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Re: Scope of CEHA Authority

This is to describe the scope of authority delegated to lead county health agencies by the New Jersey Department of Environmental Protection (Department) pursuant to the County Environmental Health Act (CEHA).

For the reasons articulated below, lead county health agencies are certified and delegated, in accordance with CEHA, the authority to implement the following environmental health programs: air pollution control, noise control, water pollution control, solid waste control and hazardous substance emergency response, and to enforce environmental health laws and regulations, in the manner and to the extent set forth below and as further set forth in their CEHA work programs.

The CEHA statute authorizes the Commissioner to delegate authority for the implementation of any program and enforcement of specified environmental health laws and the rules and regulations adopted thereunder to certified local health agencies. N.J.S.A. 26:3A2-28. To become certified, the Act requires a county to designate a lead local health agency and submit a work program describing the activities it proposes to undertake and demonstrating its ability to meet the administrative and performance standards set forth at N.J.A.C. 7:1H-1 et seq., N.J.S.A. 26:3A2-33.

The Act also requires a certified local health agency to delineate responsibility for the implementation of its work program throughout the County. N.J.S.A. 26:3A2-33. Accordingly, the lead county health agency may rely upon the qualifications and capabilities of other local agencies to serve as subcontractors to the certified local health agency. The Department envisions such an arrangement will be administered by the lead local health agency, which is providing the umbrella for CEHA program administration throughout the county, and under this arrangement the lead local health agency will retain ultimate control and responsibility for the proper implementation of the CEHA program within its respective county.

The lead local health agency is responsible for undertaking enforcement actions pursuant to the Act, and notifying the Department of all enforcement activity taken pursuant to the Act.

The CEHA work program must demonstrate the lead local health agency's ability and willingness to implement the above referenced programs in a manner that complements rather than duplicates the Department's activities and provides for the effective and timely coordination of activities undertaken thereunder. Based upon the CEHA work programs, the Department determined that all lead county health agencies have satisfied the requirements of the Act. Accordingly, the Department has certified all lead local health agencies and delegated authority thereto as set forth in the individual work programs.

The lead local health agencies, pursuant to N.J.S.A. 26:3A2-25, have the authority to undertake the following environmental activities on behalf of the Department:

1. AIR POLLUTION CONTROL

- 1a. Conduct inspections of dry cleaners, gas stations, paint spray booths, and any other non-major sources of air pollution as designated by the Department to determine compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the rules and regulations adopted pursuant thereto, N.J.A.C. 7:27-1 et seq.;
- b. Conduct investigations in response to citizen complaints, including those referred by the Department, concerning any source of air pollution. Entry of a Major Source facility to investigate a citizen complaint is limited to identifying the source of the complaint. Air Pollution Control violations that are identified at major source facilities shall be promptly referred to the Department for action.
- c. The lead local health agencies shall expressly refrain from conducting routine inspections of Major Source facilities and those B Source facilities expressly reserved for routine inspection by the Department. Delegated B Sources are delineated in the annual CEHA grant agreements.

2. NOISE CONTROL

- 2a. Conduct investigations in response to citizen complaints and referrals made by the Department regarding any source of noise that is subject to the noise limits set forth at N.J.A.C. 7:29-1 et seq., to determine compliance with the Noise Control Act, N.J.S.A. 13:1G-1 et seq. and the rules and regulations adopted pursuant thereto, N.J.A.C. 7:29-1 et seq.;

3. WATER POLLUTION CONTROL

- 3a. Conduct water pollution, water supply and potable water investigations in response to citizen complaints, including those referred by or initiated by the Department, pursuant to, as appropriate, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., an Act to protect the purity of public supplies of potable waters, N.J.S.A. 58:11-9.1 et seq., an Act concerning protection of the subsurface and percolating waters of the state, N.J.S.A. 58:4A-4.1 et seq., and the rules and regulations adopted pursuant to the above referenced statutes, to identify:
 - (1) alleged unpermitted discharges of pollutants to surface or groundwater;
 - (2) contamination of potable domestic and non-community water supplies;
 - (3) improperly constructed wells and abandoned wells; and
 - (4) septic system malfunctions.
- b. Inspect new, registered physical connections between public and non-public water supply systems in accordance with N.J.S.A. 58:11-9.1 et seq., an Act to protect the purity of public supplies of potable waters, the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the rules and regulations adopted pursuant thereto;

