



### **NEW LAW AFFECTS ENVIRONMENTAL INVESTIGATIONS**

When commercial real estate is being sold or financed, it is common for a prospective purchaser or lender to require testing of the soil and groundwater at the property. It is often possible to keep the results of the environmental testing confidential by entering into a non-disclosure agreement; however, as of July 1, 2015, a new law has become effective which expands the requirements to report certain test results to the Connecticut Department of Energy and Environmental Protection (“DEEP”).

Since 1998 state law has required that a significant environmental hazard (“SEH”) discovered in the course of an environmental investigation must be reported to DEEP. The reportable SEH are intended to protect drinking water wells, watersheds and direct exposure to hazardous soils and indoor air quality. In 2013, more stringent reporting requirements were enacted, and despite lobbying efforts in the last legislative session, these new standards became effective July 1.

Some of the changes regarding conditions to be reported are:

- Drinking water wells: in addition to reporting contamination in a drinking water well, if groundwater protection standards are exceeded within 200 feet of a well, DEEP must be notified and the exceedance may require locating and testing drinking water wells on other properties.
- Indoor air quality: if a volatile substance which is ten times the industrial standard is found within 15 feet below or adjacent to an occupied building, DEEP must be notified.
- Shallow soil: more stringent reporting standards now apply to contaminants found in the top 2 feet of soil at property used for residential purposes, including schools, parks or playgrounds, as well as adjacent industrial commercial properties within 300 feet of the residential property with exposed or accessible soil contaminated over the allowable limit.
- Contaminated groundwater discharging into surface water: more stringent reporting standards, plus the addition of reporting undissolved “free product.”

Due to the increased likelihood of the requirement to immediately report an SEH to DEEP, property owners should consider this risk when allowing testing of soil and groundwater on their property and be very sure that a highly qualified licensed environmental professional is performing the work.

Please contact Barbara S. Miller if you have any questions.