NJDEP's Proposed Site Remediation Reform Act of 2009 (SRRA) Amendments: Impact on Commercial Transactions & What You Need to Know

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Temperatures may be rising as we emerge from winter, but there is sure to be a chilling effect on the commercial real estate industry as a result of the New Jersey Department of Environmental Protection's (NJDEP) proposed amendments to the Site Remediation Reform Act of 2009, N.J.S.A. 58:10C-1 et seq. (SRRA). The NJDEP seeks to amend SRRA, also known as "SRRA 2.0," to include changes to numerous regulations related to site remediation. Among other changes included in the proposed amendments is a specific provision that will likely have a negative impact on both the real estate market and commercial property owners.

In such proposed amendments, the NJDEP is seeking to expand responsibility for reporting discovered contamination to the NJDEP during due diligence conducted pre-acquisition of a commercial property. The current regulations only require reporting if a Licensed Site Remediation Professional (LSRP) discovers contamination during the due diligence period. Thus, Sellers of commercial property permit potential Buyers to use non-LSRPs (typically environmental consultants) to perform due diligence on the property. Should the due diligence uncover potential contamination, there is no requirement to report the same to either the Seller or the NJDEP. Parties are free to, and routinely do, enter into environmental agreements regarding remediation, and the transaction proceeds accordingly.

With this specific provision of the proposed amendment, however, the matter is taken out of the hands of the parties. Once the amendment goes into effect, which is anticipated to be the Summer of 2025, any person – including non-LSRPs - will be required to report any findings to the NJDEP with the Seller, as owner, being a responsible party for site remediation. Thus, the Seller will now be at risk when it attempts to sell. Under this scenario, a potential Buyer could perform their due diligence, discover "something," report the findings to the NJDEP, and then walk away from the deal, leaving the Seller with no Buyer and a potentially costly remediation. The proposed amendment will create a large risk for Sellers to list commercial or industrial properties for sale because they will have zero protection from any alleged contamination that they were not previously aware of.

While many, including the NJDEP, may see this proposed amendment as a "loophole" being closed, the effects on the real estate market could be far-reaching. The current regulations in place ensure that transactions proceed with the Buyer being able to assess a property while limiting the Seller's risk. The current regulations also help foster cleanups, as many times the Buyer will address any issues upon closing. The new amendment, however, would soften an already tough commercial real estate market and make it difficult for Sellers.

The NJDEP's proposed SRRA amendments could significantly impact commercial real estate transactions, shifting new risks onto Sellers and reshaping due diligence practices. If you are navigating a sale or acquisition, understanding these changes is critical. Porzio's real estate, environmental, and land use attorneys are available to discuss how these developments may impact you and the broader market.