

SITE REMEDIATION REFORM ACT OVERVIEW

David B. Farer, Esq.*
Greenbaum, Rowe, Smith & Davis LLP
Woodbridge, New Jersey

Current as of October 2013

Site Remediation Reform Act ("SRRA"), passed by the New Jersey Assembly and Senate on March 16, 2009 as A.2962/S.1897; enacted May 7, 2009, N.J. Stat. Ann. §58:10C-1 et seq. [enacted in 2009; amended in 2010].

1. Legislative Purpose

- To establish and implement a Licensed Site Remediation Professional ("LSRP") program pursuant to which LSRPs, rather than DEP, determine the propriety and conclusion of environmental investigations and cleanups in a wide variety of settings and situations, and pursuant to which LSRPs issue the final sign-off document – known as a Response Action Outcome ("RAO") -- rather than DEP issuing a No Further Action Letter ("NFA").
- To establish and implement a licensing regime for individuals with requisite degrees of scientific or engineering education, and training and experience in the field of site remediation, whose examination, licensing and performance overseen by a board, and who are subject to penalties, enforcement proceedings and license revocation for derogation of responsibilities and requirements.
- To allow DEP to focus on high priority contamination sites over which it will retain direct oversight and review powers, in certain cases mandatory and others elective.
- To thereby ease the overload on DEP's constrained resources and personnel, reduce backlogs in reviews and approvals of site investigation and cleanup plans and reports, and thus speed up the cleanup process to allow for quicker case completion and site redevelopment.
- To establish mandatory timeframes for all phases of environmental investigations and cleanups.
- To expand reporting requirements to DEP on discovery of spills, discharges and evidence of contamination where LSRPs are party to the information.

*©Copyright 2013 by David B. Farer. The author gratefully acknowledges the assistance of Jay A. Jaffe, Harriet S. Rabinowitz and Gaitri E. Oare in the update and preparation of these materials.

ISRA COMPLIANCE

- To establish a permitting program for engineering and institutional controls, with specific financial assurance requirements.
- To modify the state's "innocent purchaser" protections so that LSRP-certified work is deemed the equivalent of that overseen and approved by DEP.
- To establish a new site-ranking system of priority remediation sites within a year of the law's enactment, with DEP having the authority to retain oversight over those sites that have been accorded the highest priority.
- To establish "presumptive remedies" for cleanups of residential properties, schools and child care facilities.
- To have the reforms apply to all DEP site remediation programs, including those under the Industrial Site Recovery Act ("ISRA") and the state's Brownfield Program.

2. Establishment of the LSRP Program and Temporary Licenses

- SRRA allowed DEP six months after enactment to issue interim rules for implementing the new law, and three months to establish a temporary licensing program for LSRPs and to issue guidance for license applications, fees and forms.
- DEP did so, and with the interim rules and temporary licensing program then in place, all new projects under the state's site remediation programs had to be overseen by LSRPs rather than DEP, unless they fell into specific exceptions described below.
- Parties with cases under DEP oversight by November 9, 2009 (180 days after SRRA enactment) had until May 7, 2012 (three years after enactment) to switch over to the LSRP program, provided they did not fall within one of the exceptions, and further provided that if a penalty had become due on a remediation, or DEP had issued a final order on a remediation, or an uncontested stipulated penalty is due, then DEP could require that the matter be switched over to the LSRP program at any time.
- Temporary licenses were issued to individuals only, were non-transferable and were valid for a period of up to three years.
- The temporary licensing program expired in February 2013. All temporary licenses have expired. In order to obtain a new license, all LSRPs must now have passed a licensing test.
- Necessary qualifications for a temporary licensee included:

ISRA COMPLIANCE

- a. Bachelor's degree or higher in natural, chemical or physical science, or engineering degree related to site remediation, from an accredited institution;
 - b. 10 years of full-time professional experience in the field (that is, application of scientific or engineering principles to contaminated site remediation where conclusions form the basis for reports or other documents), of which 5 years must have been in New Jersey, and at least 3 of which must have occurred immediately before the application;
 - c. recent completion of federal health and safety training and state-mandated training on DEP Technical Requirements for Site Remediation;
 - d. clean record on environmental crime or similar criminal offense, and on any fraud, theft, deception, forgery or similar crime; and
 - e. no professional license revocation by licensing board or other professional agency for past 10 years.
 - f. DEP could allow 1 year of professional experience credit for applicants with relevant master's degrees, and up to 2 years of credit for applicants with relevant doctorate degrees.
- For a temporary license concerning remediation of underground storage tank ("UST") discharges only, DEP could allow substitution of full-time professional experience for holding of a bachelor's degree, provided the applicant had 14 years of full-time professional experience, of which at least 5 must have occurred in New Jersey immediately before the application.

3. SRP Licensing Board and Licenses

- Pursuant to SRRA, a Site Remediation Professional Licensing Board (the "Board") was established to develop and implement permanent licensing requirements and to oversee licensing and performance of LSRPs.
- The Board is composed of 13 members:
- a. The DEP Commissioner or designee (to be chair);
 - b. The State Geologist or designee;
- Eleven New Jersey residents appointed by the Governor and confirmed by the Senate, to be comprised of:
- a. 6 LSRPs (initially temporary licensees), with initial terms of one to four years, and then all for four year terms;