

LEGAL

Q&A

Q Are landlords and tenants "jointly and severally liable" under the Industrial Site Recovery Act ("ISRA")? Under New Jersey law, may a landlord or tenant force the other's hand to remediate environmental contamination under ISRA?

A Under ISRA, landlords and tenants are jointly and severally liable and therefore, the New Jersey Department of Environmental Protection may seek to enforce liability against either party, or both. N.J.S.A. 13:1D-1 et seq. ISRA is a transaction specific law, and the obligation to remediate is triggered by myriad events, including certain changes in ownership and modification of operations involving landlord-tenant relationships. Accordingly, it is critical that liability for ISRA compliance be spelled out with precision in leases. For example, the lease may require landlord to comply with ISRA where landlord's business dealings trigger the ISRA law. Contrastingly, the lease may require tenant to comply with ISRA upon a cessation of operations or sale of the business or assets.

New Jersey law permits a landlord, or the tenant, as the case may be, to file a formal petition to NJDEP to enforce lease provisions and compel the party responsible pursuant to the provisions of the lease, to comply with ISRA.



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