

## New Jersey Updates the Site Remediation Reform Act

August 26, 2019

On August 23, 2019, Governor Murphy signed legislation that amends the revolutionary Site Remediation Reform Act (“SRRA”). For over two years, the New Jersey Department of Environmental Protection (“NJDEP”), state legislators and various stakeholders have met to discuss and revamp SRRA, which was created in 2009 to overhaul and ultimately privatize the authority that oversees the remediation of contaminated sites in New Jersey by creating the Licensed Site Remediation Professionals (“LSRP”) program.

In June, identical bills S-3862 and A-5293, nicknamed “SRRA 2.0”, were passed by the New Jersey legislature and sent to Governor Murphy’s office for his signature. SRRA 2.0 does not make any overwhelming changes to the already existing law, but its revisions are intended to clarify and improve on the practices and policies that have been created during the last decade of implementation.

Notable revisions include the following highlights:

- New LSRP reporting obligations. For example, the LSRP must notify the person responsible for the remediation and the NJDEP if the LSRP obtains specific knowledge that a discharge has occurred at any part of a site and not just that part of the site for which the LSRP was retained.

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A requirement that the NJDEP must encourage the use of green and sustainable practices during the remediation of the contaminated site.

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A notice of remediation activity must be provided to the municipalities and counties in which the site is located prior to the initiation of the remedial investigation. This is now at an earlier stage of the process than had originally been required.

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An affidavit of merit is now required for any action for damages for personal injuries, wrongful death, or property damages resulting from an alleged act of malpractice or negligence by an LSRP.

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Amendments to the technical requirements establishing remediation funding sources, including how the funding sources are used, dispersed of and released. Also the addition of a surety bond has been included as an additional remediation funding source and as financial assurance.

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Changes to the requirements regarding the investigation or reporting of an “immediate environmental concern” or “IEC”. Specifically, the definition of IEC now includes contamination that migrated into “a structure currently used or able to be used for human occupancy.” This will likely change investigation and reporting obligations with respect to unoccupied structures.

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Addition of the defined term “retained,” which means “hired, individually or through a firm or other person, by or on behalf of a person responsible for conducting remediation, to perform, manage, or supervise remediation or to periodically review and evaluate a remediation performed by other persons.”

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Amendments to the direct oversight provisions, including procedures for NJDEP to modify the direct oversight requirements based on the demonstration of specified factors.

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Clarifies that a non-LSRP cannot perform the remediation unless it is “managed supervised, or periodically reviewed” by an LSRP, with certain codified exceptions.

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An LSRP must be retained to perform the requirements for the duration of a remedial action permit.

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A responsible party must respond to any inquiry from the public regarding the status of remediation by providing either: 1) information or documents that are responsive or 2) a written summary status report. An LSRP may be designated to respond to public inquiries.

If you have any questions concerning SRRA 2.0 or any other federal or state environmental laws, please contact Randi Schillinger or Geri Albin of Saiber LLC’s Environmental Law practice.