Update on New Jersey’s Site Remediation Rules & Proposed Legislative Changes

Site Remediation Reform Act (SRRA) 2.0

Passaic County Brownfields Commission October 24, 2018

Presenter by:
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Hawthorne Environmental Commission – Chairperson
Site Remediation Rules – Amended Effective August 6, 2018

• Purpose of the Amendments
  – Streamline those rules
  – Clarify provisions that make it difficult to implement the rules
  – Simplify the implementation of the licensed site remediation professional (LSRP) program

• New chapter, N.J.A.C. 7:26F, Heating Oil Tank System Remediation Rules, to address the closure of heating oil tank systems, and remediation of discharges from those systems

• We will discuss the more significant rule changes

Your should review the amendments to determine whether these changes affect your site. Please consult your LSRP and environmental attorney.
Site Remediation Rules – Amended
Effective August 6, 2018

• New Jersey Pollutant Discharge Elimination System (NJPDES) Rules (N.J.A.C. 7:14A)
• Underground Storage Tanks (UST) Rules (N.J.A.C. 7:14B)
• Industrial Site Recovery Act (ISRA) Rules (N.J.A.C. 7:26B)
• Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) Rules (N.J.A.C. 7:26C)
• Technical Requirements for Site Remediation (Tech Regs) Rules (N.J.A.C. 7:26E)
• NEW Heating Oil Tank System Remediation (HOTS) Rules (N.J.A.C. 7:26F)
NJDEP Site Remediation Phases

- Industrial Establishment (ISRA-subject) – Sale of property, sale of business, etc.; Conduct PA/SI
- Regulated Underground Storage Tank (UST) Cases – Conduct SI
- Spill Act Discharge – Conduct a PA/SI if remediating an Entire Site; Conduct a RI/RA for remediating an Area of Concern (AOC);
- Presumptive Remedy – Change in Use to Residents, Schools, Child Care; Require a PA (Entire Site)
NJPDES Rules
(N.J.A.C. 7:14A)

• Clarified applicability of Permit By Rules to Remediation
  – What discharges to groundwater that are associated with sampling or to implement remediation authorized under Permit by Rule

  – When Permit by Rule can be invalidated (stop any negative impacts caused by the discharge to groundwater and remediate those impacts)
UST Rules
(N.J.A.C. 7:14B)

• Owner/Operator shall confirm or disprove a suspected release by conducting an investigation
  – Investigation results “No” suspected release - Document investigation
  – Investigation results “Yes” suspected release - Notify NJDEP hotline

• Remedial Action Outcome (RAO) applies to a “Clean Pull” (no further remediation is required)
ISRA Rules
N.J.A.C. 7:26B

• Owner or operator shall establish a Remedial Funding Source within 14 days of NJDEP’s receipt of Remedial Action Workplan certified by a LSRP

• Based on Des Champs court decision, deleted requirement that owner or operator demonstrate that the site is not contaminated above any remediation standard to obtain a de minimis quantity exemption
ARRCS Rules
N.J.A.C. 7:26C

• Updated multiple definitions
  – Amended “Person” to include a responsible corporate official, which includes a managing member of a limited liability company (LLC) or a general member of a partnership

  – Clarified “statutory permittee” any person who becomes the owner, operator, or tenant after an institutional or engineering control is placed on the property
ARRCS Rules
N.J.A.C. 7:26C

• Off-site discharges migrating onto a site are required to be called into NJDEP’s Hotline

• Clarified timeframes for notifying NJDEP of retention, dismissal of LSRP, and retention of replacement of LSRP
  – 2 days if Immediate Environmental Concern
  – 45 days other situations

• Public notification requires 14 days prior to commencing initial field activities associated with the Remedial Investigation
ARRCS Rules
N.J.A.C. 7:26C

• Sites is subject to NJDEP’s Direct Oversight if miss Statutory or Mandatory timeframe
  – What requirements is due to NJDEP and when
  – Adjustments to the Direct Oversight requirements

• LSRPs cannot issue Remedial Action Outcome
  – Until all monitoring wells are decommissioned
  – In the event there are changes in the institutional and engineering controls, a Remedial Action Permit modification or termination must be issued by NJDEP

Statutory timeframe – Cases with discharges prior to May 7, 1999, a remedial investigation must be completed by May 7, 2014 or May 7, 2016 (complied with 2 year extension requirements)
ARRCS Rules
N.J.A.C. 7:26C

• Require documentation of property owner’s permission when applying a deed notice to the site, if the person responsible for conducting remediation is not the property owner.

