

DEP ADVISES MUNICIPALITIES OF MANDATORY REMEDIATION TIME FRAMES

Compliance Advisory for Municipal Officials - March 20 12

Site Remediation Reform Act

An Overview of the LSRP Program can be found at:

www.nj.gov/dep/srp/srra/lrsp/lrsp_program_overview.pdf

Detailed descriptions of all regulatory and mandatory requirements related to the various submissions discussed in this advisory can be found at:

<http://www.nj.gov/dep/srp/re.pdf>
<http://www.nj.gov/dep/srp/lnapl.pdf>
<http://www.nj.gov/dep/srp/iec.pdf>
<http://www.nj.gov/dep/srp/pasi.pdf>

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The Site Remediation Reform Act (SRRA) of 2009 established an affirmative obligation for responsible parties to remediate contaminated sites in a timely manner. The New Jersey Department of Environmental Protection (DEP) established mandatory deadlines for submittal of milestone remedial reports to ensure that the steps implemented to investigate and/or remediate contaminated sites are protective of public health and the environment.

A municipality that **is** a responsible party must adhere to these deadlines. However, a municipality that owns contaminated property for which it **is not** a responsible party is not required, but is strongly encouraged to adhere to these deadlines.

As previously advised, the first deadline is March 1, 2012 and requires the submittal of:

Initial Receptor Evaluation

Under certain circumstances, the following reports must also be submitted by March 1, 2012:

*Preliminary Assessment and Site Investigation Report(s)**
*Immediate Environmental Concern Contaminant Source Control Report***
*LNAPL Free Product Interim Remedial Measures Report****

For sites where a municipality **is** responsible for the contamination under the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11g.d(4)), the municipality must submit the Initial Receptor Evaluation and any of the other three reports listed above, if applicable, by the mandatory time frame of March 1, 2012. Municipalities that do not comply with the mandatory time frame will be subject to "Direct Department Oversight." Direct Department Oversight requires the municipality to establish a remediation trust fund for the site and authorizes DEP to make all remedial decisions and pay the contractors using the established funding.

SRRA also requires responsible parties to hire a Licensed Site Remediation Professional (LSRP) to oversee the investigation and cleanup of a site no later than May 7, 2012. However, DEP strongly encourages municipalities to hire an LSRP now, as they can assist with the preparation and submittal of the reports listed above. The LSRP is not acting on behalf of the State, is not hired by the State and is not in any way connected with the State, so it is not an "agent" of the State.



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DEP advises municipalities of mandatory remediation time frames

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For sites where the municipality **is not** responsible for the contamination under the Spill Act, the mandatory time frames do not apply; however, DEP encourages the municipality to complete the Initial Receptor Evaluation to identify the existence of any human or ecological receptors and continue with the remediation. Any site that is not remediated will continue to remain on the State's Known Contaminated Sites List.

A municipality can determine whether it is responsible for the contamination by reviewing the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11g.d(4). The Spill Act exempts government entities from joint and several liability where the governmental entity involuntarily acquires title to a site by virtue of its function as sovereign, or where the governmental entity acquires the property by any means for the purpose of promoting the redevelopment of that property. The municipality is not liable for any discharge that occurred prior to ownership of the site that the municipality acquired involuntarily, such as in cases of:

- bankruptcy
- tax delinquency
- abandonment
- escheat
- eminent domain
- condemnation

There is no liability protection to the municipality if they caused or contributed to the discharge of a hazardous substance, or if they acquired ownership of the property by condemnation or eminent domain and that property is being remediated in a timely manner by another party.

SRRA also replaced DEP's oversight fees, which were based on the amount of time staff spent overseeing the remediation and therefore were unpredictable, with annual

fees that are based on the number of areas of concern (AOCs) and impacted media (ground water, sediment, surface water), and are more predictable.

For sites where the municipality **is not** responsible for the contamination based on the exceptions listed above, the municipality is **exempt from paying the initial annual remediation fee and subsequent annual remediation for years in which it is not remediating.**

Typically, municipalities may have in their possession a portfolio of sites, but often lack the revenue to remediate any or all of these properties. However, as monies become available, these municipalities often undertake part of the remediation, then stop when funds run dry, only to resume later when funding becomes available. Although any remediation that is conducted by these municipalities must be conducted pursuant to all applicable regulations, they are not required to pay annual remediation fees during years in which their budgets do not include monies for remediation, nor are they bound by the requirement to conduct the remediation within the mandatory time frames.

However, once the municipality undertakes remediation at any site, it must pay fees, hire an LSRP and be sure to remediate in compliance with all applicable rules.

* *A preliminary assessment and/or site investigation may be required for certain sites, including but not limited to, sites subject to the Industrial Site Recovery Act, or underground storage tanks that are regulated pursuant to the New Jersey Underground Storage of Hazardous Substances Act.*

** *The initiation of Immediate Environmental Concern (IEC) source control, if an IEC condition is discovered at a site (see IEC Guidance for definition of IEC).*

*** *Complete the installation of a free product (LNAPL) interim remedial measure (IRM), initiate monitoring and submit the IRM report, if free product is discovered at a site.*

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