



Soil contamination: What are the cleanup objectives?

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After an environmental study, soil contamination was discovered on your property. The soil must be excavated and removed from the site for disposal in a licensed facility. What are the appropriate cleanup levels? How do you know when the property is clean?

After performing soil investigation that defines the vertical and horizontal extent of the soil contamination, you should be ready to have an experienced environmental consultant direct the remediation of the soil. It is also likely that you will be involved with the New York State Department of Environmental Conservation (DEC), or other regulatory agency that will oversee the cleanup.

For many years, the cleanup objectives in New York State were set forth in the DEC's Technical and Administrative Guidance Manual (TAGM) 4046. TAGM 4046 is a guidance document, not a regulation or statutory requirement, issued by DEC in the early 1990s. The guidance sets forth specific numerical cleanup objectives for a variety of chemicals that have been applied throughout New York State by regulatory agencies and consultants/contractors performing soil remediation. The numerical criteria are generally set forth as parts per million (ppm). For example, the soil cleanup objectives for lead in urban areas is generally regarded as 200 ppm to 500 ppm, the background level for lead. Typically, 400 ppm is applied. Although DEC issued new regulations about one year ago, setting forth comprehensive cleanup objectives, many regulatory personnel and environmental consultants continue to apply the TAGM levels.

In November, 2006, the DEC issued new regulations under the Brownfield Cleanup and Inactive Hazardous Waste Site (otherwise known as Superfund) program at 6 NYCRR Part 375. These regulations set forth "unrestricted" cleanup objectives and restricted cleanup objectives. Under the unrestricted cleanup objectives, soil is required to be remediated to the objectives, but there are no further specific requirements with respect to the property. For example, under the unrestricted cleanup objectives, the requirement for lead is 63 ppm, which was defined based on a soil investigation in rural areas in upstate New York.

Under the November, 2006 regulations, there are also restricted cleanup objectives which are for property that will have a use that is restricted in the future to residential, commercial, or industrial. Under these requirements, an environmental easement, a deed restriction and other detailed requirements, which are required. For example, under the restricted cleanup objectives, the requirements for lead are 400 ppm for residential, 400 ppm for commercial, and 1600 ppm for industrial. The allowed levels increase as the future use of the property goes from residential, commercial to industrial. Although the future use of the property may be intended for commercial or industrial use, the owner of the property must evaluate the additional requirements that will be imposed under the environmental easement which may include annual inspections, maintenance of building foundations or parking surfaces, or other requirements. These items should be carefully weighed in relationship to the cleanup savings resulting from the higher cleanup objectives.

In conclusion, the property owner and their environmental advisors should recognize these different cleanup objectives that may be applicable to the property and carefully evaluate the cleanup objectives and associated requirements.

James Rigano is an attorney concentrating in environmental law with Certilman Balin Adler & Hyman, LLP, Hauppauge, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540