

GIORDANO, HALLERAN & CIESLA

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

PLEASE RESPOND TO:

U.S. POSTAL SERVICE ADDRESS:

POST OFFICE BOX 190

MIDDLETOWN, NEW JERSEY 07748

OR:

HAND DELIVERY AND OVERNIGHT SERVICE ADDRESS:

125 HALF MILE ROAD

RED BANK, NEW JERSEY 07701

(732) 741-3900

FAX: (732) 224-6599

www.ghclaw.com

November 2006

DEP Preparing “Deficiency” Notices For Hundreds Of SRP Cases

The Site Remediation Program (SRP) within the New Jersey Department of Environmental Protection (DEP) has been preparing a major enforcement initiative to coincide with the September 18, 2006, effective date of the SRP’s Grace Period Rules, N.J.A.C. 7:26C-10. The Grace Period Rules cover all SRP programs including: UST cases, ISRA cases; and VCP (voluntary cleanup program cases) under a MOA (memorandum of agreement).

Conceptually, SRP’s Grace Period Rules were meant to achieve compliance with the Grace Period Law, N.J.S.A. 13: 1D-125 et seq., to provide the opportunity for regulated parties to avoid penalties for “minor” violations by requiring DEP to give formal notice and an opportunity to “cure” the violation during a specific period of time – “the grace period.”

Notices of Deficiency

As part of the SRP’s implementation of the Grace Period Rules, case managers throughout the State have been asked to review all of their case files to identify all cases where compliance may be deemed “deficient” by the SRP. Deficiencies can involve failure to meet timeframes; failure to submit schedules; incomplete submissions; and improper report formats. Deficiency notices will be addressed to the “responsible party” and consultants and attorneys may not be copied.

Timeframes

Each “Notice of Deficiency” will indicate the timeframe within which the deficiency must be fully addressed to avoid the imposition of penalties. Timeframes are set forth at N.J.A.C. 7:26C-10.4 and depend on the type of case involved. Timeframes range from 30 to 90 days, most often 30 days.

No “Conditional Approvals” -- Compliance Efforts Should be Carefully Documented

SRP will no longer issue “conditional” approvals. Either a proposal is approvable or it is deficient. Hence, requests for variances must be detailed. Extreme care should be used when a “Notice of Deficiency” is received to protect the applicant’s rights. Failure to achieve compliance with a claimed “deficiency” can have severe consequences including numerous and often severe penalties. For voluntary clean up cases, the MOA can be terminated. Additional details can be found on the SRP website at www.nj.gov/dep/srp/guidance/graceperiod.

This information is not to be construed as legal advice. If you should have any questions relating to the DEP’s deficiency notices for SRP cases, please contact Andrew B. Robins, shareholder in our Environmental Practice Area, at arobins@ghclaw.com or call 732-741-3900.