

Published Articles

SRRA 2.0 Is Signed into Law, Amending New Jersey's Site Remediation Reform Act

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Earlier this year, we **reported** that the New Jersey Senate and Assembly approved legislation to amend the 2009 Site Remediation Reform Act (SRRA). On August 23, 2019, this legislation, colloquially referred to as "SRRA 2.0," was signed into law by Governor Phil Murphy.

SRRA 2.0 is intended to implement "lessons learned" in the ten years since the enactment of SRRA launched the privatization of a large portion of the responsibilities previously handled by the New Jersey Department of Environmental Protection (NJDEP) with the creation of a Licensed Site Remediation Professional (LSRP) program.

As signed into law, the changes to SRRA, associated laws and the LSRP program include the following:

- Public Notice and Response to Public Inquiries - amends 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 written or email public inquiries regarding the status of the remediation.
- Immediate Environmental Concern/Vapor Intrusion - broadens 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 now is defined to include confirmed contamination that has migrated into "a structure currently used or able to be used for human occupancy," replacing prior language referring to "an occupied or confined space."

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Published Articles (Cont.)

- LSRP Contamination Reporting Requirements - clarifies 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 law also provides 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 - imposes 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 - amends 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 implements 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 who are not responsible for the discharge may enter into an Administrative Consent Order to modify direct oversight requirements. The legislation also permits 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 as declared by the Governor, President, or other authorized official, 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 - expands 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.

If you have questions about the issues discussed in this Alert and possible impacts, please contact the author, **Maura E. Blau**.