

Environmental E-news

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Change in Management Contamination and MDOT Right-of-Way

The Michigan Department of Transportation ("MDOT") recently provided notice that it is changing the process for managing contamination within an MDOT right-of-way. Specifically, MDOT will begin implementation of a new application procedure to leave contamination in place within MDOT-controlled right-of-way as part of a response activity or corrective action proposed under the applicable regulations to address contamination.

The applicant will be required to enter into an environmental license agreement with MDOT that specifies the conditions under which the contamination may remain in place according to the press release from the Michigan Department of Natural Resources and Environment ("MDNRE"). MDOT may require some type of financial assurance, such as bonding, from the applicant to ensure MDOT-worker protection and proper management of the hazardous substances.

The applicant will also be required to file with the Register of Deeds a "Notice of Environmental Conditions Affecting Property Controlled by the Michigan Department of Transportation" ("Notice") on the right-of-way property to describe the nature and extent of the contamination provide information as to those activities that may result in unacceptable exposure to hazardous substances. MDNRE must approve the Notice before MDOT will give consent to record the Notice on the right-of-way property. The form Notice will be available on the MDNRE website. One advantage of the Notice is that it could be used when there is groundwater contamination that exceeds residential drinking water cleanup criteria. With the Notice, this contaminated groundwater may remain in place. The Notice also replaces the use of the former MDOT individual permit process.

If you would like more information about the foregoing or any other environmental law needs, please feel free to contact one of the following Butzel Long lawyers:

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