



SITE REMEDIATION REFORM ACT OVERVIEW

By David B. Farer

Site Remediation Reform Act ("SRRA"), passed by the New Jersey Assembly and Senate on March 16, 2009 as A.2962/S.1897; enacted May 7, 2009, N.J. Stat. Ann. §58:10C-1 *et seq.*; amended 2010.

Special Adopted Repeal and New Rules: N.J.A.C. 7:26B-1.5 and 4.1; 7:26C ("ARRCS rule"); and 7:26E-1.5, 1.7, 3.12 and 5.2 [Adopted November 4, 2009].

Special Adopted New Rules: N.J.A.C. 7:14B-1.8; 7:26B-4.3 and 5.9; 7:26D-7.5; and 7:26E-1.9, 1.14 through 1.19 and 7.2 [Adopted November 4, 2009].

Special Adopted Amendments: N.J.A.C. 7:1E-5.7 and 6.5; 7:1I-1.5, 2.6 and 3.3; 7:1J-1.4, 2.7 and 6.3; 7:7A-5.4 and 15.4; 7:8-5.4; 7:9C-1.1 and 1.6; 7:14A-3.1, 7.4, 7.5 and 9.10; 7:14B-1.6, 1.7, 2.4, 3.5, 3.6, 3.8, 4.2, 5.5, 5.6, 7.2, 7.4, 8.3, 8.4, 8.5, 8.7, 9 and 10.2; 7:22-3.4, 3.11, 3.17, 4.11 and 4.17; 7:26B-1.4, 1.6, 1.8 through 1.11, 3.3, 3.4, 4.2, 5.1, 5.3, 5.5, 6.1 through 6.5, 6.7, 8.1, 8.2, 8.3; 7:26D-1.1, 1.5, 7.1, 7.3, 7.4 and 7:26D Appendix 5; 7:26E-1.2, 1.3, 1.4, 1.6, 1.8, 1.11, 1.12, 2.1, 2.2, 3.1 through 3.5, 3.7, 3.9, 3.13, 4.1, 4.2, 4.4, 4.5, 4.6, 4.8, 5.1, 6, 7.1, 8 and 7:26E Appendix H; 7:38-1.4, 2.4, 6.6, 9.2 and 9.6; and 7:45-8.5 [Adopted November 4, 2009].

Special Adopted Repeals: N.J.A.C. 7:1J-6.9; 7:26B-2.2, 2.3, 3.1 and 7:26B Appendix A; 7:26D Appendix 6; and 7:26E Appendices B and F [Adopted: November 4, 2009]

1. Legislative Purpose

- To establish and implement a Licensed Site Remediation Professional ("LSRP") program pursuant to which LSRPs, rather than DEP, will determine the propriety and conclusion of environmental investigations and cleanups in a wide variety of settings and situations, and pursuant to which LSRPs will issue the final sign-off document – known as a Response Action Outcome ("RAO") -- rather than DEP issuing a No Further Action Letter ("NFA").
- To establish a licensing regime for individuals with requisite degrees of scientific or engineering education, and training and experience in the field of site remediation, whose examination, licensing and performance will be overseen by a board, and who will be subject to penalties, enforcement proceedings and license revocation for derogation of responsibilities and requirements.
- To allow DEP to focus on high priority contamination sites over which it will retain direct oversight and review powers, in certain cases mandatory and others elective.
- To thereby ease the current overload on DEP's constrained resources and personnel, reduce backlogs in reviews and approvals of site investigation and cleanup plans and reports, and thus speed up the cleanup process to allow for quicker case completion and site redevelopment.
- To establish mandatory timeframes for all phases of environmental investigations and cleanups.
- To expand reporting requirements to DEP on discovery of spills, discharges and evidence of contamination where LSRPs are party to the information.

- To establish a permitting program for engineering and institutional controls, with specific financial assurance requirements.
- To modify the state's "innocent purchaser" protections so that LSRP-certified work is deemed the equivalent of that overseen and approved by DEP.
- To establish a new site-ranking system of priority remediation sites within a year of the law's enactment, with DEP having the authority to retain oversight over those sites that have been accorded the highest priority.
- To establish "presumptive remedies" for cleanups of residential properties, schools and child care facilities.
- To have the reforms apply to all DEP site remediation programs, including those under the Industrial Site Recovery Act ("ISRA") and the state's Brownfield Program.

