

New Law Gives Municipalities More Control Over Environmental Cleanups



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The Site Remediation Reform Act (SRRA) promises to substantially expand the opportunities for municipal and community involvement in the cleanup process.

Legislation signed into law on May 7, 2009, the Site Remediation Reform Act (SRRA), promises to dramatically alter the cleanup process for contaminated sites in New Jersey.

This law, together with regulations adopted by the New Jersey Department of Environmental Protection which as of September 2, 2009 extend sweeping public notice and outreach requirements to most contaminated sites in New Jersey, substantially expands the opportunity of municipal and community involvement in the cleanup process. Municipalities will now be better able to monitor and influence the progress of environmental cleanups within their borders and take appropriate action if they deem the remediation to be insufficiently protective, lagging in speed, or of a nature that real estate will be rendered permanently unusable. In order to exercise this power responsibly, each municipality should be sure that it has ready access to technical and legal advisors with expertise on these issues.

The new notification and outreach regulations require those responsible for a cleanup to notify various parties, including owners and tenants within 200 feet of the property and the clerk of the municipality, of certain prescribed information concerning the contamination in question. They must also provide periodic updates and notify those parties that all reports will be supplied to the municipality if requested by the municipality. Importantly, a written request by a municipal official, such as a mayor or chairperson of an environmental commission, can also trigger a determination by the NJDEP that there is a "substantial public interest" in remediation activities concerning a contaminated site. In that

instance, the responsible party shall institute additional public outreach, such as the holding of an information session or public meeting.

The SRRA, which imposes new procedures for new and newly discovered discharges beginning November 7, 2009, and for existing open cases no later than May 7, 2012, is fashioned after laws in effect in Massachusetts and Connecticut. It is intended to remove an overburdened NJDEP from routine oversight of New Jersey's thousands of contaminated sites by delegating the supervision of the remediation process to private licensed environmental professionals called Licensed Site Remediation Professionals (LSRP's). Remediation consultants will now be required to possess substantial minimum education and levels of experience, and by November 7, 2010 will need to take an exam formulated by a new Site Remediation Professional Licensing Board.

The SRRA also provides statutory deadlines for the completion of the assessment and remediation and directs the NJDEP to establish mandatory and expedited site specific deadlines for the completion of various tasks concerning the assessment and cleanup of the site.

Unless the site in question has special characteristics, such as being a site where there is a "substantial public interest," in the remediation, environmental reports will no longer be submitted to the NJDEP for its interim review, but will only be examined after the LSRP deems the cleanup to be completed. It is the LSRP who is ordinarily responsible for determining to what extent the contamination should be investigated and what form of remediation is appropriate. In doing so, the LSRP is required to follow the requirements of regulations and standards governing site assessment and remediation, is expected to adhere to timelines established by the NJDEP, and must certify to the NJDEP that the work performed meets NJDEP requirements. A party interested in the progress of the remediation will now ordinarily be required to obtain the relevant reports directly from the LSRP and not from the NJDEP.

At the conclusion of the process, the LSRP is to issue a "response action outcome" (RAO) a new regulatory document designed to signify that a site has been remediated sufficiently that it is in

compliance with all applicable statutes, rules and regulations concerning the environment. The RAO, as well as the complete file of the LSRP, is required to be filed with the NJDEP at the same time that the RAO is issued to the party responsible for having conducted the remediation. The NJDEP will then have three years to review the contents of the LSRP's file and determine whether the remedial action is protective of public health or safety. If it determines that it is not sufficiently protective, the RAO will be invalidated. An LSRP can face sanctions, including loss of licensure, if he or she does not comply with the applicable requirements.

There are, however, certain categories of sites that will continue under direct oversight by the NJDEP. They include those sites where the site investigation has not been completed within ten years of the discovery of the discharge and where the remediation has not been completed within five years of passage of the SRRA. The NJDEP will also step in when there has been a failure to meet mandatory deadlines, or when there have been enforcement actions instituted two or more times within a five year period after passage of the Act.

The NJDEP has the discretion to assume direct oversight in other classes of sites as well. When the NJDEP is in charge of a site, it is empowered to select the remedial action and can mandate in many instances that the

responsible party post a remediation funding source. When an LSRP makes a submission to the NJDEP for case where the NJDEP has direct oversight, the LSRP must send it to the NJDEP and the responsible party simultaneously, meaning that there will be no opportunity for the responsible party to review and comment on it prior to submission. When the NJDEP selects the remedy, a "public participation plan" must be adopted to solicit comments of members of the surrounding community concerning the remediation.

As a result of the new statute and regulations, municipalities will be able to alert the NJDEP to contaminated sites within their borders that they believe should be given enhanced scrutiny. Public officials will also be able to voice their concerns when there is a belief that a remediation is not being performed in a manner that is consistent with the interests of the municipality and the community surrounding the site. The issues which may be in question often involve complex technical and legal questions regarding the degree of contamination, appropriate method of cleanup, and legal responsibility for remediating a discharge. Having been given an increased opportunity to affect the course of an environmental cleanup, local governments must now take steps to make sure that they are able to exercise this power in an informed and responsible manner. ▲