- c. Conduct inspections of non-transient and transient public non-community water supplies and any other individual potable water supply systems designated by the Department to determine compliance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the rules and regulations adopted pursuant thereto, N.J.A.C. 7:10-1 et seq.;
4. SOLID WASTE CONTROL
- 4a. Conduct inspections of solid waste facilities, transfer stations and compost facilities, and other solid waste facilities as designated by the Department, to determine compliance with the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules and regulations adopted pursuant thereto, N.J.A.C. 7:26-1 et seq.;
 - b. Conduct investigations in response to citizen complaints and matters referred by the Department regarding an alleged violation of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules and regulations adopted pursuant thereto, N.J.A.C. 7:26-1 et seq. and N.J.A.C. 7:26A-1 et seq.
5. HAZARDOUS SUBSTANCE EMERGENCY RESPONSE
- 5a. Participate in emergency response actions, in accordance with the provisions of the work program and the County Emergency Operations Plan, for incidents involving the discharge or threatened discharge of a hazardous substance, including the assessment of the environmental health threat, the initiation of actions necessary to prevent or mitigate risk to the public, natural resources or property, the investigation of the cause or source of the discharge and identification of the responsible party, and the prompt notification of the Department of all emergency response actions.
 - b. Investigate citizen complaints, including those referred by the Department, involving the alleged discharge or threatened discharge of a hazardous substance, and conduct emergency response actions as necessary in accordance with a. above. Once the emergency has been abated, refer all cases involving on-going discharges and/or unknown discharge sources to the Department immediately for follow-up by the Department.
 - c. Oversee remedial actions undertaken by a responsible party as requested by the Department in writing on a case by case basis.
 - d. Violations identified pursuant to a., b., or c. above shall be immediately referred to the Department for action.
6. GEOGRAPHIC INFORMATION SYSTEMS
- 6a. Assist the Department in the development of a Geographic Information System through the collection of data pertaining to all subject areas for which authority is delegated.

Each lead local health agency is further authorized to undertake such activities and functions that logically accompany the authority delegated above, throughout the entire jurisdictional area of its respective county, including, but not limited to, the entering upon any conveyance, site, place, and building to inspect, procure samples, examine records or any other reasonable purpose necessary to determine compliance with delegated environmental health laws, and to take enforcement actions and negotiate the

settlement of any matter, provided all such activities and functions are undertaken in a manner consistent with the CEHA work program and the Department's regulations and policies.

The specific frequency of routine inspections to be conducted by the lead local health agency is identified in the annual County Environmental Health Act grant agreements executed between each lead local health agency and the Department.

Each lead local health agency may undertake all enforcement actions initiated pursuant to the authority delegated herein in accordance with the enforcement policies and procedures as set forth below and shall utilize the county counsel or the prosecutor of the municipality in which a violation has occurred as legal counsel. The lead local health agency must promptly notify the Department of the issuance of notices of summonses and the scheduling of settlement conferences within five (5) working days prior to initiating a pretrial settlement conference, and/or action in a court of competent jurisdiction to collect a penalty or seeking other relief in connection with any violation of environmental health laws specified in this Order of Certification. If the Department does not respond to this notice, the lead local health agency may proceed with the enforcement matter and promptly report the outcome in writing to the Department.

The Department shall retain the authority, in all cases, to supersede this delegation and make any decision on any matter delegated pursuant to CEHA.

The lead local health agencies must expressly refrain from maintaining legal action pursuant to N.J.S.A. 26:3A2-25, in the following situations unless the Department expressly approves such an action in writing on a case by case basis:

- a. When a violation is found from a major source air pollution facility;
- b. When violations of the Water Pollution Control Act are found to be from either a NJPDES permitted facility or from a Public Community Water Supply System; or
- c. When violations are found to be from sites contaminated with hazardous substances, and site remediation is required beyond that of an emergency response action, the lead local health agency must immediately refer these cases to the Department for action.

Receipts from all fees and penalties collected by the lead local health agency, pursuant to the authority delegated herein must be deposited into the Environmental Quality and Enforcement Fund established and maintained by the lead local health agency, and shall be dedicated to the use of the lead local health agency in carrying out its delegated responsibilities under CEHA, as required by N.J.S.A. 26:3A2-35. Further, information of monies deposited into and expended from the Environmental Quality and Enforcement Fund shall be made available to the Department upon request.

Yours truly,

Deborah Pinto, Chief
Office of Local Environmental Management