

Environmental Law & Litigation

January 5, 2024

New Year, (Likely) New Remediation Standards—NJDEP Kicks Off 2024 With Proposed Ground Water Quality Standards

By [Mark S. Heinzelmann](#) and [Brian S. Winfield](#)

On Jan. 2, the New Jersey Department of Environmental Protection (NJDEP) rang in the new year by publishing a [Proposed Rule](#) updating the Ground Water Quality Standards (GWQS) for 65 of the 73 constituents currently regulated for Class II-A groundwater. As most readers know, the department uses the GWQS as base standards for the remediation of groundwater contamination. For most ongoing and future cleanups, the updated GWQS will apply. For previously closed sites, the impact of the Proposed Rule will depend on a number of factors, including (1) whether any of the contaminants with updated standards still exist and (2) whether the updated standards resulted in an order of magnitude change.

Of the 65 contaminants subject to the Proposed Rule, 50 will have GWQS that are more stringent, and seven of those will be more stringent by an order of magnitude or more. The remediation standard for a contaminant becomes more stringent by an order of magnitude when that standard is decreased by a factor of 10. For instance, if a contaminant's remediation standard was 0.1 micrograms per liter (µg/L) and it was decreased to 0.01 µg/L, that standard would have changed by an order of magnitude. The seven proposed GWQS that will become more stringent by an order of magnitude or more are:

Contaminant	Current GWQS	Proposed GWQS
1,1 biphenyl	400 µg/L	5.0 µg/L
Cobalt	100 µg/L	2 µg/L
Cyanide (free)	100 µg/L	5.0 µg/L
1,3-dichlorobenzene	600 µg/L	5.0 µg/L
Heptachlor epoxide	0.2 µg/L	0.020 µg/L
Methoxychlor	40 µg/L	0.1 µg/L
Vinyl chloride	1.0 µg/L	0.035 µg/L

Under the Brownfield and Contaminated Site Remediation Act, when there has been an order of magnitude change in a remediation standard, the NJDEP can (1) compel responsible parties to apply the newly promulgated standard to ongoing remediation and/or (2) reopen previously closed sites and compel additional remediation if the contaminant subject to the order of magnitude change still exists above the new standard. See N.J.S.A. 58:10B-12(j) and 13(e), respectively. Because the GWQS for the above seven contaminants are changing by an order of magnitude or more, the department is empowered to compel additional remediation at previously closed sites where those contaminants are still present. For the remaining 43 constituents, their standards are not changing by an order of magnitude. As a result, those standards will only impact sites that have not yet reached the remedial action phase and/or received a final remediation document.

Notably, in the Proposed Rule, the NJDEP identifies a large number of closed sites that may be impacted by the order of magnitude changes. Most significantly, the department believes there are 153 closed sites with existing 1,1-biphenyl contamination in excess of the proposed GWQS. It also believes there are 639 closed sites with existing vinyl chloride in excess of the proposed GWQS. If the NJDEP's estimates are correct, each of those sites may require additional remediation when/if the Proposed Rule becomes final.

The department is hosting a virtual public hearing for the Proposed Rule on Jan. 30, and all comments to the Proposed Rule must be filed no later than March 2.

If you have any questions about the Proposed Rule, order of magnitude changes, or site reopeners, please contact the authors of this article.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

MARK S. HEINZELMANN

Counsel

T: 973.422.2946

mheinzelmann@lowenstein.com

BRIAN S. WINFIELD

Staff Attorney

T: 862.926.2284

bwinfield@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C

This Alert has been prepared by Lowenstein Sandler LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. Lowenstein Sandler assumes no responsibility to update the Alert based upon events subsequent to the date of its publication, such as new legislation, regulations and judicial decisions. You should consult with counsel to determine applicable legal requirements in a specific fact situation. Attorney Advertising.