

'Kiddie Kollege' Gives Rise to Strict, New Environmental Requirements for Child Care Centers in New Jersey



BY STEVEN T. SENIOR, ESQ.
RIKER, DANZIG, SCHERER, HYLAND & PERRETTI LLP

Mercury contamination at a New Jersey child care center has resulted in new environmental requirements, designed to protect the health and safety of children.

THE DISCOVERY OF MERCURY CONTAMINATION at a New Jersey child care center last summer has created a clamor over state and local governments' oversight of the redevelopment of the former thermometer factory in Gloucester County. It also has resulted in a host of new environmental requirements for licensed child care centers designed to protect the health and safety of children.

The new requirements are directed at a variety of potential hazards, including environmental contamination remaining from former uses of the building or property, the co-location of dry cleaners or nail salons that may create indoor air hazards, the presence of asbestos, radon, or lead, and the quality of drinking water. Operators of child care centers are confronted with the need for new, unfamiliar regulatory approvals from the Department of Health and Senior Services (DHSS), the Department of Children and Families (DCF), and the Department of Environmental Protection (DEP).

The strict new requirements are imposed two ways: through DCF's licensing and relicensing of child care centers and through issuance of construction permits and certificates of occupancy for new or altered facilities. The requirements apply to all licensed centers, including those provided by employers on corporate campuses. Because child care centers must be relicensed every three years, as many as 1500 centers will require evaluation each year over the next three years.

The new law directs DHSS by January 2008 to develop procedures to assess child care centers and schools and maximum contaminant levels for these building interiors. Local construction permits and certificates of occupancy for reconstruction, conversion, or repair of an existing building or structure located on certain potentially hazardous sites will not be issued until DHSS certifies that the building is safe. For new construction or alteration of centers, a No Further Action letter (NFA) is required from DEP, which provides that no further remediation of hazardous substances is needed. Failure to comply with the law may give rise to civil administrative penalties of up to \$25,000 per day for a first offense.

The potentially hazardous sites subject to scrutiny include facilities previously used for industrial, storage, or high-hazard purposes under the Uniform Construction

Code, or as a nail salon, dry cleaner or gasoline service station, or that are located on a contaminated or potentially contaminated site or property subject to the Industrial Site Recovery Act.

DCF has adopted an emergency regulation for child-care centers applied through its Office of Licensing. If the facility previously was used for a potentially hazardous purpose, the applicant for a new license or renewal must investigate the site, demonstrate compliance with DEP soil guidelines and certify completion of corrective actions recommended by DEP and DHSS. If a nail salon or dry cleaner is operating in the same building, indoor air sampling will be required. Applicants must obtain an NFA or similar approval from DEP and certify that the building complies with standards for drinking water and radon, asbestos and lead hazards.

DCF, DHSS and DEP are preparing for an onslaught of environmental assessments and requests for regulatory approval, straining to meet the demands of the new law and requests for guidance from a newly regulated community unfamiliar with environmental requirements. DHSS currently is developing standards for building interiors. Until these are adopted, existing DEP standards for intrusion of contaminants from beneath building structures and other applicable standards should be considered on a case-by-case basis.

DEP is developing tools and guidance for local construction officials and has developed or is developing policies and procedures to investigate soils, including playgrounds, to define the scope of the area to be evaluated at large multi-use sites, and to address other issues. DEP has initiated its own assessment of potential hazards at centers located within 400 feet of a known contaminated site.

The Kiddie Kollege incident has spawned a new regulatory regime, giving rise to new requirements and questions. Many centers operate in leased facilities, which may require involvement of landlord-owners to resolve environmental issues. Operators of child care centers should act quickly to comply with the new law and regulation to avoid loss of licensing and substantial penalties. ■

Steve Senior is Counsel in the Environmental Law Department of Riker, Danzig, Scherer, Hyland & Perretti LLP, www.riker.com.