

New Illinois Environmental Right-to-Know Legislation

Introduction

Weaver Boos Consultants (Weaver Boos) prepared this environmental brief to highlight key elements of Illinois' new Right-to-Know Legislation. This legislation expands the powers of the Illinois Environmental Protection Agency (the IEPA) to issue administrative orders for response actions and public notices pertaining to releases that have or may result in off-site contamination.

The legislation will place additional obligations on responsible parties and likely will affect real estate transactions and redevelopment of environmentally-impacted properties, particularly since the responsible party could become someone other than the person that caused the release (i.e. new owners or developers of environmentally-impacted properties).

Background

Public Act 94-314 (the Public Act) was signed into law in July 2005 and became effective January 1, 2006. The Public Act amends the Illinois Environmental Protection Act (the Act) by: 1) Revising Section 58.8 (Duty to record), 2) Adding Section 22.2d (Authority of the Director to issue orders), and 3) Adding Section 22.50 (Compliance with land use limitations), and 4) Adding Title VI-D (Right-to-Know).

The IEPA currently has rules (Case No. R06-23) before the Illinois Pollution Control Board (the Board) that are anticipated to be finalized by mid September 2006 in order to meet a 240-day deadline required by the Public Act. The following sections briefly discuss key elements of those changes to the Act.

Highlights

The IEPA Can Issue Response Action Orders - This new law allows the Director of the IEPA, rather than only the Illinois Attorney General, to issue orders to responsible parties, whether liable or potentially liable, to perform response actions. The recipient of an order has limited options to challenge the order and must comply with the order while challenging it. Limited options are available for reimbursement of response actions if the order is overturned or if the cost is incurred on behalf of bankrupt or insolvent parties.

IEPA Contamination Evaluation - As of January 1, 2006, the IEPA is required to evaluate soil and groundwater contamination that does or may extend beyond the boundary of the site where the release occurred. Furthermore, the IEPA shall take appropriate actions to respond to releases, which may include, but are not limited to, public notices, investigations, administrative orders, and enforcement referrals.

Potable Well Surveys - Part of the IEPA's evaluation will rely on potable well surveys by responsible parties which identify potentially affected potable wells, setback zones, and regulated recharge areas within certain distances of the property boundary or the edge of the measured or modeled contamination.

Public Notices - Beginning January 1, 2006, the IEPA must:

1. Notify affected off-site property owners when soil contamination is beyond the boundary of the site where the release occurred and poses a threat of exposure to the public.

2. Notify affected potable well owner/operators and users when groundwater contamination poses a threat of exposure to the public (whether or not a potable well is present).
3. Notify all property owners within 2,500 feet when an enforcement action, seal order, or CERCLA immediate removal occurs.

A community relations plan is required if the threat is present for more than five properties, water systems, or present for one community water system. This public notice method will be more complicated, expensive, and will need to include interested citizens, identified groups, organizations, and businesses within 1,000 feet.

A six-item fact sheet is required if the threat in soil is present for five or fewer properties or the threat to groundwater is present for five or fewer private, semi-private, or non-community water systems.

Potential Public Notice Costs - The responsible party is liable for the IEPA's notification costs (or in select situations the parties (authorized parties) can perform the notification with IEPA review and approval), which according to the IEPA filings before the Board, could be as follows for certain tasks:

- Contact list and fact sheet - \$9,500 to \$12,000.
- Community relations plan - \$4,500 to \$6,000.
- Fact sheet and community relation plan updates - \$2,200 to \$4,800.

Comments by some parties experienced with this process suggest that these estimated notification costs are low and that the IEPA's review/approval process can delay the issuance of notices if notices are being completed by the responsible party.

Points to Consider

- This legislation spans all aspects of the IEPA, not just LUST, SRP or RCRA programs.
- Consider the consequences of this legislation when dealing with environmentally-impacted properties and plan accordingly.
- Enrollment into the voluntary site remediation program may result in IEPA-ordered response actions that are not voluntary.
- Notifications could increase the legal risks for responsible parties.
- If you receive a notice, you may want to contact a qualified attorney and consultant for advice.

Weaver Boos currently employs qualified Environmental Professionals with the background and experience to assist you with your environmental assessment and remediation needs with respect to these new laws and regulations. For additional information, please contact Keith R. Fetzner at 630-717-4848 or Doug Dorgan at 312-922-1030.

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