

GRS&D Achieves Significant Environmental Appellate Victory

Court Strikes Down NJDEP Regulation That Imposed Cleanup Obligations on Users of Small Amounts of Hazardous Substances

July 12, 2012

Greenbaum, Rowe, Smith & Davis LLP, on behalf of our client Des Champs Laboratories, has successfully challenged the New Jersey Department of Environmental Protection's (NJDEP) denial of an application for a De Minimis Quantity Exemption (DQE) under New Jersey's Industrial Site Recovery Act (ISRA).

In the matter *Des Champs Laboratories Inc. v. Robert Martin, Commissioner, New Jersey Department of Environmental Protection*, the Superior Court of New Jersey, Appellate Division, struck down a new NJDEP regulatory requirement as being beyond the scope of the agency's authority under the ISRA statute.

ISRA is a transaction-triggered environmental law that requires a subject party to investigate and, if necessary, clean up environmental contamination at an industrial establishment upon the occurrence of particular events such as a cessation of operations or sale of a business or property, regardless of whether the ISRA-subject party actually caused the contamination.

To alleviate the impact of ISRA on users of small quantities of hazardous substances, the New Jersey legislature built into the ISRA statute a "DQE" under which businesses that use less than a defined small amount of hazardous substances are entitled to an exemption from ISRA's requirement to conduct potentially costly investigation and remediation.

In 2009, however, NJDEP revised its DQE regulation, imposing a new requirement that the ISRA-subject property be free from contamination in order that the applicant qualify for the exemption. This revision to the regulation was not supported by the underlying ISRA statute, and appeared to circumvent the very purpose of the DQE. Des Champs Laboratories filed suit against NJDEP to challenge the regulatory change.

On July 6, 2012, the Appellate Court ruled in favor of Des Champs Laboratories. The Court invalidated the new regulation, thus preserving the important exemption for users of small amounts of hazardous substances. GRS&D Litigation Department partner **Daniel L. Schmutter**, who represented Des Champs in the action against DEP, notes that "This ruling is a victory for the rule of law. The Court affirmed the principle that agencies must only act within the scope of their statutory authority." The case was litigated by Mr. Schmutter with support from partners **Jay A. Jaffe** (Environmental Department) and **Jack Fersko** (Real Estate Department).

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