

Environmental Law: Solving NJ Client Conflicts with the NJDEP and USEPA

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THE COMPLEX LAWS AND REGULATIONS THAT apply to environmental issues leave many businesses in dire need of legal counsel. The following case studies showcase how law firms can protect and defend firms from liability and fines from the New Jersey Department of Environmental Protection (NJDEP) and the U.S. Environmental Protection Agency.



Connell Foley LLP

By Agnes Antonian, Esq., Partner
Member, Environmental Law Group

What do owners of beachfront properties in New Jersey need to know if they want to remodel or build on their properties? The NJDEP often denies CAFRA approvals for oceanfront properties on the basis that the entire property constitutes a dune and construction on dunes is not permitted. This firm represented Mrs. Seigel in the appeal of such a denial. Ultimately, the permit denial was reversed by the seminal Appellate Division opinion, *Seigel v. New Jersey Department of Environmental Protection*, 395 N.J.Super. 604 (App. Div. 2007), providing much needed guidance and clarification as to what land the NJDEP can regulate as a dune. Chiding the NJDEP for its broad interpretation of dunes including any discernible slope on a property, the Appellate Court clarified that a dune must have two “abruptly” inclining and declining slopes measured in comparison with the rest of the property. Noting that this clarification is intended to “improve the overall economic position” of coastal inhabitants, the Court concluded that the NJDEP failed to apply the principle of fundamental fairness in denying the permit. Importantly, the Seigel opinion provides critical guidance for beachfront property owners with respect to imposition of dune regulations.



Giordano, Halleran & Ciesla, P.C.

By Andrew B. Robins, Esq.

Giordano Halleran & Ciesla was hired by a pharmaceutical company that acquired property in Morris County which had allegedly been remediated by the prior owner. Upon further review of the property, however, the remedia-



Addressing the contamination of soil and water are litigious propositions that require the advice and guidance of an experienced environmental law firm.

tion had clearly been deficient. The environmental consultant estimated that the work needed to complete the remediation was well in excess of \$1 million. Utilizing years of experience and familiarity with the myriad of environmental laws, a creative approach was developed involving a revised remediation plan. The remedy also required our client to obtain a series of NJDEP land use element approvals, such as wetlands approvals. Ultimately, the project was brought to a successful conclusion for costs far less than 10 percent of the original cost estimate. A complex and massive remediation effort was avoided and replaced with an appropriate control measure—fencing, which had no impact on the development potential of the property. Environmental matters, particularly site remediation matters, frequently have unique facts and circumstances. The successful approach to such environmental issues typically involves marshalling the available information, and working with consultants who are leaders in their areas of expertise. That approach resulted in a substantial success for our client.



Greenbaum Rowe Smith & Davis LLP

By David A. Roth, Esq.

We recently represented a manufacturer in an enforcement action prosecuted by the U.S. Environmental Protection Agency (EPA). The EPA alleged that the manufacturer failed to comply with the requirements of the Emergency Planning and Community Right to Know Act (EPCRA) by failing to submit the appropriate forms and certifications for a particular reporting year. EPCRA requires certain businesses to file a toxic chemical release form for

continued on page 36