Foster Garvey

Legal Alerts

Petroleum Technical Assistance Program: A New Tool for Cleanup of Contaminated Property in Washington

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There are several options to clean up contaminated properties under Washington's cleanup law, the Model Toxics Control Act (MTCA). One of the more common options used in real estate development projects is to engage in independent cleanup actions, and then entering into the Voluntary Cleanup Program (VCP) managed by the Department of Ecology (Ecology). Ecology is authorized by statute to provide technical assistance and to issue written opinions on whether a cleanup meets those requirements. If cleanup is successful, Ecology will issue a No Further Action (NFA) opinion, which is helpful for facilitating transactions and loans for properties where contamination is an issue. Unfortunately, the VCP is currently overburdened with projects, resulting in long delays in response to requests for assistance or for an NFA.

With the enactment of House Bill 1266 in early 2017, the Pollution Liability Insurance Agency (PLIA) has been authorized to provide similar technical and legal assistance to parties engaging in independent cleanup actions through its Petroleum Technical Assistance Program (PTAP). The PTAP is the result of substantial need for additional ways to promote independent cleanups, as Ecology's VCP currently has a six to twelve month waiting list.

ELIGIBILITY AND COST

PLIA allows for submission of an online application to determine eligibility into the PTAP, and requires a one-time payment of $7,500. The PTAP is currently only available for commercial sites and properties that are contaminated solely with petroleum released from above-ground or underground storage tanks, with no other hazardous substances. Highly complex sites with extensive groundwater contamination plumes or surface water impacts will likely be referred back to Ecology. In addition, the PTAP is not available to sites that are already in Ecology's VCP or that are the subject of environmental litigation.

PARAMETERS OF PTAP

PLIA may issue the same types of NFA opinions that are issued by Ecology, including:

1. a property-specific NFA;
2. a site-wide NFA, covering your property and anywhere else contamination may have come to be located;

3. a restricted NFA, where some residual contamination remains but poses no direct risk so long as protective measures are put in place; and/or
4. a partial sufficiency NFA, which addresses either one particular type of contamination or one specific portion of a site.

These written opinions will then be recorded in Ecology's database, and will be tracked by Ecology as if the opinion was issued under the VCP. PLIA can also provide informal advice and opinions on whether remedial actions or proposals meet the substantive requirements of MTCA.

TIMEFRAME FOR REVIEW

PLIA will begin accepting applications for the PTAP in January 2018. Under the PTAP, PLIA will be able to provide technical assistance and advice on an expedited timeframe with no waiting list or waiting period.

After submission of the application, PLIA's technical staff will meet with property owners to review the application and to set realistic cleanup goals. PLIA's review goal is 45 days, which is half the time of Ecology's current 90 day goal under VCP. PLIA can provide rapid turnaround on its review and determinations, providing responses within two to three months (or less) rather than the six to twelve months needed for a response from the VCP.

CONCLUSION

The primary advantage of utilizing the PTAP instead of VCP is time - the PTAP provides rapid turnaround of environmental opinion requests, which will help to facilitate property transactions where contamination may be an issue and to facilitate financing where the affected property serves as collateral. While the PTAP will still provide stringent review of environmental closure requests using the same standards and requirements as Ecology under MTCA, the PTAP will provide property owners and developers with a better opportunity for timely environmental review and closure of qualifying sites.

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