

# Transforming Site Remediation in New Jersey: Are LSRPs and the NJDEP on the Same Page?

Tracking and streamlining the remediation of approximately 9,000 of New Jersey's contaminated sites is a huge challenge for LSRPs. Will the NJDEP work with LSRPs to make New Jersey a more business-friendly state for property developers and builders?



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**M**AY 7, 2012, MARKED A MILESTONE IN THE reform of New Jersey's system for cleanup of contaminated sites under the Site Remediation Reform Act (SRRA). The purpose of the SRRA legislation is to expedite site cleanup and clear the backlog of remediation cases previously overseen exclusively by the New Jersey Department of Environmental Protection (NJDEP).

The primary means of effectuating the new system was the creation of Licensed Site Remediation Professionals (LSRPs), a private class of licensed professionals who stand in the shoes of the NJDEP to oversee site remediation in New Jersey. The new system is complex. The SRRA legislation prompted the development of new regulations, numerous NJDEP guidance documents, a professional licensing board, codes of conduct, and a "reorganization" of the NJDEP—all aimed at tracking and streamlining the remediation of approximately 9,000 of New Jersey's contaminated sites.

As of May 7, 2012, most parties responsible for cleanup of contaminated sites are now required to do so with an LSRP. Paradoxically, the implementing regulations for the new system adopted on May 7th included a provision which would delay site cleanups by at least two months by providing the NJDEP 60 days to review the LSRP-selected remedy for the site before it can be implemented. This requirement has been met with significant criticism from numerous LSRPs and from the regulated parties whose transactions, financing and construction schedules may be negatively impacted by the 60-day delay.

Specifically, N.J.A.C. 7:26E-5.5(a) requires a person conducting remediation to submit a remedial action work plan (RAW) to the NJDEP at least 60 days before implementing the remediation. A RAW is not required

for cases that can be fully remediated to unrestricted use within one year. However, the majority of commercial sites cannot be practically remediated to residential standards and employ engineering or institutional controls which allow soils to remain above residential standards. These are not unique cases but they do require submission of a RAW.

Generally, a RAW outlines the LSRP recommended cleanup remedy. It can be as simple as identifying contamination present at the site that is above residential standards but below commercial or industrial standards. In this scenario, an institutional control would be required. Under the new regulations, the RAW would be submitted to the NJDEP for the 60-day review period, thus delaying the implementation of the remediation and arguably circumventing the LSRP's ability to expeditiously close out the case.

In the rule proposal, the NJDEP was asked the purpose of the rule, which according to the commentators was unnecessary and contrary to LSRP oversight of all remediation activities. Without specifically addressing these concerns, the NJDEP responded that the rule allowed it to review the more complex cases. However, there is no established mechanism for the NJDEP to determine which cases are "more complex." Additionally, as to the delay, the NJDEP reasoned that during the 60-day period, some preparation for implementing the RAW could proceed.

There is no dispute that the NJDEP has a stake in the implementation of effective remedies. The rub seems to be that the 60-day review period is unnecessary in light of the opportunity for the NJDEP to review all submissions under the new system. The new system was painstakingly developed with checks and balances to afford the NJDEP with the ability to review the remedial actions and challenge the LSRP's conclusions or remedies if necessary.

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There is no mechanism in the rules for the NJDEP to provide comments nor is it apparent that the delays resulting from the comments would be limited to 60 days. If the NJDEP has comments or requires additional information, the dialogue could continue beyond the 60-day review with some uncertainty as to who at that stage is driving the remediation.



The NJDEP maintains the authority to review the remedial action of any case and reopen the case when it deems the remedy is insufficient during its three-year review period after the LSRP closes the case. The LSRPs and the parties performing the remediation bear the risk if the remedial strategy is deemed insufficient. The 60-day RAW review period does not shift this liability, and the rule has no clear mechanism for the NJDEP comments and the ultimate delay period is indeterminate.

It is expected among LSRPs and the regulated community that the 60-day hold on implementing the RAWs is likely a provision that will be amended as the parties become more settled in their new positions. For the time being, those in the regulated community that were expecting the removal of these sorts of delays under the new system must be prepared to hurry up and wait. ■

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The SRRA/LSRP system adopted on May 7th included a provision which could delay site cleanups by at least two months by providing the NJDEP 60 days to review the LSRP-selected remedy for a site before it can be implemented.