• Amended requirements within 30 days after subdivision,
  – Request termination of the existing Remedial Action Permit and Deed Notice,
  – Record new Deed Notice for each subdivided parcel and
  – Apply for a New Remedial Action Permit

• Requires the permittee to inform NJDEP when the municipality revises the lot and block designations of a site and when the address of the permittee changes.
ARRCS Rules
N.J.A.C. 7:26C

• Amended Model Deed Notice - Appendix B
  – Clarify that temporary disturbances to an engineering control do not require notice to the NJDEP
  – Adopted the modification to the Remedial Action Permit process

• Amended Remedial Action Outcome Notice – Appendix D
  – Specific requirements for well decommissioning
  – Includes new Remedial Action Outcome Notices
ARRCS Rules
N.J.A.C. 7:26C

• Specified violations of Technical Requirements and Heating Oil Tank System Remediation (HOTS) rules are subject to enforcement provisions

• Added penalties
  – Missing statutory timeframe
  – HOTS
  – Fee/oversight
  – Final remedial documents (Remedial Action Outcome – protectiveness of the remedy)

• Adopted adjudicatory hearing provisions
Tech Regs Rules
(N.J.A.C. 7:26E)

- Amended Immediate Environmental Concern definition to include any potable well or irrigation well that is used for potable purposes

- No longer specify that Remedial Action Workplan due 60 days prior to implementation; still must be submitted prior to implementation
Tech Regs Rules
(N.J.A.C. 7:26E)

- Amended requirements use of “alternative fill” to a site must meet
  - “Like on Like”
  - ‘75th percentile”
  - “Volume required to restore the pre-remediation topography and elevation of the receiving area of concern”

- If do not meet any one of the above, must obtain NJDEP approval PRIOR to brining material to site

- Also need PRIOR NJDEP approval if moving contaminated material onsite to area not previously contaminated
HOTS Rule - Objectives
(N.J.A.C. 7:26F)

• Allow pre-qualified environmental professionals to investigate/remediate low risk UHOT cases with limited DEP oversight
• Accelerate the DEP review process
• Allow real estate transactions to proceed more quickly
• Allow DEP case managers to focus on high risk sites
HOTS Rules
(N.J.A.C. 7:26F)

• Applicability - Above-ground tanks and underground tanks that contain heating oil for onsite consumption for:
  – Residential use, regardless of tank size, or
  – Non-residential use that have a capacity of 2,000 gallons or less; and
    Contain No. 2, 4 and 6 oil, and kerosene

• All Remediations started after August 6, 2018 must comply with the new HOTS Rule N.J.A.C 7:26F.

• Contains all of the administrative and prescriptive (soil and groundwater) technical requirements for HOTs
HOTS Rules
(N.J.A.C. 7:26F)

• Owner or operator of HOTs may use a certified subsurface evaluator or an LSRP to address discharges (must be hired within 2 business days after discovery of a discharge)

• Surface spills of less than 100 gallons of fuel oil notify NJDEP Hotline; NJDEP will refer case to county/local health departments
  – Owner or operator of HOT may work with county/local health department (NJDEP will not issue a No Further Action letter) or

  – Follow HOTs program (NJDEP will issue a No Further Action letter)
HOTS Rules  
(N.J.A.C. 7:26F)

• Allows residual soil contamination to remain at a residential property under a HOTS Deed Notice without a Remedial Action Permit  
  – If impacts are located beneath a residential building, paved area or capped easement, no free product is present, and impacts are not located under aforementioned structures are remediated

• Small Quantity Exemption - Less than 15 cubic yards of soil contamination under a residential building when excavation or treatment is impeded or impracticable – No HOTS deed notice required
Proposed Legislative Changes

Site Remediation Reform Act (SRRA) 2.0
SRRA 2.0

• Stakeholder effort to identify statutory and regulatory improvements to the SRRA and LSRP Program

• Stakeholders, Legislators, NJDEP and LSRP Board
  – Licensed Site Remediation Professionals Association
  – Other trade associations and groups (CCNJ/SRIN, NJBA, State Chamber, NAIOP)

• Broad range of topics to site remediations have been discussed or raised by different stakeholders

• NJDEP holding stakeholder sessions (July and September 2018)
Site Remediation Reform Act (SRRA)  
May 7, 2009

• Affirmative obligation to remediate
  – An owner or operator of an industrial establishment subject to ISRA
  – The discharger of a hazardous substance or a person in any responsible for a hazardous substance pursuant to the Spill Act
  – The owner or operator of a UST that has discharged a hazardous substance

• Created Licensed Site Remediation Professional (LSRP) program
  Mandatory/regulatory remediation timeframes

• Establishes when NJDEP undertakes Direct Oversight

• Remedial Action Outcome replaces NFA
SRRA 2.0 Stakeholder Sessions

Driven by NJDEP and LSRP Board Recommendations Approved by Senator Robert Smith

- No “Remediation” without an LSRP
- Discharge reporting during Due Diligence
- Other LSRP Immediate Environmental Concern/Discharge notifications
- Independent Professional Judgment
- Other LSRP Board recommendations, including “Sustaining the Pool of LSRPs”

LSRP Board Recommendations web link: https://www.nj.gov/lsrpboard/board/srra_issues_rec_lang_amendmnts.pdf
SRRA 2.0 Stakeholder Sessions

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• LSRP of Record
• Remediation Funding Sources and Surcharges
• Direct Oversight
• Green and Sustainable Remediation
• Enhancing Public Notification/Access to files
SRRA 2.0 Stakeholder Sessions

Deferred Topics

• Remedial Action Permit Reforms

• Non-Discharge conditions – clarifying what is a discharge and develop new approaches for ubiquitous contaminants (i.e. Historic Fill)

• Relief from certain remediation requirements for Volunteers and Bona Fida Prospective Purchaser Protection

• Strict, but Flexible Risk Based Program – state generic standards, site-specific standards, and site-specific risk assessment

• SRRA Impact on Municipalities