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### LICENSED SITE REMEDIATION PROFESSIONALS

The Site Remediation Reform Act ("SRRRA") was signed into law in May 2009. On November 4, 2009, DEP adopted the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS") rules to implement aspects of the SRRRA. The interim regulations are effective immediately and replace the prior Oversight of Remediation of Contaminated Sites Rules. The ARRCS implement the SRRRA requirement that responsible parties take immediate and continued steps to remediate contaminated sites.

A Licensed Site Remediation Professional ("LSRP") must be retained for all new remediation cases. The LSRP will issue all approvals for the site including the new Remedial Action Outcome (RAO). The RAO replaces DEP issued No Further Action (NFA) determinations and are to be filed with DEP upon completion of remediation. The RAO constitutes a determination that a site has been remediated in compliance with all applicable requirements. Under the SRRRA, RAO's are deemed by operation of law to constitute a covenant not to sue for the area of concern remediated.

Existing remediation cases can opt into the LSRP program. "Existing cases" are limited to those sites where DEP has been officially notified of the discharge or presence of contamination prior to November 4, 2009 and the entity conducting the remediation has been "continuously conducting the remediation" since notification to DEP. Persons who initiated remediation prior to November 4, 2009 and have continuously conducted the remediation may continue without an LSRP, but must satisfy the mandatory remediation timeframes established under the regulations. If a person who initiated remediation prior to November 4, 2009 elects to opt into the LSRP program, he may proceed with remediation without having to obtain DEP oversight approvals.

The ARRCS rules provide detailed requirements regarding: fees for sites undergoing remediation; reporting and recordkeeping responsibilities; mandatory timeframes and regulatory timeframes for all remediation projects; DEP direct oversight of remediation cases; remediation funding sources; remedial action permitting to cover post-RAO requirements such as cap maintenance; and Technical Assistance Grants (TAGs) and financial assistance applications.

The new rules also effectuate changes in the context of ISRA and amend the Technical Requirements for Site Remediation.

The ARRCS consist of nearly 400 pages of detailed regulations. Owners of property that are subject to an on-going remediation or that require remediation in the future should consult with experienced professionals to ensure compliance with these new rules. For more on the new changes please consult our website at [www.ghclaw.com](http://www.ghclaw.com).

### WETLANDS PRE-EMPTION

#### *In Re Water Usage Certification Rules*

The Appellate Division again confirmed that regulation of freshwater wetlands is exclusive to the Freshwater Wetlands Protection Act ("FWPA"). The case involved a challenge of rules adopted by DEP under the Water Supply Management Act. One of the rules required applicants for a water usage certification to submit a wetlands impact study. The Court rescinded the regulation on the grounds that it encroached upon the exclusive jurisdiction to regulate freshwater wetlands under the FWPA.

The FWPA "constitutes the only program for regulation of freshwater wetlands in the State". The FWPA includes exemptions for farming activities. The Court recognized that the FWPA's exclusivity clause, although primarily concerned with precluding regulation by local governmental entities, is also applicable to attempts at regulation by the State outside of the context of the FWPA. The Court also noted that while the FWPA has a specific exemption for farming activities, there is no specific mandate under the Water Supply Management Act for protection of plant and animal species associated with wetlands.

This decision is an important recognition of the limitations of DEP's authority to regulate wetlands, as DEP attempted to boot strap wetlands regulation outside of the FWPA in the context of other regulatory programs.

### OPTION CONTRACTS

#### *Toll Bros., Inc. v. Readington*

This case recognizes the investment backed expectations of developers, holding that developers who are contract purchasers with an exclusive option to purchase land have the right to challenge municipal zoning ordinances.

Toll held an exclusive option contract. The parcel was rezoned from residential and office to agricultural/residential. Toll's action challenging the ordinance was dismissed for lack standing based on Toll's status as a contract purchaser with an option.

The appellate court reversed finding that Toll suffered injury and had standing to pursue a claim based on its economic investment in pursuit of development approvals and maintenance of the option. The rezoning decreased the value of the option and resulted in a loss of costs incurred in pursuit of the development. The fact that Toll could elect not to exercise its option did not negate the claim.

The Court concluded that it was unlikely given the significant investment made to pursue development approvals and given the value of option.

