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REAL ESTATE / TRANSACTIONAL LAW

# Update

*Spring 2008*

## A “WIN” FOR REDEVELOPERS OF BROWNFIELD SITES

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On May 7, 2007, the New Jersey Department of Environmental Protection proposed Soil Remediation Standards that include changes to the existing numeric residential and nonresidential soil cleanup criteria (SCC) and impact to groundwater (IGW) soil cleanup criteria. In particular, the proposed IGW soil remediation standards would set extremely stringent cleanup levels for chlorinated solvents, a group of chemicals that includes trichloroethylene (TCE) and perchloroethylene (PCE or Perc), contaminants of concern frequently found at Brownfield, dry cleaners and other sites.

The DEP received a firestorm of comments from redevelopers and others in the regulated community, that the proposed IGW standards would grind Brownfield cleanups and redevelopment of urban sites to a halt, due to the uncertainty created by the time and cost to achieve compliance with the IGW standards or obtain DEP’s approval of an alternative remediation standard. In addition, developers and others voiced concerns that the DEP does not have the “horses” to process the anticipated flood of applications for approval of alternative IGW standards, and new hires are unlikely given the State’s current budget crunch.

The upshot is, according to reliable sources within DEP, that the DEP has decided not to adopt the IGW portion of the rule proposal at this time. The remainder of the proposal will be adopted, with minimal changes by May 7, 2008, and will be published in early June 2008 in the *New Jersey Register*. While the IGW pathway still will need to be evaluated, the overly stringent proposed IGW standards will not be adopted. The DEP will continue to evaluate the IGW pathway on a site-specific basis and intends to provide guidance regarding determination of IGW cleanup levels. Of course, the DEP may in the future propose IGW standards, but for now, this rollback is in the “win” column for the redeveloper and regulated community.

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