2. Establishment of the LSRP Program and Temporary Licenses

- SRRA allowed DEP six months after enactment to issue interim rules for implementing the new law, and three months to establish a temporary licensing program for LSRPs and to issue guidance for license applications, fees and forms.
- With the interim rules and temporary licensing program in place, all new projects under the state's site remediation programs are overseen by LSRPs rather than DEP, unless they fall into specific exceptions described below.
- Parties with cases under DEP oversight by November 3, 2009 (180 days after SRRA enactment) will have until May 7, 2012 (three years after enactment) to switch over to the LSRP program, provided they do not fall within one of the exceptions, and further provided that if a penalty has become due on a remediation, or DEP has issued a final order on a remediation, or an uncontested stipulated penalty is due, then DEP may require that the matter be switched over to the LSRP program at any time.
- Temporary licenses are to be issued to individuals only, are non-transferable and are to be valid for a period of up to three years.
- Necessary qualifications for a temporary licensee include:
 - a. Bachelor's degree or higher in natural, chemical or physical science, or engineering degree related to site remediation, from an accredited institution;
 - b. 10 years of full-time professional experience in the field (that is, application of scientific or engineering principles to contaminated site remediation where conclusions form the basis for reports or other documents), of which 5 years must have been in New Jersey, and at least 3 of which must have occurred immediately before the application;
 - c. recent completion of federal health and safety training and state-mandated training on DEP Technical Requirements for Site Remediation;
 - d. clean record on environmental crime or similar criminal offense, and on any fraud, theft, deception, forgery or similar crime; and
 - e. no professional license revocation by licensing board or other professional agency for past 10 years.
 - f. DEP may allow 1 year of professional experience credit for applicants with relevant master's degrees, and up to 2 years of credit for applicants with relevant doctorate degrees.

- For a temporary license concerning remediation of underground storage tank ("UST") discharges only, DEP may allow substitution of full-time professional experience for holding of a bachelor's degree, provided the applicant has 14 years of full-time professional experience, of which at least 5 must have occurred in New Jersey immediately before the application.

3. SRP Licensing Board and Licenses

- A Site Remediation Professional Licensing Board (the "Board") is to be established to establish licensing requirements and to oversee licensing and performance of LSRPs.
- The Board is to be composed of 13 members:
 - a. The DEP Commissioner or designee (to be chair);
 - b. The State Geologist or designee;
- Eleven New Jersey residents to be appointed by the Governor and confirmed by the Senate, to be comprised of:
 - a. 6 licensed site remediation professionals (initially temporary licensees), with initial terms of one to four years, and then all for four year terms;
 - b. 3 members of statewide environmental protection organizations knowledgeable concerning hazardous substance discharges, one of whom is to be an LSRP, also to serve similar terms as above;
 - c. 1 member of the business community knowledgeable concerning hazardous substance discharges, with an initial term of three years and then four year terms; and
 - d. 1 member of the academic community knowledgeable concerning hazardous substance discharges, with a term of four years.
- The Board is to administer licensing examinations, issue licenses and renewals, establish standards for continuing education and track compliance with those requirements; establish and collect fees; adopt and administer standards for professional conduct; investigate complaints and impose discipline, and suspend and revoke licenses of violators; publish and maintain names and contact information for LSRPs; publish and maintain a list of suspended or revoked licenses; provide public information on the program, and maintain and make available a record of complaints against LSRPs.
- The Board has 18 months to adopt regulations on implementation, administration and enforcement of the program.
- No individual is to be permitted to take the licensing exam until the Board has determined that the applicant meets the standards for education, training and experience, and for references in this regard.
- Necessary qualifications for an applicant to be eligible for the exam:
 - a. Holder of Bachelor's degree or higher in natural, chemical or physical science, or engineering degree related to site remediation, from an accredited institution; or holder of temporary license to remediate USTs only (except that if holder of temporary license fails the exam, applicant may not reapply for license);
 - b. 8 years of full-time professional experience in the field (that is, application of scientific or engineering principles to contaminated site remediation where conclusions form the basis for reports or other documents), of which 5 years must have been in New Jersey, and at least 3 of which must have occurred immediately before the application;

- c. a minimum of 5,000 hours of relevant professional experience in New Jersey over the five years immediately prior to application that is of a professional grade and character that indicates fitness to issue an RAO;
- d. recent completion of federal health and safety training and state-mandated training on DEP Technical Requirements for Site Remediation;
- e. clean record on environmental crime or similar criminal offense, and on any fraud, theft, deception, forgery or similar crime; and
- f. no professional license revocation by licensing board or other professional agency for past 10 years.
- g. DEP may allow 1 year of professional experience credit for applicants with relevant master's degrees, and up to 2 years of credit for applicants with relevant doctorate degrees.

