

NEW JERSEY SITE REMEDIATION REFORM ACT

On May 7, 2009, the New Jersey Site Remediation Reform Act (“Reform Act”) was enacted. The Reform Act was established to speed up the current NJDEP site remediation process and is modeled after a similar Massachusetts law. It is intended to streamline the New Jersey cleanup process, which the former Commissioner of the NJDEP characterized as “broken.”

Prior to the Reform Act the NJDEP was responsible for reviewing and approving the work of environmental consultants and ultimately issuing the No Further Action (“NFA”) letter. With the backlog of cases pending before the NJDEP, it would often take several years for a property to receive a NFA letter

Under the Reform Act, the NJDEP will no longer be involved in reviewing and issuing NFA’s, this will be completed by a newly created Licensed Site Remediation Professional (“LSRP”). The LSRP will be required to not only complete site remediation but also issue a Remedial Action Outcome (“RAO”) letter, which is the replacement for a NFA.

Furthermore, the Reform Act required the NJDEP to develop the regulatory framework that LSRP’s must follow for the completion of remedial efforts and the issuance of the RAO. These regulations are known as the Administrative Requirements for Remediation of Contaminated Sites (“ARRCS”).

Highlights of the LSRP and the ARRCS requirements are summarized below. Please be advised that the information outlined below is for general information only.

LSRP

Traditionally when a site was determined to be a contaminated the site, it was reported to the NJDEP who then assigned a case manager. The environmental consultant was retained by the responsible party and was tasked with evaluating the site, developing the appropriate remedial work plans, executing remediation and submitting remedial reports to the NJDEP case manager for approval and issuance of a NFA. This was a time consuming process, as the NJDEP was intimately involved in the review and approval of each phase of work.

The Reform Act has radically changed all this, as the NJDEP will no longer be involved in direct oversight and approval of site remediation efforts. Rather, the LSRP is now responsible for oversight and approval of site remediation efforts and upon completion of remediation efforts, the LSRP will issue a RAO. Responsibility for compliance with regulatory timeframes still remains with the responsible party and the responsible party will contract with an LSRP to complete remediation of the site.

To insure the fairness and impartial framework that the LSRP must follow, the Reform Act and ARRCS have established a Code of Conduct for LSRPs. The Code of Conduct

sets forth the obligations and responsibilities of the LSRP, which requires the LSRP to report any immediate environmental concern or hazardous discharge immediately upon confirmation. This Code of Conduct is the baseline for the audits and reviews described below.

The NJDEP is required to audit the work of LSRP's on an annual basis for technical completeness. All reports and data generated by the LSRP, including the contract between the LSRP and the responsible party, are required to be submitted to the NJDEP upon completion of the work and issuance of the RAO. The NJDEP has three years from the issuance of an RAO to audit the work but the LSRP does not need NJDEP approval for each step along the way. Work will be audited for compliance with the technical requirements of ARRCs, the Code of Conduct and other applicable NJDEP regulations.

LSRPs are licensed and governed by a 13-member State of New Jersey Site Remediation Professional Licensing Board similar in concept to licensing boards established for oversight and licensing of Professional Engineers, Surveyors, Architects, etc. The Licensing Board will review and audit the performance of the LSRPs on an annual basis for compliance with the Code of Conduct and be the entity responsible for any disciplinary action.

ARRCS

On November 4, 2009, the NJDEP published new regulations, which are known as the Administrative Requirements for Remediation of Contaminated Sites. The ARRCs went into effect immediately for all new cases discovered after November 4th but also contain certain provisions affecting existing cases immediately if the existing case has any one of four Immediate Environmental Concerns ("IEC"). For existing sites that do not meet these immediate triggering criteria, there are other provisions that will take effect March 1, 2010.

The ARRCs are complex, including a number of changes to current remediation laws, as well as the establishment of many new remediation laws. Most importantly, however, the ARRCs establish an affirmative obligation for the responsible party to remediate discharges of hazardous substances to the environment within mandatory timeframes. There are significant penalties that can be imposed on the responsible party for failure to perform its obligations within these mandatory timeframes.

In summary, the broad aspects of the Reform Act and ARRCs are that they require all new cases discovered after November 3, 2009 to be completed by a LSRP. They also allow responsible parties that have existing cases pending review at the NJDEP to transfer their case to a LSRP.

Immediate Environmental Concerns - There are four types of IEC's defined in the ARRCs that require immediate attention and are as follows:

1. Confirmed exceedance of a NJ Ambient Indoor Air Screening Level

2. Confirmed contamination in a potable well
3. Confirmed contamination in an occupied or confined space
4. Any other confirmed condition that poses an immediate threat to the environment of the public health and safety

Any site that has a known IEC as specified above must immediately report the IEC to the NJDEP. Within 5 days of NJDEP notification the responsible party must implement interim mitigation measures. Within 2 months of NJDEP notification the responsible party must install an engineered mitigation system and within 6 months of NJDEP notification source control and submittal of the source control report must be completed and submitted to the NJDEP.

Effective immediately for all new cases discovered after November 4, 2009 and effective for all pending cases after March 1, 2010 are the following requirements:

Receptor Evaluation – Significant changes have been made by ARRCs, which now require the identification and evaluation of potential receptors around contaminated sites. Receptors include land use (schools, day care, residence), ground water wells, vapor intrusion (indoor ambient air quality) and ecological. Each receptor has specific requirements and timeframes for completion, which are too comprehensive to specifically list herein.

LNAPL (Free) Product Recovery – Within 60 days after March 1, 2010 or when LNAPL is identified, whichever is later, the responsible party must initiate recovery of free product and notify NJDEP. Within 270 days the responsible party must complete delineation, complete the installation of an LNAPL recovery system, monitor operations and submit an interim report to the NJDEP.

ISRA Preliminary Site Assessment – Significant changes have been made to the requirements governing an ISRA transaction, the requirements of which are far too comprehensive to summarize herein.

Summary

While there will be growing pains associated with this new program at first, in the long term the Reform Act and ARRCs offers responsible parties the ability to quickly be able to mobilize and remediate sites and obtain a RAO in a fraction of the time it took under the old system.