



LEGAL Q&A

Q Has privatization of New Jersey's remediation program afforded developers and re-developers free reign to formulate remediation strategies without any checks and balances in place?

A No. The adoption of the Site Remediation Reform Act has, necessarily, placed significant responsibility on environmental consultants, attorneys and other professionals to develop and implement effective cleanup strategies in the face of increased environmental regulation. Under the current License Site Remediation Program (LSRP), it is true that private environmental consultants, not NJDEP, issue "final approvals", or a Response Action Outcome (RAO). The road leading to issuance of the RAO, however, is strikingly similar to procedures required in pre-LSRP cases. For example, environmental consultants remain obligated to follow the investigatory and remediation protocols established under New Jersey's Technical Requirements for Site Remediation (N.J.A.C. 7:26E). The Technical Regulations set forth requirements for sampling techniques, delineation of both groundwater and soil contamination and also catalogue parameters necessary to close out a case. Consultants in the pre-LSRP world would look to the Technical Regulations and make their best possible argument to the NJDEP case manager, frequently pushing the envelope in the spirit of advocacy for the client. Post-LSRP remediation requires the consultant to wage battle, internally, balancing the need to adhere to the Technical Regulations, and simultaneously safeguard against NJDEP's right to audit. Environmental consultants and their remediation teams, now more than ever, need to work within the regulatory framework to achieve maximum efficiency. At the same time, because NJDEP will not necessarily be there every step of the way to say no, in some cases, the consultant will have to assume the role of naysayer.



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