

NJDEP Offers Potential Buyers of Contaminated Property Way Out of Direct Oversight

Environmental and Land Use

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The New Jersey Department of Environmental Protection (NJDEP) has issued Pre-Purchase Administrative Consent Order Administrative Guidance to allow potential buyers of contaminated sites the opportunity to obtain adjustments to direct oversight requirements for out of compliance sites, if they agree to conduct the remediation of the property they are seeking to purchase. The Administrative Consent Order (ACO) must be fully executed prior to transfer of the Property (the date of Closing, not recording of the Deed). The potential buyer must not be a responsible party in any way responsible for the contamination at the Site (for example, not a predecessor, partner, subsidiary). The benefits to the potential buyer include no longer paying direct oversight fees but instead annual remediation fees and NJDEP waiving the 1% surcharge fee (except for ISRA). The new buyer will be deemed the person responsible and will be able to select an appropriate remedy and conduct the remediation without prior approvals from NJDEP.

The NJDEP is requesting as much notice as possible if a potential buyer would like to enter into an ACO and estimates approximately two (2) months for negotiations and finalizing of an Administrative Consent Order, if the Site is not too complex. This is a benefit for parties seeking to purchase contaminated sites, without the burden of penalties and direct oversight by NJDEP to undertake the obligations for the remediation. It is also a benefit to communities to enable old impacted sites to be remediated and revitalized for a beneficial use.

For more information or for assistance contact:

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