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EPA Process Kicks in on Freeway Sanitary Landfill

Legal Update

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In early February 2017, the U.S. Environmental Protection Agency (EPA) began mailing general notice letters and requests for information to parties it believes may be responsible under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for cleanup of the Freeway Sanitary Landfill Site, located in Burnsville, Minnesota. The environmental concerns are contamination leaching from the landfill into groundwater and the buildup of landfill gases, such as methane, to reach dangerous levels. The Minnesota Pollution Control Agency (MPCA) has indicated that the costs of cleaning up the landfill could approach \$65 million.

The Freeway Landfill accepted wastes from 1969 to 1990. The landfill had been permitted by the MPCA and was qualified to enter Minnesota's Closed Landfill Program. After state and local efforts failed to settle with the owner and address the landfill through the Closed Landfill Program, the Freeway Landfill was referred for cleanup under the federal Superfund program.

Under Superfund, in addition to the owners or the property and the operator of the landfill, waste haulers and the parties who generated hazardous wastes and arranged to dispose of such wastes at the landfill are all liable for the cleanup of the landfill. These parties are sometimes referred to as "potentially responsible parties," or "PRPs."

Parties who receive the EPA notice letter and information request should be prepared to get organized and engaged early. Responding to the EPA's information request may require extensive records review. Failure to comply can result in significant penalties. In the case of the Freeway Landfill, the EPA is requiring that responses be submitted within 30 days. It is possible that the EPA may consider an extension of time to answer, but generally requires parties to communicate early and provide justification for an extension of time.

You should also consider both your response process and strategy. A PRP may want to initiate a legal hold to preserve relevant records, form a response team to assemble documents and prepare written responses, and set up an electronic data site or other file management program to manage and organize written records.

Additionally, business entities should consider successor liability (or lack thereof), identify potentially applicable insurance coverage, assess privileged and confidential information, and compare the scope of the EPA's requests to the EPA's actual authority (which may prompt negotiations with EPA to clarify and/or limit the scope of such requests).

It's possible that other PRPs who receive the Freeway Landfill letters from EPA may form a "PRP Group" to address issues common to all parties, develop a way to allocate shared liabilities, and negotiate settlements with the EPA, which could include *de minimis* settlements that are available to parties whose waste contributions were minimal in volume or toxicity.

In the end, every party who receives the EPA's notice regarding the Freeway Landfill must carefully analyze its alleged connections to the Site, its corporate history, the nature of wastes and overall strategy.

Fredrikson & Byron's Environmental Law Group has more than 30 years' experience representing a wide range of clients at Superfund sites nationwide and has assisted clients in responding to general notice letters and information requests. Our group has a reputation for creative and cost-effective representation in complicated environmental claims. Please contact the Fredrikson & Byron's Environmental Law Group at 612.492.7171 if you have questions regarding receipt of or response to an EPA general notice letter or request for information.