

Brownfields

New York Issues Streamlined Procedures For Properties' Environmental Easements

The New York State Department of Environmental Conservation (DEC) has released streamlined procedures for the environmental easements required for properties in the state's brownfields, superfund and environmental restoration programs.

The new procedures, issued Feb. 20, eliminate a current requirement that a title report and title insurance be provided for most sites. The procedures also simplify the requirements for site surveys and provide a new easement checklist that must be signed by an attorney and submitted to the department.

"These changes will help expedite the completion of cleanup projects, and reduce the cost to remedial parties," the department said in a notice announcing the new procedures.

"For most properties, a last owner search will be sufficient to document ownership and authority to convey an easement to the Department," according to the new title requirements. "The Department reserves the right to request additional information, up to requiring a full title report, where it determines that complexities in documenting ownership may substantially cloud title."

Under the new procedures, the type of properties that may require a full title report include those with restricted deed transfers or multiple party ownership.

Many of the most common mistakes made by applicants in the state's brownfields program involve the environmental easement process, according to Lawrence P. Schnapf of Schnapf LLC. He said these mistakes cause delays in obtaining the certificate of completion (COC) needed to obtain brownfield tax credits.

"The original requirements were very detailed and required the use of an ALTA (American Land Title Association) survey, which is not normally used in NYC transactions," Schnapf told Bloomberg BNA in an e-mail message.

"Delays in obtaining COCs can be significant, especially if the delay causes the applicant to not obtain a COC by Dec. 31, since this means they won't be able to claim tax credits for another year," he added.

Simplified Survey Requirements. Under the simplified survey requirements, an existing survey map may be used, and the state will no longer require an ALTA survey, according to Schnapf. In addition, surveys showing an environmental easement will no longer have to be filed with county clerks nor will they have to be certified to DEC.

"These changes eliminate or modify a number of prescriptive requirements for easements," David J. Freeman, director of real property and environmental law at the firm Gibbons P.C., told Bloomberg BNA in an e-mail message. "These changes will save time and expenses for both site owners and DEC, without sacrificing the protection of the public and of the environment that these easements are designed to provide."

Freeman said previous requirements "were creating significant complexity and extra costs, with no commensurate environmental benefit."

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Additional information on the new procedures is available at <http://www.dec.ny.gov/chemical/48236.html>.

Water Pollution

Wisconsin Offers Industry Additional Time to Comply with New Phosphorus Rule

Wisconsin municipal and commercial wastewater systems discharging phosphorus into state waterways will have up to 20 years to achieve compliance with the state's science-based phosphorus rule, under legislation passed by the state Legislature Feb. 20.

The Wisconsin Assembly passed Senate Bill 547 by a vote of 76 to 19. The measure was approved by a voice vote in the Senate Feb. 18 and now goes to Gov. Scott Walker (R) for signature.

S.B. 547 gives point-source dischargers additional time to comply with Wisconsin's water quality based effluent limitations for phosphorus. These facilities could petition the state for up to four five-year exemptions from certain requirements of the rule. A second key component of the bill gives dischargers a new fee-based option for complying with the water quality standard.

Support for the proposed law was driven by operators of municipal wastewater systems, manufacturers, paper mills and food processing companies, who said they would have to spend billions of dollars to upgrade their facilities to comply. Environmental groups expressed concerns that the proposed law would undermine the state's efforts to cut phosphorus pollution, which impairs a quarter of the state's 700 water bodies.

Shift From Narrative Standards. The phosphorus rule was adopted by the Department of Natural Resources in 2010 under the Wisconsin Pollutant Discharge Elimination System permits program (WPDES). The rule marked a dramatic shift away from previous narrative-based strategies governing phosphorus pollution, replacing it with numeric goals for each affected waterway.

While the 2010 phosphorus rule provided some flexibility for compliance, municipal wastewater treatment plants and industrial dischargers have complained that the rule was expensive to implement and netted uncertain environmental benefits.

The rule also contains a trading program and an "adaptive management" option under which point sources and nonpoint sources can engage in cooperative ventures aimed at cost-effective strategies for controlling phosphorus discharges.

Variances Allowed. S.B. 547 would add flexibility by allowing point source dischargers to meet phosphorus standards without making major facility upgrades. The legislation permits such dischargers to seek a variance from the Wisconsin Department of Administration.

The variances must establish a schedule by which the point source will come into compliance with the rule over 20 years.