

NRD

Present Status

Two Directives have been issued by the DEP - lower Passaic River and Ciba Geigy facility in Toms River.

Demand letters have been sent to a number of companies. In press releases, the NJDEP has issued an open invitation to all manufacturing companies to assess their own situation and voluntarily come in to DEP to negotiate a settlement.

Options

1. Voluntary negotiations

- No established procedure. What protection will you get?
- Will an Administrative Consent Order be required?

Advantages

- Will probably get a low figure.
- DEP unlikely to initiate formal proceedings.

Disadvantages

- Probably little protection
- Federal - neighboring States can make their own NRD claims. NJDEP can reopen for additional NRD claims.
- Possible waiver of statute of limitations defense.

2. Letter from DEP

- Again, no established procedure.

3. Directive

- Cannot ignore it.
- Must state good faith defense in declining to comply with Directive.

4. How can you challenge Directive or Letter Demand?

- Await enforcement by DEP
- State Court action by DEP most probable.
- DEP will probably try for one venue, one judge, most likely Middlesex County.
- Removal to Federal Court probably not viable
- Affirmative challenge in State Court.
- Affirmative challenge in Federal Court
- Weighing of options very difficult.
- How DEP will proceed is difficult to predict.