

Remediation in Progress Waiver Not Recognized as a Property Interest and Does Not Require Due Process

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On Feb. 5, 2024, the Superior Court of New Jersey's Appellate Division held that a Remediation in Progress Waiver ("RIPW") is not a recognized property interest and therefore does not require constitutional due process.

In January 2007, Clarios, a previous owner of an industrial facility in New Jersey, was subject to the Industrial Site Recovery Act ("ISRA") and Environmental Cleanup Responsibility Act ("ECRA"), its predecessor in interest. Clarios notified the NJDEP that it planned to cease operations at the Property and applied for a RIPW. A RIPW allows the owner or operator of an industrial establishment to apply to the NJDEP to close or transfer ownership or operations, **provided the industrial establishment is already in the process of remediation** and specific requirements are maintained. A RIPW does not exempt the owner or operator from its statutory obligation to remediate the industrial establishment but suspends these obligations while the remediation is in progress.

Clarios sold the property to an entity named DeNovo New Brunswick, LLC ("DeNovo"). DeNovo then conveyed the site to the current property owner. On April 20, 2022, approximately 15 years after the RIPW was granted, the NJDEP issued a letter to Clarios advising that the site was not meeting its remediation obligations and the RIPW was being rescinded. Accordingly, Clarios was to complete its outstanding remediation obligations. Clarios requested an adjudicatory hearing and was denied. The Appellate Division affirmed the NJDEP's denial.

Notably, the NJDEP waited 15 years to contact Clarios and revoke the RIPW. During that time, the property was conveyed to two different entities. Clarios was far removed from the ongoing remediation and probably had limited knowledge of the non-compliance issues.

This should serve as a warning to others to remain vigilant about your remediation obligations even if you received a RIPW if the remediation is still not completed.

Related Case

Superior Court of New Jersey, Appellate Division, [Docket No. A-0511-22](#) (February 5, 2024)

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