



Environmental agencies, protocols and enforcement rules vary widely state to state

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Many consultants working in the environmental industry are requested by clients to travel to other states where those clients may own or lend. This is very common in the Northeast where many states are located in close proximity to each other. Many firms quickly learn that every state has different nuances with their environmental departments. From the names of the agencies, to their protocols and enforcement rules, consultants can become overwhelmed when not familiar with the local jurisdiction. In addition to the "state" run agencies, many local municipalities may have their own set of environmental notifications and requirements. In New York, the primary regulatory body is the Department of Environmental Conservation (DEC) which is run out of Albany. Their department primarily governs petroleum releases and tank registrations as well as the Hazardous Waste Department and Brownfields program. However, counties such as Nassau, Suffolk and Westchester can handle certain types of spills events as well as registration of tanks (over 1,100 gallons) as delegated to them. The DEC also employs case managers to oversee remediation projects and communicate with consultants and the responsible parties of petroleum spills.

In New Jersey, the state agency governing environmental issues is the Department of Environmental Protection (DEP). In the past few years, N.J. has certified many consultants in the Licensed Site Remediation Professionals (LSRP) program. This program allows private consultants to act as case managers on behalf of the state. The goal of the program was to increase the pace of remediation. NY does not currently have such a program as the case managers are employees of the DEC. N.Y. and N.J. also differ in how they monitor underground heating oil tanks (USTs). As outlined above, N.Y. requires tanks above 1,100 gallons to be registered regardless of the site usage. In N.J., residential properties using USTs are exempt from registration (regardless of the size). However, when these unregulated tanks are abandoned in place or removed, the N.J. unregulated heating oil tank (UHOT) program must be adhered to. Therefore the fact that a tank may be exempt from registration does not mean it is exempt from regulatory protocols when taking it out of service or addressing any contamination that may be present.

In the tri-state area N.J. and Conn. have property transfer laws that require a seller to disclose when contamination exists at a property prior to a sale. N.Y. does not have such a disclosure law so it falls under a "buyer beware" category making due diligence of potential environmental impacts that much more important. It is also important to understand that New York City currently is the only municipality in the country to have its own Brownfield program as these programs are typically run at the state level. Similar to the state program, there are incentives in place to encourage development of contaminated sites. Taking it one step further, buyers in the N.Y.C. market should understand that the city has its own DEP which has flagged hundreds of sites around the five boroughs as potentially being contaminated. These sites are known as E-designated and require an extra level of

testing to prove no contamination is present

In N.Y.C., a developer must also consider expenses related to urban fill that may be present. These are typically compounds that are present in the soil but not at "actionable levels" that need to be reported to a regulatory agency. However, during the excavation phase of a re-development, certain disposal and transportation costs will apply escalating the overall cost of the project.

These are some examples of the different agencies in the tri-state area and within the same N.Y.C. area that need to be understood during due diligence of acquiring real estate. So when selecting a consultant, it is important to work with one whose expertise is in line with the clients objectives. Communicating with an environmental consultant prior to hiring them is important so they can be an effective member of the acquisition team.

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