

N.J. Privatizes Remediation

In May, New Jersey became the third state in the nation to privatize the cleanup of contaminated sites. The Site Remediation Reform Act (SRRRA) established a Licensed Site Remediation Professional (LSRP) program whereby LSRPs, rather than the New Jersey Dept. of Environmental Protection (DEP), primarily oversee and issue final approvals for most site remediations. With more than 19,000 sites in various stages of environmental investigation and remediation, SRRRA supporters hope the privatized system will expedite site cleanup and save money.

The new law presents a significant opportunity for clients to have a greater role in the management of their contaminated sites. However, it also comes with a number of significant risks that must be carefully navigated before the rewards of an LSRP business can be realized. A comprehensive consideration of LSRP responsibilities, potential liabilities and conflicts, as well as risk management, will allow individuals and companies to succeed in the new role.

In order to become an LSRP, an individual will have to meet certain requirements: a bachelor's degree related to site remediation, eight years of full-time professional experience in the field, at least 5,000 hours of relevant professional experience within New Jersey immediately prior to submission of the application, completion of required health and safety education and training, passing a licensing examination and satisfactory criminal and professional license records.

SRRRA requires establishing an LSRP board to oversee licensing, continuing education and professional conduct of licensed profes-

sionals. Before creating the board, DEP must establish a temporary LSRP program no later than 90 days after the law was enacted. Temporary license requirements will be substantially similar to the permanent license requirement with the exception of a licensing examination.

Once hired to oversee a site remediation, an LSRP is responsible for supervising site remediation work and must certify to DEP that all submitted documents are consistent with all applicable remediation requirements adopted by the agency. Remediation requirements will include mandatory remediation time frames and standards to guide LSRPs. However, for some categories of remediation projects, LSRPs will not be allowed to exercise their discretion in selecting a remediation strategy.

An LSRP also has a number of notification responsibilities, including reporting regulated discharges, site conditions that create an immediate environmental concern and unauthorized deviations from the remediation plan. Upon completion of remediation, the responsible LSRP can issue a final written sign-off determination, called a Response Action Outcome (RAO), confirming that no contamination is present on-site.

LSRPs also will be empowered to determine the required amount

of any financial assurances and also will determine when and how much the financial assurance can be reduced as a cleanup proceeds. To ensure proper compliance, DEP will randomly audit a LSRP's work and, in certain cases, invalidate an RAO if it determines the remediation is not protective of human health or the environment.

In addition to fulfilling their numerous legal obligations, LSRPs will have to develop strategies to avoid significant liabilities. Beside the obvious risk of malpractice lawsuits, LSRPs can also be subjected to severe penalties for misconduct.

LSRPs will have to consider ways to address various potential conflicts of interest. Such conflicts may include maintaining environmental due-diligence confidentiality while also complying with DEP notification requirements, and satisfying contractual performance guarantees while complying with remediation standards.

Many traditional risk-management techniques applicable to design and construction professionals can be used by LSRPs, including contractual risk control and insurance. An LSRP's professional-services agreement should clearly define the scope of services and identify legal limitations and standard of performance. LSRPs also must manage potential conflicts by choosing the appropriate project-delivery method for their business model and risk tolerance. ■

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