



Environmental and Utilities Legal Update

New York Indoor Air Quality Disclosure Law

New York State now requires property owners to notify current and prospective tenants of certain test results relating to indoor air quality. The new law, codified in Section 27-2405 of New York's Environmental Conservation Law, became effective in December 2008.

Disclosure of "Test Results" Provided by "Issuer"

The law is intended to address the issue of indoor air quality and vapor intrusion. Therefore, only the disclosure of certain "test results" is required, specifically those for indoor air, subslab air, ambient air, subslab groundwater, and subslab soil. Soil and groundwater samples taken from areas outside a building's footprint do not need to be disclosed.

The law applies to test results provided by an "issuer," which is defined as one of the following:

- a person subject to an order under the New York State hazardous waste or petroleum spill cleanup laws
- a participant in New York's Brownfield Cleanup Program who has entered into a Brownfield Cleanup Agreement with New York State Department of Environmental Conservation (NYSDEC)
- a municipality subject to a contract with NYSDEC to undertake an environmental restoration project
- NYSDEC

Based on the definition of "issuer," many indoor air and subslab tests fall outside the requirements of the new statute. For example, samples collected while performing a voluntary audit or due diligence are not required to be disclosed if the provider is not otherwise an "issuer" as defined above.

Notification to Current Tenants and Occupants

Property owners or their agents who are provided test results from an issuer that exceed NYS Department of Health (DOH) or Occupational Safety and Health Administration (OSHA) guidelines for indoor air quality must provide a fact sheet and notice of any public meetings required to discuss the test results to all tenants and occupants within 15 days of receipt of the results. The test results themselves, as well as any closure letter, must also be provided upon request. The DOH is charged with preparing the fact sheets, which will identify the compound or contaminant of concern, applicable reportable detection levels, the health risks associated with the compound or contaminant of concern, and a means to obtain further information.

Disclosure to Prospective Tenants

If the property is already subject to an engineered control for indoor air contamination or ongoing monitoring pursuant to a remedial program, and indoor air test results have been provided by an issuer, *regardless of whether the test results exceed guidelines*, the owner or owner's agent must provide a fact sheet, and upon request any test results or closure letter, to prospective tenants before entering into a lease or rental agreement. Additionally, the rental

or lease agreement must contain the following language in at least 12-point type in boldface on the first page:

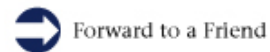
"NOTIFICATION OF TEST RESULTS: The property has been tested for contamination of indoor air: test results and additional information are available upon request."

For More Information

At Robinson & Cole, we have experienced environmental attorneys who understand that environmental compliance is but one aspect of the complex, multifaceted, and sometimes competing demands made on businesses. For more information, please contact one of our environmental attorneys:

Pamela K. Elkow, (203) 462-7548, pelkow@rc.com
Earl W. Phillips, Jr., (860) 275-8220, ephillips@rc.com
W. Richard Smith, Jr., (860) 275-8218, wsmith@rc.com
Sarah M. Martin, (203) 462-7561, smartin@rc.com

Disclaimer: Nothing in the communication constitutes legal advice and shall not be relied upon as such. For legal advice, rely on your attorney. Robinson & Cole provides legal counsel only upon entering a written retainer with an identified client specifying the agreed scope of services.



© 2009 Robinson & Cole LLP

All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission.

This email was sent to: archive@rc.com

This email was sent by: Robinson & Cole LLP
280 Trumbull Street Hartford, CT 06103 Attn: Client Relations



We respect your right to privacy [view our policy](#)

[Manage Subscriptions](#) | [Update Profile](#) | [One-Click Unsubscribe](#)