



New Jersey Proposes New Amendments to Site Remediation Regulations and Rules

Legal Blogs and Updates

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The New Jersey Department of Environmental Protection (“NJDEP”) is proposing extensive new rules, repeals, and amendments to several of its site remediation regulations. If adopted, these changes will significantly impact requirements for owners, operators, or other persons responsible for remediating sites throughout New Jersey. Critically, included amongst the proposed changes is a requirement for any person with knowledge of a spill or discharge, even in the context of environmental due diligence, to notify both the NJDEP and the property owner, potentially triggering further investigation and remedial obligations.

The proposed changes codify and implement the provisions of legislation known as SRRA 2.0, which became effective on August 23, 2019, as well as other changes intended to simplify the remedial action permit process, streamline the implementation of the licensed site remediation professional program, make technical changes and corrections, and clarify language. The proposed changes would affect a number of site remediation regulations including the Industrial Site Recovery Act (ISRA) Rules (N.J.A.C. 7:26B), the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), the Technical Requirements for Site Remediation (N.J.A.C. 7:26E), and the Heating Oil Tank System Remediation Rules (N.J.A.C. 7:26F).

Published in the New Jersey Registrar on October 21, 2024, the proposed rules would enact the following non-exhaustive list of changes to the current regulatory scheme:

- Revises definitions of “remediation” and “retained” to be consistent with the updated definitions included in SRRA 2.0.
- Clarifies that an LSRP does not have to be retained to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by an LSRP, provided that the sampling/investigation is not: (1) legally required; (2) conducted to obtain a response action outcome; and (3) conducted to investigate or address any known, suspected, or threatened discharge of contamination.
- Expands the scope of notification required in response to public inquiries. Specifically, the proposed rules provide that the person responsible for conducting a remediation must provide information or documents

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that are responsive to the public inquiry or a written summary status report for the remediation, including a description of the site's industrial history, source(s) of contamination, description of contamination, current remedial status, proposed remedial actions with a schedule, extent of contamination, actions performed to minimize the impact to the public, and a list of online resources for information about the contaminants.

- No longer requires a structure to be occupied in order for the migration of contamination into it to be deemed an "immediate environmental concern." However, proposed new language in the Technical Requirements would except unoccupied structures from further immediate environmental concern remediation requirements.
- Obligates any person obtaining specific knowledge of a discharge to notify the NJDEP and the property owner of the discharge. However, the rules clarify that a person undertaking "all appropriate inquiry," for instance in the context of environmental due diligence prior to property acquisition, will not be liable for the discharge's cleanup and removal costs unless and until that person ultimately acquires the property.
- Effects several changes to the laws governing the establishment of remediation funding sources, including how and when those sources may be used, dispersed, and released.
- Expands the use of remedial action permits to a third media option—indoor air—in addition to the current soil and groundwater.
- Allows for the combination of all impacted media into a single remedial action permit, with only one permit schedule for future biennial protectiveness submissions.
- Introduces new remedial action permit *types* (Permit I, Permit II, Permit III, Permit IV, and Permit V) that correspond to different kinds of chosen remedies and incur different review times from the NJDEP.
- Amends requirements for biennial certification submissions, including the submission of operation, maintenance, and monitoring plans, engineering controls schedules, and the results of any additional sampling that occurred during the prior two years.
- Introduces new institutional controls for indoor air called an "indoor air notification area."
- Clarifies requirements for deed notices for soil remedial action permits and allows the use of notices in lieu of deed notice as an institutional control option for soils.
- Changes administrative procedures for the review of permit changes and termination requests.
- Revises remedial action requirements in order to incorporate the 2021 changes to the remedial standards, including the integration of new indoor air remediation standards, and the incorporation of the ingestion-dermal and inhalation exposure pathways for soil.

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- Introduces the concept of “annulment” of Response Action Outcomes (“RAO”) for instances when an LSRP is no longer available to make changes to an RAO, and “revocation” of a remedial action permit when the site has been brought into compliance with the applicable standards.
- Updates and clarifies requirements for the use of alternative fill.
- Prohibits the delineation of contamination by extrapolation or modeling.
- Incorporates references to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., at N.J.A.C. 7:26E-1.1(b).

A copy of the proposed rules is available on the NJDEP website, and can be accessed [here](#).

The NJDEP will be hosting a virtual public hearing to discuss the proposed changes to the rules on November 21, 2024, at 1:00 pm. Comments may be submitted on or before December 20, 2024.

Connell Foley LLP will continue to monitor these rule proposals and their potential impact on current and future site remediation for properties throughout the Garden State. If you have any questions regarding how these proposed rules may impact your site or development, please contact our Environmental Law Group team.



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