

New LSRP Rules Released by DEP

Marc Policatro and Andrew Robins

December, 2009

In May 2009, the Site Remediation Reform Act (SRRA) was signed into law starting a wave of major changes in how the remediation of a contaminated site in New Jersey is administered. The first set of nearly 400 pages of new regulations was adopted on November 4, 2009, resulting in sweeping changes to NJDEP's Site Remediation Programs.

New Obligation to Remediate

The new rules implement the statutory requirement that responsible parties take immediate steps, and continue to take steps, to remediate known contamination. A series of deadlines – regulatory timeframes and mandatory timeframes – have been established and new deadlines will be added in the future.

ARRCS Rule

Effective immediately, all of DEP's Oversight Rules for Contaminated Sites have been replaced with a new set of regulations entitled the Administrative Requirements for the Regulation of Contaminated Sites (ARRCS). These rules cover both existing cases and all new cases. For all new cases, a Licensed Site Remediation Professional (LSRP) must be retained. The LSRP will issue all approvals for the site including the new Remedial Action Outcome (RAO) which replaces the DEP issued No Further Action (NFA) determinations. Existing cases can opt into the LSRP program.

To qualify as an "existing case" (not a new case), a remediation project must meet both parts of the following two part test:

1. DEP must have been officially notified of the discharge or presence of contamination prior to November 4, 2009; and
2. The entity conducting the remediation must have been "continuously conducting the remediation" since notification to DEP.

The ARRCS Rule also details:

- Fees for site undergoing remediation
- Reporting and recordkeeping responsibilities
- Mandatory timeframes and regulatory timeframes for all remediation projects
- When DEP can place the remediation into direct oversight
- When a Remediation Funding Source (RFS) must be posted, and how the amount of RFS is to be calculated
- A new Remedial Action Permit program to cover post-RAO (post-NFA) requirements such as cap maintenance
- Applications for financial assistance and for Technical Assistance Grants (TAGs)



**MASTER
SPONSOR**
Defending Our Industry

NEW JERSEY

cutting
edge

ISRA Changes

The SRRA effectuates changes in the mechanics of transactions falling within the ambit of the Industrial Site Recovery Act (ISRA). Provided certain statutory elements are satisfied, an owner or operator is still entitled to close a transaction prior to implementing a full investigation and cleanup of a site. Under the new rules, a "Remediation Certification" must be filed with the NJDEP. The certification must clearly spell out the nature of the transaction and the particulars of the "manufacturing" or "industrial establishment" at issue. Responsible parties must continue to provide a financial assurance, or form of collateral, to fund any cleanup that might be required. NJDEP will require a minimum "Remediation Funding Source" in the amount of \$100,000 if known groundwater contamination exists. NJDEP's minimum financial assurance increases to \$250,000 in cases where groundwater contamination is present.

Technical Rules Changes

The new rules also amended the Technical Rules relating to:

- The use of presumptive remedies for sites with residential, school or daycare uses
- Developing alternative remediation standards
- Variances from DEP's requirements

Marc D. Policastro and Andrew B. Robins are both shareholders in the firm's Environmental Practice Area and can be reached at mpolicastro@ghclaw.com or arobins@ghclaw.com. Visit Giordano, Halleran & Ciesla, P.C. on the web at www.ghclaw.com.