/#forms>.

Deed Notice or Classification Exception Area biennial certification submittals on active sites should be directed to the assigned case manager.

All other submittals should be directed to:

**New Jersey Department of Environmental Protection**  
**Bureau of Operation, Maintenance and Monitoring**  
**PO Box 413**  
**Trenton, NJ 08625-0413**  
**Attention: Robert Soboleski, Bureau Chief**

## Who should I contact with questions?

Deed Notice or Classification Exception Area biennial certification questions on active sites should be directed to the assigned case manager. Questions on all other sites should be directed to the Office of Community Relations at [srpcommunity@dep.state.nj.us](mailto:srpcommunity@dep.state.nj.us) or at (609) 984-3081.

## Where can I get more information?

**The following web sites can be accessed for additional information regarding this advisory:**

For a list of sites scheduled for enforcement action

[http://datamine2.state.nj.us/dep/DEP\\_OPRA/Intro.htm](http://datamine2.state.nj.us/dep/DEP_OPRA/Intro.htm)

Technical Requirements for Site Remediation-Subchapter 8

<http://www.nj.gov/dep/srp/regs/techrule/techr108.pdf>

Guidance on engineering and institutional controls <http://www.nj.gov/dep/srp/regs/guidance.htm#bicert>

**Visit the following Web site for general information:**

Contact NJDEP: <http://www.nj.gov/cgi-bin/dep/contactdep.pl>

**To comment on this advisory:**

<http://www.nj.gov/dep/enforcement/survey.html>

Please note this advisory is intended to be a summary explanation of a department initiative. It does not include all potentially applicable requirements. If you have any questions related to compliance with this initiative, please contact the SRP number listed above.