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More Stringent "Significant Environmental Hazard" Reporting Requirements to Take Effect July 1, 2015: *Who Should Care and Why*

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Despite recent lobbying by industry and other stakeholders for a postponement of its effective date, a law passed in 2013 (Public Act 13-308) will take effect on July 1, 2015 amending existing reporting requirements for environmental professionals and owners of real property on which environmental investigation or due diligence is conducted and from which soil and/or groundwater samples are collected. The so called "Significant Environmental Hazard" (or "SEH") reporting requirements have been in effect since 1998 (at Conn. Gen. Stat. § 22a-6u [http://www.cga.ct.gov/current/pub/Chap_439.htm#Sec22a-6u.htm]) and require notification to the Connecticut Department of Energy & Environmental Protection ("DEEP") of contamination found in soil or groundwater at certain thresholds and under certain situations. The changes will, in some cases, significantly lower reporting thresholds, resulting in more sites across the state triggering the statutory SEH reporting requirements.

Why should you be concerned?

The more stringent reporting requirements will result in increased agency notifications required after environmental due diligence is conducted by any "technical environmental professional." Accordingly, parties' obligations regarding notifications to the property owner and applicable regulatory agencies, any required follow-up reporting and/or investigation/remediation (and associated costs), confidentiality issues, and the mechanics for sharing of information, should be addressed between the parties and an agreement reached on how to manage an SEH reporting event. Therefore, buyers, sellers, and existing or future lenders need to be aware of the statutes implications.

Notably, the changes also include additional self-implementing provisions, which are intended to allow for easier and more streamlined compliance by the site owner after reporting of the SEH. However, to qualify, the notifying party must include with its initial SEH notification, documentation showing that the contamination or condition was mitigated and that there are no exposure pathways from the contamination, along with a plan to maintain such mitigation measures, or documentation that describes how the contamination or condition was abated. Despite these new self-implementing provisions, DEEP retains authority to approve or reject any plan or report and could require additional action, including further mitigation efforts, investigation and/or remediation. For more information, see DEEP's recent presentation regarding these changes (available at http://www.ct.gov/deep/lib/deep/site_clean_up/remediation_roundtable/roundtablepresent6_9_15.pdf) beginning at slide 52.

For further information or to discuss how these issues may impact you or your clients, please contact Aaron D. Levy at alevy@goodwin.com, John E. Wertam at jwertam@goodwin.com or Andrew N. Davis at adavis@goodwin.com.

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