

Published Articles

SRRA 2.0: New Jersey Introduces Legislation to Amend Site Remediation Reform Act

Maura E. Blau and David C. Scott
Greenbaum, Rowe, Smith & Davis LLP
June 10, 2019

Legislation has recently been introduced in the New Jersey Senate and Assembly to amend the 2009 Site Remediation Reform Act (SRRA). The legislation reflects a collaborative effort led by Senator Bob Smith, a co-sponsor of the Senate bill, working with various stakeholders and the New Jersey Department of Environmental Protection (NJDEP).

The legislation – identical bills S-3862 and A-5293 – is colloquially referred to as “SRRA 2.0.” It is intended to implement “lessons learned” in the ten years since SRRA was enacted, launching the privatization of a large portion of the responsibilities previously handled by NJDEP by creating the Licensed Site Remediation Professional (LSRP) program.

Just as SRRA necessarily included amendments to several existing New Jersey environmental laws in establishing the LSRP program, SRRA 2.0 does likewise. If enacted, the changes to SRRA, associated laws and the LSRP program would include the following:

- Public Notice and Response to Public Inquiries – would amend the public notice requirements of the Brownfield and Contaminated Site Remediation Act, which requires notice to the public regarding ongoing remediation, to provide more specific direction for responsible parties and LSRPs as to how to respond to public inquiries about the remediation.
- Immediate Environmental Concern/Vapor Intrusion – would broaden vapor intrusion investigations and reporting requirements to include unoccupied structures by amending the definition of the term “Immediate Environmental Concern (IEC),” which is intended to identify environmental conditions that are an immediate threat to human health or the environment. An IEC would now be defined to include confirmed contamination that has migrated into “a structure currently used or able to be used for human occupancy,” replacing

Attorneys

Maura E. Blau

David C. Scott

Published Articles (Cont.)

prior language referring to “an occupied or confined space.”

- LSRP Contamination Reporting Requirements – would clarify that an LSRP’s obligation to report contamination to NJDEP is limited to situations where the LSRP obtains “specific knowledge” of either an IEC condition or a discharge at a site for which the LSRP is retained. The amendments would also provide more specific instruction to LSRPs on reporting obligations, and on procedures to report the discharge or condition to the person responsible for conducting the remediation.
- Legal Action Against LSRPs – would impose more formalized requirements in order to bring a malpractice action against an LSRP, including the requirement for an Affidavit of Merit, by including LSRPs as statutorily defined “licensed persons” similar to attorneys or doctors.
- NJDEP Direct Oversight – would amend the direct oversight provisions, which require NJDEP supervision and the posting of funding for “delinquent” sites, to include procedures for an “off ramp” for moving out of the direct oversight status. The law would formally implement certain procedures which NJDEP has been informally following, including that direct oversight runs with the land “regardless of who owns the property and regardless of a transfer of ownership of the property,” and that prospective purchasers may enter into an Administrative Consent Order to modify direct oversight requirements. The proposed legislation would permit NJDEP to modify direct oversight requirements based on a demonstration of financial hardship by the person responsible for conducting the remediation, as well as in the case of a delay in conducting the remediation caused by a public emergency (such as a natural disaster) and in instances when NJDEP makes a written determination that the direct oversight modification is in the public interest and protective of the public health and safety and the environment.
- Remediation Funding Sources – would expand the type of remediation funding sources available to the person responsible for conducting the remediation, particularly by adding the option for a surety bond, including the requirement for NJDEP to establish a surety bond model agreement.

The proposed legislation also includes language addressing procedures for disbursing funds during the remediation and terminating the remediation funding source upon completion of the remediation, specific to each type of funding source, and establishes standards for the type of entities that may establish specific types of remediation funding sources.

At a June 6, 2019 Senate Environment and Energy Committee meeting chaired by Senator Smith, the Committee heard testimony on the bill from NJDEP and representatives of a number of stakeholder groups, among others. Many speakers indicated that they would also be submitting written comments. Senator Smith stated that the Committee would reconsider the bill when it meets again on June 17, and that he expects the bill will be voted on at that time.

If you have questions about the issues discussed in this Alert and possible impacts, please contact the authors, **Maura E. Blau** and **David C. Scott**, members of the firm’s Environmental Department.