

Industrial Site Recovery Act: An Environmental Consideration For New Jersey Life Sciences Facilities

Life sciences companies must consider the applicability and requirements of various environmental laws and regulations that may apply to operations and transactions.

In the State of NJ, the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq. is one such law which, if applicable, may entail significant regulatory requirements. ISRA compliance is triggered by the transfer of ownership or operation of an "industrial establishment." There must be both an "industrial establishment" and a transaction to trigger ISRA.

Industrial Establishment

"Industrial establishment" means any place of business or real property at which such business is conducted, having the North American Industry Classification System ("NAICS") codes listed in Appendix C of the ISRA regulations, N.J.A.C. 7:26B-1.1 et seq., subject to certain specified exceptions and limitations. NAICS is a classification system created by the federal government to facilitate the collection of statistical information. All businesses have NAICS numbers based on the nature of their business. For purposes of this brief overview, suffice it to say, certain NAICS codes applicable to life sciences companies are subject to ISRA. In addition to having a listed NAICS number, the business operations must involve the storage or handling of hazardous substances as defined in the New Jersey Spill Compensation and Control Act, N.J.A.C. 7:1E.

Transfer of Ownership

The phrase "transferring ownership or operations" means "any transaction or proceeding through which an industrial establishment undergoes a change in ownership" or a significant change in operations. Sale of the real property where an industrial establishment is located may also trigger the statute. ISRA compliance is required at the time of the triggering event and prior to the closing of a property sale. Typical transactions which trigger the requirement of an industrial establishment to comply with ISRA include the sale of business, the sale of property, or the cessation of operations. Complex business transactions (such as corporate

UPDATE

April 2014

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reorganizations, initial public offerings or stock transfers) often require a more detailed analysis to determine if ISRA compliance is required. Included in the definition of a change in ownership is "the sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment." "Controlling interest" means the "interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies of a corporation, partnership or other business entity." By way of general overview, indirect owner transactions require an evaluation of whether the indirect owner's assets would have been available for remediation; corporate reorganization transactions require an evaluation of whether the subject transaction is a corporate reorganization not substantially affecting the ownership; and controlling interest transactions require an evaluation of whether the subject transaction is a transfer of a controlling interest. In each of these categories, the facts at issue must be carefully examined in conjunction with the regulatory definitions, financial information and various regulatory exemptions and waivers.

Compliance with ISRA

If an industrial establishment is subject to ISRA and it is determined there are no qualifying waivers or exemptions, the owner or operator of the industrial establishment must comply with notification and remediation requirements set forth in the referenced ISRA regulations. Compliance and site remediation can be an involved and lengthy process with concomitant expense and remediation funding requirements. Finally, it should be noted that the ISRA regulations include various alternate compliance options, exemptions and waivers.

ISRA was enacted to implement New Jersey's policy to protect the public health and safety, and the environment by promoting efficient and timely cleanups. Companies in the life sciences should be cognizant of ISRA and other environmental laws and regulations that may have an impact on the operation and transfer of business.

Please do not hesitate to contact us if you have any questions regarding ISRA or other environmental laws and regulations that may apply to your operations.