

The Environmental Corner

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State Level Environmental Enforcement During Periods of Economic Downturn

The current state of the economy affects so many areas of our lives, but one that isn't talked about much is how the current hiring freezes imposed by almost every state environmental agency impacts environmental cleanups. It is safe to say that the state-level regulatory agencies are not hiring new staff to handle environmental cleanups. While this may initially sound like a good thing in that dry cleaners may feel they have some breathing room from the long arm of the law, I see it differently.

In general, the environmental regulations continue to get tougher and the acceptable levels of chemical constituents allowed to remain in soil, vapor and groundwater continue to be lowered. Because many sites take a long period of time before they are cleaned up to acceptable levels and "closed", the project managers working for local, state, and federal regulatory agencies continue to get

more and more sites that they are responsible for managing. Their workload continues to increase in volume and the piles of reports and work plans they are to review keep growing.

But while the project managers may have a hard time reviewing the technical work plans and reports in a timely manner, the time frames imposed on business owners to clean up sites continues on schedule with little reprieve to the owners, even if

they don't have the money for the cleanups. We work in a number of states and we have seen Notice of Violation (NOV) letters and associated penalties imposed with little advanced warning such as phone calls or threatening letters. These NOV's can come with steep fines. In many states, the agency may fine a business or individual under administrative civil liability of up to \$1,000

Continued on page 2

As Seen In...

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per violation day. These violations may be as simple as failing to submit an environmental report on time to not sampling monitoring wells on a scheduled basis. Often times the matter is sent to the state Attorney General's office where it runs on its own legal course. It even seems that some state agencies are using this instrument to offset budget cuts.

And if that's not enough, financial institutions remain reluctant to lend money to businesses and property owners using environmentally impaired properties as collateral, until the sites are cleaned up. The problem is that the sites that exhibit levels of contaminants above the established clean up levels are being prioritized based on their risk to human health and the environment. While this seems like a reasonable approach, what happens is that only a handful of sites meet the "high" priority threshold. That means that sites still must be characterized fully, the risks evaluated, cleanup feasibility studies conducted and in most cases, remedial alternatives must be implemented and carried out, but the sites from a regulatory standpoint might end up in no man's land. The sites are not considered contaminated enough for direct oversight, but not clean enough to be closed without some remedial action.

On the other hand, the Obama administration's new political appointees are beginning to settle into their positions at Federal, Environmental Protection Agency and the Department of Justice. This administration has publicly stressed the need for energetic environmental enforcement and has sought unprecedented levels of funding for new enforcement positions. The federal law authorizes

Environmental Protection Agency to seek statutory penalties of up to \$32,500 for each day of non-compliance prior to January 12th 2009, and \$37,500 for each day thereafter.

In the end, business and property owners will need to evaluate their particular situations to navigate through the changing economic, regulatory and business climate. Hiding their heads in the sand will likely result in losing out on opportunities to refinance, sell or grow. Dealing with environmental liabilities can be an unnerving situation, but not dealing with them and avoiding them is far worse.

With proper planning and the development of a proactive strategy, business and property owners will continue to prosper. Before the curb and asphalt work were completed. We saved additional money by working with site contractors to excavate and backfill the trenches. While we were not able to have the SVE wells installed before the asphalt due to the schedules of the local drilling companies, we put in traffic vault boxes. These traffic vault boxes were installed and finished as the asphalt was being laid down, which lead to a very clean look for the final drive area. Later, we took the vault lids off and drilled and installed our SVE wells through these traffic vault boxes. In taking advantage of the renovation of the empty neighboring suites, we installed SVE wells and completed the underground trenching and piping.

Finally, we ran cost calculations to determine what the additional costs would be to install the necessary piping and traffic vault boxes for the future implementation of an ozone/peroxide injection system to reme-

diate the site groundwater. Though we hadn't determined for sure what our final groundwater remediation technology would be, it turned out that the cost to install two additional PVC pipes within the SVE header system trench during the renovation activities was far less expensive than installing the system at a later date. In fact, the cost benefit of installing the piping and traffic utility boxes during the renovation activities was spending approximately \$4,000 during renovation and not determining not to use the ozone/peroxide injection system, versus spending over \$150,000 later to install the same system and resurface the asphalt and install new curbs.

In summary, we installed the entire system during the renovation activities at a huge savings to our customer. In addition, we avoided future business interruptions, potential costs for lost business caused by those disruptions, and we were able to remediate contaminated soil closer to the dry cleaner source by accessing the neighboring suites, and we did not need to restore the site to its pristine condition because the finished construction activities performed by the owners at their cost accomplished that. The only downside was the pressure to work during the contractors tight time schedule and the small amount of money that could be lost if the ozone/peroxide injection system is not selected as the final groundwater remediation technology.