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*ELECTRONIC NEWS BRIEF***Illinois EPA Initiates NFR Compliance Program***Most sites are in compliance, with one glaring exception*

No Further Remediation (NFR) letters issued by the Illinois EPA have become the Seal of Approval for contaminated sites voluntarily cleaned up under the Agency's guidance. Buyers and lenders depend upon NFR letters to gain comfort that a site no longer poses a threat to human health and the environment. The presence of an NFR letter has been crucial to the completion of many deals involving contaminated property.

The Agency's "Site Remediation Program" started issuing NFR letters in 1997. The program has been very successful because it allows contaminated soils and ground water to remain in place if human exposure is limited through controls on access or the use of barriers. Thus, the NFR letter often restricts future uses to industrial or commercial activity (not residential) and requires that contaminated soils be confined beneath engineered barriers such as pavement or foundations. The letters must also be officially recorded with the county recorder's office.

Literally hundreds of NFR letters have been issued by Illinois EPA but there has been no follow-up program of inspections to determine if the conditions imposed were actually being implemented, until now.

First sites to receive letters are inspected

Earlier this summer the Agency inspected each of the 94 sites that received NFR letters in 1997, the first year in which the current program was in operation. They also conducted a title search to determine if county records included the restrictions imposed in the letter.

Whoops!

The results? In 91 cases, the property was in compliance with the land use restrictions. In two cases, an engineered barrier was breached, exposing the underlying soils. In a third case, the NFR letter restricted the site to industrial/commercial uses but the Agency found *residential construction*.

As of this writing, the results of the title search program were unavailable.

What happens next?

The Agency now must decide how to deal with the cases of non-compliance that were found. According to Doug Clay of the Agency's Bureau of Land, the first step will be to notify the owners of the two sites on which barrier breaches were found, and ask the site owner to repair them. A follow-up inspection would be conducted at a later date. Clay said that the issue posed by unauthorized residential construction would obviously be more difficult to resolve. The first thing the Agency will do is review the details of the cleanup to determine if there is any way site conditions could support a residential use.

Letter could be voided

What happens if no changes are made? The NFR letter is issued as the result of a voluntary program. Unlike traditional regulatory programs, failure to comply does not carry the threat of civil or criminal enforcement proceedings. The worst scenario for the site owner is if the Illinois EPA voids the letter, which could have significant consequences for the owner if financing and development were contingent upon receiving the NFR letter.

Future Activities

Illinois EPA plans to conduct annual evaluations of a sample of sites. The sample would be taken from those sites with NFR letters that have been in effect for five years and contain restrictions. As such, it appears that sites that received letters in 1998 could be subject to an Agency inspection in 2003.

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