

NEW ILLINOIS RIGHT-TO-KNOW LAW

Joseph R. Podlewski, Jr.

On July 25, 2005, the new Illinois "Right-to-Know" Law (SB 241--P.A. 94-314) became effective, imposing a statutory requirement upon the Illinois Environmental Protection Agency to notify affected landowners in the vicinity of a contaminated site of the presence of contamination. The highlights of this law are outlined below:

- A. What are the events triggering the IEPA notice obligation?
 1. An IEPA determination, based upon "credible, scientific information available to it" that:
 - a. Off-site soil contamination exceeds "appropriate" Tier 1 remediation objectives under the Illinois Pollution Control Board's "Tiered Approach to Corrective Action Objectives ("TACO") rules (35 Ill. Adm. Code Part 742); or
 - b. Off-site groundwater contamination exceeds Class I groundwater quality standards (35 Ill. Adm. Code Part 620);
 - OR**
 2. the Illinois Environmental Protection Agency either:
 - a. Refers an enforcement case under Section 43(a) of the Illinois Environmental Protection Act (to a state's attorney or the Illinois Attorney General for injunctive relief "in circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons" (415 ILCS 5/43(a)); or
 - b. Issues a seal order under Section 34(a) of the Act (415 ILCS 5/34a)); or
 - c. Conducts or oversees a CERCLA removal action. A CERCLA removal by the U.S. EPA or a third party with IEPA or U.S. EPA oversight also constitutes a triggering event.
- B. If a triggering event occurs, what must the IEPA do?

Give notice of the action to the owners of all property within 2,500 feet of the contamination "or any closer or farther distance that the Agency deems appropriate under the circumstances."

C. When must the notice be given?

Within 60 days of the triggering event.

D. How is the notice to be given?

Mechanisms may include "personal notification, public meetings, signs, electronic notification and print media." IEPA may allow a private party with a community relations plan to provide the required notice in lieu of the Agency.

E. What is the notice to contain?

1. The name and address of the site or facility where the release occurred or is suspected to have occurred;
2. The identification of the contaminant released or suspected to have been released;
3. Information as to whether the contaminant was released or suspected to have been released into the air, land, or water;
4. A brief description of the potential adverse health effects posed by the contaminant;
5. A recommendation that water systems with wells impacted or potentially impacted by the contaminant be appropriately tested; and
6. The name, business address, and phone number of persons at the Agency from whom additional information about the release or suspected release can be obtained.

F. Who pays for the notice?

The responsible party.

G. How does the IEPA get the information to provide in the notice?

The Act authorizes the IEPA to issue an "information demand letter" to the site owner or operator "that requires the owner or operator to provide the Agency with the information necessary, to the extent practicable, to give the notice required. . . "



The new Illinois Right-to Know law, although well-intentioned, may well have a chilling effect upon redevelopment of contaminated properties with off-site contamination, particularly under the voluntary Site Remediation Program. A prospective purchaser interested in redeveloping such a property and obtaining the benefits of a No Further Remediation Letter through the SRP will now have to deal with the consequences of the mandated Agency notice to nearby landowners. In addition, and perhaps more significantly, that purchaser may also be on the receiving end of an administrative clean-up order issued by the IEPA under its new administrative order authority because certain events triggering notice under the Right-to-Know law also serve as the justification for issuance of an administrative order requiring remediation of the property.

By having the potential to transform a voluntary request for IEPA review of a remediation project into a clean-up obligation, the new Illinois Right-to-Know law dramatically alters the regulatory landscape for brownfields redevelopers. Those interested in redeveloping properties with off-site contamination must now take into account the significant ramifications that seeking IEPA review of a voluntary remediation may have before embarking upon such a project.

If you have a question regarding this or other environmental law, please call **Joseph R. Podlewski**, (312) 516-4445 or jpodlewski@schwartzcooper.com, or any other member of Schwartz Cooper's Real Estate Practice Groups.