

## What does the looming May 7, 2014 Site Remediation Reform Act Deadline mean for you?

The Site Remediation Reform Act ("SRRRA"), enacted in May 2009, includes a significant requirement to complete the remedial investigation of certain sites before May 7, 2014. The requirement applies to: all discharges/contaminated areas of concern at the site where the contamination was identified on or before May 7, 1999, and all discharges/contaminated areas of concern at the site where the contamination should have been identified due to an obligation to complete a preliminary assessment and/or site investigation on or before May 7, 1999.

Implicit in the requirement are questions regarding what "entire contaminated site", "complete the remedial investigation" and "nature and extent of contamination" mean. Some of these questions have been addressed in a June 2013 Policy Statement issued by the New Jersey Department of Environmental Protection (NJDEP). Specifically, the purpose of the NJDEP Policy Statement is to clarify which investigations are subject to the deadline, to define the phrases "entire contaminated site," "complete remedial investigation," and "nature and extent of contamination," and to address the need to attain remediation standards prior to issuance of a Response Action Outcome ("RAO").

For purposes of the deadline, the Policy Statement provides that "entire contaminated site" means the discharges or contaminated areas of concern at a site, including soil, ground water, surface water, sediment and air and any location where contamination is emanating, or discharges that have migrated or are migrating offsite containing contaminants at concentrations above applicable remediation standards or screening criterion.

Completion of the remedial investigation is demonstrated by completion of a remedial investigation report pursuant to the Technical Requirements for Site Remediation, an updated receptor evaluation as part of the remedial investigation report, and a determination of whether a remedial action is required for the site or contaminated areas of concern pursuant to the Technical Requirements. From a performance based perspective, the Policy Statement specifically notes that the professional judgment of the Licensed

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### Attorney Advertising

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#### ABOUT US



Site remediation Professional ("LSRP") governs the determinations/conclusions of when (1) there is sufficient information to know the nature and extent of a discharge of a contaminant, both on- and off-site; (2) there is sufficient information to know which, if any, receptors have been or may be impacted by the discharge being remediated; and (3) when additional delineation is not necessary in order to select appropriate remedial action(s) to protect public health and the environment.

The NJDEP interprets "the nature and extent of a contaminant" to mean delineation to the applicable remediation standards at the time the remedial investigation report is submitted. To do so, the LSRP should use applicable regulations, guidance, and professional judgment to determine when sufficient data exists to demonstrate the nature and extent of a discharge of a contaminant. The LSRP is allowed to complete the delineation using multiple lines of evidence and by employing alternative methods, in addition to collecting samples, so long as the remedial investigation report includes documentation in support of all determinations.

NJDEP is sending letters to those parties who it believes may be subject to this deadline. Others are voluntarily coming forward. And, of course, there is a form (May 7, 2014 Remedial Investigation Complete supporting Documentation Form) as well as guidance that must be submitted by those who may have received an NJDEP letter but believe they have completed the required remedial investigation.

With all of that said, the May 2014 deadline creates a definitive burden on responsible parties, one which must be met to avoid the specter of direct oversight of pending remedial projects. Please do not hesitate to contact us if you have received the NJDEP letter or have any other questions or concerns regarding whether the May 7, 2014 Site Remediation Reform Act Deadline affects you.

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