

Staying Ahead

with Saul Ewing

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General Assembly Passes Bill to Fund Pennsylvania's Hazardous Sites Cleanup Program

By Joel R. Burcat and Peter J. Yoon

On December 12, 2007, the Pennsylvania House of Representatives unanimously voted to fund the Hazardous Sites Cleanup Act ("HSCA") program for an additional four years. The measure was unanimously endorsed by the Pennsylvania Senate in October. During a news conference on December 12, Governor Rendell indicated that he intends to sign the bill to preserve the HSCA program. Once it is signed, a stronger Department of Environmental Protection ("DEP") presence can be expected to follow, along with an increased number of enforcement actions. We would also expect that at existing HSCA sites, DEP will take a more vigorous approach to remediation and enforcement.

The fund was set to run out of money by the end of December, and more than 130 state employees faced potential furloughs. The bill in question, SB 1100, will fund the HSCA program until June 30, 2008 with \$17 million from "legislative accounts" and \$40 million each fiscal year through July 2010 from the same fund as it had in the past – the Capital Stock and Franchise Tax.

The HSCA program gives the DEP the ability to respond and to clean-up spills of hazardous and toxic substances into the environment. In addition to the clean-up of hazardous sites, the HSCA program is critical in supporting DEP's Land Recycling program and "brownfields" program (also known as "Act 2"). This affects not only companies involved in brownfields cleanup and remediation, but also developers, municipalities, consultants, lenders, attorneys, and all Pennsylvania residents.

The funding bill will put the HSCA and Act 2 programs on solid footing for the next few years, but it does not provide a permanent funding solution for HSCA. The Capital Stock and Franchise Tax is expected to be phased out by the end of 2010, as Pennsylvania tries to encourage a more welcoming new business climate. Still, permanent funding for HSCA will be necessary, especially in an industrial state like Pennsylvania. Pennsylvania is second in the nation with 93 Superfund sites, and currently has approximately 158 HSCA sites and 150 brownfields sites.

Many observers had noted that DEP had slowed down on a variety of actions implementing HSCA, in anticipation of the shut-down of the program and the furloughing of its employees if funding was not found by the General Assembly. It is likely that the HSCA program will pick up its pace in early January, following the holiday season. This means that to the extent DEP had not taken action or had withheld action, we expect to see the Department moving forward more vigorously in the first quarter of 2008.

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