

What is Hazardous Waste? Part 2, Your Neighborhood

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November 3, 2014

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If one's home is a sanctuary, then one's neighborhood is a safety net. Environmental cleanup projects are found in virtually every municipality. Do these cleanup projects themselves jeopardize neighborhood health and safety? And if environmental regulations are so stringent, why are there so many cleanups?

Have there really been a lot of environmental cleanups?

The short answer is yes -- more than you might ever imagine. But the nature of these cleanups has changed dramatically since the early 1980's.

Cleanups began in earnest during the 1980's when sites posing the most direct or imminent threat to the public's health and safety were addressed. Then during the 1990's many underground storage tanks were removed and remediated. The first decade of the 21st century saw the advent of large-scale Brownfield cleanups where derelict or long-abandoned inner city properties were cleaned and redeveloped. And now during the "teens," cleanup work continues -- meeting the requirements established by New Jersey's Site Remediation Reform Act (SRRA).

A Brief History of the Environmental Laws that Induce Cleanups

The environmental movement that we know today was born in 1969 and developed during the 1970's when a series of federal environmental laws were passed. These laws became the basis of the environmental laws that govern us in all 50 states. It also didn't take long for New Jersey to be among those states in the vanguard of the environmental movement. Without environmental laws, strict enforcement, and draconian penalties, most companies would not change their behavior, and industrial pollution would remain largely unabated. Sadly, human indifference and corporate greed are often predictable behaviors. What follows is a brief summary and is not intended to be comprehensive.

When people speak of environmental cleanups, they often think of the former mega-hazard projects addressed by the federal Superfund law. Names like Valley of the Drums (KY), Love Canal (NY), Tar Creek (OK), Murray Smelter (UT), Merrimac Chemical/Monsanto (MA), Burnt Fly Bog (NJ), Chemical Control (NJ), Toms River Chemical (NJ), Lone Pine Landfill (NJ), American Cyanamid (NJ), and DuPont's Pompton Lakes Works (NJ) conjure images of buried drums, ground water flowing in multiple colors, solvent odors, and cancer clusters. Indeed, these sites--and many others across the country--created indelible reminders of the dangers humans can exact when allowed to operate businesses in an unregulated and unfettered fashion. But

environmental laws changed corporate behaviors, and eventually all of these sites and others like them were remediated. But that wasn't enough.

On December 31, 1983, a groundbreaking environmental law went into effect in New Jersey called the Environmental Cleanup and Responsibility Act (ECRA). ECRA was modified ten years later and became the Industrial Site Recovery Act (ISRA). Today ISRA remains a viable and powerful law that requires current property owners to clean their properties before they are allowed to sell them. Business owners protested because of the "unfairness" of this law, and parts of it were indeed unfair. Nonetheless, this law, more than any other that I know of, induced remediation at more sites in New Jersey than any other single law. But once again, that wasn't enough.

In 1988, the United States Environmental Protection Agency (EPA) issued underground storage tank (UST) regulations that, among other things, directed each state to issue their own UST regulations. New Jersey of course followed suit. And for ten years there was a major thrust to replace regulated USTs with new state-of-the-art tanks with all of the latest safeguards. This resulted in the nationwide removal of hundreds of thousands of old USTs, many of which were leaking. And because of environmental regulations, these former USTs were remediated. But that wasn't enough.

A law was needed to induce investors and developers to buy impacted properties--, especially in the inner cities--remediate them and return them to the tax rolls. Enter New Jersey's Brownfield and Contaminated Site Remediation Act of 1998. This law created incentives for investors to buy derelict, blighted urban properties, clean them up, create jobs, and then create a ratable. Because of this, many urban properties that had been shunned have been reclaimed. But that wasn't enough.

Sometimes things slip through the cracks. A child care center called Kiddie Kollege opened in Gloucester County, New Jersey in 2004. In 2006, Kiddie Kollege stopped operations when the New Jersey Department of Environmental Protection (NJDEP) and the Department of Health and Senior Services found the facility was unfit for occupancy because of high levels of mercury throughout the building. How this terrible thing happened is another story. But as a direct result, a new law was passed requiring all existing child care centers to prove that they were environmentally fit. Moreover, any new child care center had to undergo proper due diligence to ensure environmental fitness. But, that still wasn't enough.

Vapor intrusion[1] (http://www.akesa.com/enewsletters/enewsletter_0514.pdf) was not even discussed by the regulatory agencies in any fashion until the early 1990's. EPA drafted its first regulations in 2002, and the NJDEP published its own guidance in 2013. As a result, many buildings located upon or next to sites with active subsurface cleanups are at risk for having impacted indoor air quality. The regulatory impetus is clear: protect human health in buildings by ensuring that the air quality is acceptable. But that was not enough either.

New Jersey's SRRA ushered in a new era of environmental compliance rules. It became effective on November 3, 2009 and its primary objective has succeeded: many long-standing cases were finally closed. And it also had another consequence. NJDEP delegated almost all case

management to private consulting companies via the Licensed Site Remediation Professional (LSRP) program. LSRPs are held to a higher standard than state case managers. Thus, cleanups are performed in a far more rigorous fashion than ever before. Sites that are granted closure are as clean as or cleaner than under the former case management system.

Are there more cleanups than ever before?

Maybe. All of the laws described above were designed to function as a catch-all mechanism. No longer would industrial or commercial property be sold without undergoing some form of due diligence. Furthermore, all of the players involved in real estate transactions have become far savvier than ever before and want to be certain that they are not buying a contaminated property. Or if they are, they want to know the details so they can adjust the sale price accordingly.

Consequently, many cleanups are performed, but the projects are generally smaller. Many of these projects remained unnoticed in the 1980's or 1990's. But because of today's environmental regulations, they receive appropriate scrutiny and are addressed.

How Concerned Should I Be Regarding a Cleanup that is Occurring in My Neighborhood?

Bear in mind that the primary objective of the NJDEP is to protect human health and the environment. It can be argued that NJDEP is too strong, contentious, etc., but it is a fact that New Jersey is a cleaner and safer place to live and work because of NJDEP's efforts.

So what about all of those sites being cleaned in all of those municipalities across New Jersey and elsewhere; should you be concerned? In a word, "No." First, high-hazard, uncontrolled waste sites are almost never encountered anymore. Most of the sites being cleaned are not hazardous per the EPA definitions. Thus, when waste is shipped out it rarely requires shipment via the Hazardous Waste Manifest system.

Environmental consultants and contractors are trained to protect both their employees and the adjacent population. Therefore, the likelihood of danger to local residents from the work done on these sites is virtually nil because of the relatively benign nature of most contaminants and the safe practices used by environmental professionals. Employees who work on these projects must follow the protective requirements of the Occupational Safety and Health Administration (OSHA). Finally, under the SRRA there is a new requirement mandating that each responsible party posts a sign indicating that a cleanup is underway, who the LSRP is, and a phone number to call if the public has questions.

As a result of this collection of laws, rules, and regulations, more waste sites are being identified and cleaned than ever before. Often they reside on small properties that may be residential, commercial, or industrial. And at the end of the day, via one remedial project after another, our communities are becoming cleaner and safer.

Conclusions

The opinions stated above are those of the author. People with questions or comments can call or write to me at 732-469-8888 x201 or send me an email at sfauer@askesa.com.

[1] Vapor intrusion describes the phenomenon when organic vapor from substances such as gasoline travel through the soil and enter buildings. Chronic inhalation of some organic vapors is harmful.

Thanks.
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