



LEGAL Q&A

Q If you want to sell a property or business that qualifies as an “industrial establishment” in New Jersey, is it permissible to close the transaction first, and then clean-up the site after closing?

A Yes. Effective November 4, 2009, under New Jersey’s Site Remediation Reform Act (“SRRA”), an owner or operator wanting to “sell first and cleanup later” can do so, provided a “Remediation Certification” is filed with the New Jersey Department of Environmental Protection (“NJDEP”). The Certification must provide specificity as to the proposed transaction and the manufacturing site, or “industrial establishment” at issue. Certain assembly, manufacturing, and even warehousing facilities may qualify. Prior to closing, the owner or operator must also provide a “Remediation Funding Source”, or financial collateral, securing the obligation to cleanup the site as necessary. In cases where no known groundwater contamination is present, NJDEP will accept a minimum funding source of \$100,000. If groundwater contamination exists, a funding source of \$250,000 must be posted. The mechanics of the SRRA Remediation Certification replaces the “Remediation Agreement” structure previously required under the Industrial Site Recovery Act. Under the new guidelines, once the transaction proceeds, applicable statutory deadlines will apply under the SRRA to facilitate cleanup of the property.



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