A Serious NJDEP Enforcement Push
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Responsible parties (RPs) who have open cases with NJDEP's Site Remediation Program and who have not been taking action within the times prescribed by the Site Remediation Reform Act of 2009 (SRRA) **will be getting a summons for failure to take action**. These summonses will be issued regardless of your financial circumstances, the size of your project, the degree of hazard, or the relative degree of impact to human health and the environment.

The SRRA was passed, in part, to reduce the number of open cases. But a case cannot close unless the RP willingly participates in the program. There have always been a percentage of responsible parties (RPs) who, for one reason or another, have not completed their projects. NJDEP wants all RP's to achieve environmental compliance in a timely fashion. And until recently, NJDEP would enforce cleanup sanctions only against recalcitrant RP's with very large projects, projects that were severely impacted, or those that posed an imminent threat to the health and safety of people or the environment. RP's whose cases were of "low environmental concern" were simply not on NJDEP's radar screen.

Using a long-established but little-used provision in the New Jersey Spill Compensation and Control Act (Spill Act), the Attorney General's office is now cracking down on ALL recalcitrant RP's with open remedial cases. This crackdown is without regard to the size of the project, degree of hazard, or financial hardship.

NJDEP does not have the manpower to undertake such an enforcement initiative. So using the Spill Act, they are sending form letters to municipal judges. The letter (see below) will be filled in with the data particular to each project by a Deputy Attorney General assigned to the case.

This is being done for two reasons: induce the RP to take action so they can close their case with a RAO and to collect whatever unpaid fees and penalties are owed. And make no mistake-- collecting back fees is a State mandate. In fact, no Licensed Site Remediation Professional (LSRP) is permitted to issue a RAO unless and until all back fees are paid in full.

We know that these letters have already begun to go out as one of our clients with a relatively small project with no remaining environmental impacts just received this exact letter. Please call ESA at 732-469-8888 if you have any questions about this or any other environmental matter.

State of New Jersey

July 28, 2014

[**VIA OVERNIGHT MAIL**]

[

      Judge Address

             ]

      Re: State, Department of Environmental Protection v.
          _____
          Ticket No. _____

Dear Judge _____:

I respectfully submit this letter to you to discuss the above-referenced matter. A copy has been sent to the defendant. This matter involves violations of the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:23-11, *et seq.*, and the regulations promulgated pursuant thereto, which include the charged violation of N.J.A.C. 7:26C-2.3(a) for failure to remediate a contaminated site. This is a prosecution for a civil penalty against Defendant _____ ("Defendant") on a Complaint filed by the New Jersey Department of Environmental Protection ("DEP"). As will be discussed in greater detail below, jurisdiction is vested in the municipal court by the Spill Act, N.J.S.A. 2B:12-17, and N.J.S.A. 2A:58-11 ("the Penalty Enforcement Law").

Under N.J.S.A. 58:10-23.11u, whenever DEP determines that a person has violated the provisions of the Spill Act, including, *inter* *alia*, any rule, regulation or directive promulgated pursuant thereto, DEP may "bring an action for a civil penalty in accordance with [N.J.S.A. 58:10-23.11u(d)]." N.J.S.A. 58:10-23.11u(d) provides, in turn, that:

> [a]ny person who violates a provision of [the
> Spill Act], or a court order issued pursuant
> thereto, or who fails to pay a civil
> administrative penalty in full . . . shall be
> subject to a civil penalty not to exceed
> $50,000.00 per day for each violation, and
> each day's continuance of the violation shall
> constitute a separate violation. Any penalty
> incurred under this subsection may be
> recovered with costs in a summary proceeding
> pursuant to 'the penalty enforcement law'
> [N.J.S.A. 2A:58-1, *et seq*.] in . . . municipal
> court.

The Penalty Enforcement Law provides that when a statute, such as N.J.S.A. 58:10-23.11u(d), permits a municipal court to impose a civil penalty, the municipal court shall decide the case in a summary manner. The court shall hear testimony on any factual issues and impose a penalty as provided for by the statute if it concludes that a violation occurred.

In the matter pending before Your Honor, Defendant has been issued a summons for failing to remediate a site located at _____ ("the Property"), as required by N.J.A.C. 7:26C-2.3(a). N.J.S.A. 58:10-23.11g(c)(1) makes Defendant, as the owner of the Property at the time a discharge of hazardous substances occurred and/or was discovered, the individual responsible for conducting the remediation of the Property. See the Administrative Requirements for the Remediation of Contaminated Site rules, particularly, N.J.A.C. 7:26C-2.3(a), a copy of which is enclosed.

[Sentences regarding Defendants' site history and lack of compliance.] However, Defendant's compliance with his remediation obligations stopped there. Defendant was required to fully [remediate], but failed to do so. The Property has thus gone unremediated. This is despite the fact that, as the evidence will show, DEP's Compliance Assistance Section has attempted to contact Defendant on numerous occasions in order to help Defendant come into compliance. As the responsible party, and pursuant to N.J.A.C. 7:26C-2.3(a), Defendant was required to remediate the Property. Accordingly, pursuant to N.J.S.A. 58:10-23.11u(d), DEP now seeks to prosecute for a civil penalty against Defendant in municipal court for failure to remediate as required by N.J.A.C. 7:26C-2.3(a).

Thank you for your attention in this matter, and please contact me if you have any questions.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:_____
    Mark S. Heinzelmann
    Deputy Attorney General

Encs: N.J.S.A. 58:10-23.11g
          N.J.S.A. 58:10-23.11u
          N.J.A.C. 7:26C-2.3(a)

cc: _____