



New York Expands Requirement to Investigate Emerging Contaminants

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New York began last year to require remediating parties to investigate whether groundwater at their sites was contaminated with the emerging contaminants 1,4-dioxane and PFAS (i.e., per- and polyfluoroalkyl substances). (See our May 29, 2018 Blog Article [NYSDEC Requiring Site Owners To Investigate Emerging Contaminants](#).) Now, the New York State Department of Environmental Conservation is broadening this requirement by mandating investigation of the presence of these contaminants in all environmental media, not just groundwater. This represents a significant and costly expansion of the obligations of remediating parties in New York, the scope of which is not yet clear.

The new requirements are embodied in a February 2019 guidance document titled Sampling for 1,4-Dioxane and Per- and Polyfluoroalkyl Substances Under DEC's Part 375 Remedial Programs. The guidance specifically requires any new site brought into one of New York's remedial programs (e.g., the State Superfund Program and New York Brownfield Cleanup Program) to incorporate sampling for 1,4-dioxane and PFAS into its investigation of soil, groundwater, surface water, sediment, and, in certain instances, animals and plants. However, it is not clear whether this new requirement will be applied to sites already undergoing remediation. It also is not clear what remediation will be required if emerging contaminants are identified at a site because New York does not yet have cleanup objectives for many of the environmental media that now must be sampled. As a result, and until cleanup objectives are established, the extent of remedial activities required to address emerging contaminants will be addressed on a case-by-case basis.

The guidance further requires that any soil imported to a site in one of New York's remedial programs must be tested for 1,4-dioxane and PFAS. This includes soil imported for use as part of a cap or as backfill. In other words,

soil imported as part of remediation must be tested for emerging contaminants even if the soil comes from another site that is not otherwise required to conduct such sampling (e.g., from a site in another state that doesn't require investigation of these emerging contaminants). The risk of finding emerging contaminants at a site that is not otherwise required to sample for them may dissuade such sites from sending fill to remediation projects in New York and may make it difficult for New York projects to obtain necessary fill.

With this new initiative, New York continues to be at the forefront of the regulation of emerging contaminants. While the initiative is an aggressive attempt to protect human health and the environment from the risks of emerging contaminants, it is likely to have a significant impact on remediation projects within New York, whether or not such projects involve emerging contaminants.

For more information, please contact the author Matthew A. Karmel at mkarmel@riker.com or any attorney in our [Environmental Practice Group](#).

Attorney:

Matthew A. Karmel

Practice:

Environmental Law

Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey 07962-1981 • t: 973.538.0800 f: 973.538.1984

50 West State Street, Suite 1010, Trenton, New Jersey 08608-1220 • t: 609.396.2121 f: 609.396.4578

500 Fifth Avenue, New York, New York 10110 • t: 212.302.6574 f: 212.302.6628

399 Knollwood Road, Suite 201, White Plains, NY 10603 • t: 914.539.3360 f: 914.539.3361

1200 Summer Street, Suite 201C, Stamford, CT 06905 • t: 203.326.6740 f: 914.539.3361

www.riker.com