4. Exceptions to use of LSRP Program

-- SRRA requires DEP to maintain and/or take on direct oversight responsibilities for particular types of remediation sites; namely, where:

- a. the person responsible for the remediation has a history of remediation noncompliance specifically including at least two enforcement actions within a five year period following enactment of SRRA;
- b. the person responsible for the remediation has failed to meet a mandatory or expedited DEP timeframe (including extensions) or a schedule under an administrative or court order; or
- c. the person responsible for the remediation has: (1) failed, prior to the enactment of SRRA, to complete the remedial investigation of the entire site within 10 years after the discovery of the discharge, and (2) failed to complete the remedial investigation within 5 years after enactment of SRRA.

-- SRRA allows DEP to elect to maintain and/or undertake direct oversight of remediations where:

- a. contamination at the site includes chromate wastes;
- b. DEP determines that more than one environmentally sensitive natural resource has been injured by contamination from the site;
- c. the site has contributed to sediment contamination in a surface water body by PCBs, mercury, arsenic or dioxin; or
- d. the site is in the highest priority category of the new ranking system to be developed by DEP under SRRA.

--Where a site falls into either of these categories:

- (1) all work and submissions to DEP are still be undertaken by an LSRP;
- (2) DEP selects the remedial action for the site;
- (3) the financial assurance must be in the form of a Remediation Trust Fund funded in the amount estimated for the remedial action; and
- (4) any disbursements from the Remediation Trust Fund must be approved in advance by DEP (see more on financial assurances below).

- For remediation of discharges from underground storage tanks that are not regulated under the New Jersey UST program, either an LSRP or a certified subsurface evaluator may be used.
- However, for remediation of discharges from regulated USTs, a certified subsurface evaluator may not be used.
- Due diligence activities conducted for the purpose of undertaking all appropriate inquiry to qualify for the state's purchaser liability protections are specifically exempted from the requirements to engage an LSRP.

5. Role and Responsibilities of the LSRP

- SRRA provides that the highest priority of the LSRP in performing professional services is the protection of human health and the environment.
- For all submissions made to DEP, an LSRP must certify that the described work was done, that the LSRP managed, supervised or performed the work that is the basis for the submission (or reviewed and evaluated the work performed by others or completed reliable work of another LSRP), and that the work and the submitted documents are consistent with all applicable remediation requirements of DEP.
- For all of their work and decisions, LSRPs must abide by all applicable state and federal standards, including DEP's Technical Standards for Site Remediation, and the mandatory timeframes and presumptive remedies to be established by DEP.
- LSRPs may not provide services outside of their areas of professional competency unless they are relying on other professionals who are determined by the LSRPs to be reasonably qualified in their fields. For example, an LSRP cannot perform professional engineering practices without being a New Jersey-licensed professional engineer.
- LSRPs must notify DEP within 15 days of being retained to conduct remediation, and within 15 days of being released from retention if the remediation has not yet been completed.
- LSRPs must correct any submission deficiencies identified by DEP within specified timeframes.
- LSRPs may complete tasks based on remedial work performed under the supervision of another LSRP so long as the prior work is fully reviewed and verifiable, and any deficiencies are corrected.
- The LSRP is to issue the final remediation sign-off document – the Response Action Outcome ("RAO")
- to the party responsible for conducting the remediation, and file it with DEP, when the LSRP determines that the site has been remediated and is in compliance. See below for more detail on the RAO and its relationship to a DEP No Further Action letter ("NFA").
- The LSRP has other specific reporting requirements, described below.
- LSRPs may not accept compensation from parties whose interests are adverse or conflicting without a written waiver executed by all parties.
- LSRPs may not be salaried employees of the person responsible for conducting the remediation or any related entities.
- LSRPs must maintain and preserve all data, documents and information concerning remediation activities at each contaminated site that relate in any way to contamination at the site, including all technical records and contractual documents no matter by whom developed; and must submit three electronic copies of the records to DEP at the time the RAO is filed with DEP.

6. LSRP Notification Provisions

- Until the recent implementation of the LSRP program, it has been the responsibility of a property owner or operator – and not third parties such as environmental consultants – to report knowledge of spills, discharges, or evidence of contamination to DEP, except as to spills or discharges from regulated underground storage tank systems.
- Under the reform law, LSRPs now have affirmative obligations to report knowledge of contamination to DEP in a variety of settings.
- When an LSRP identifies a condition that meets the new standard of an "immediate environmental concern," the LSRP must immediately report the condition to the DEP hotline and to the person responsible for conducting the remediation.
- "Immediate environmental concern" is defined as a condition at a contaminated site where:
 - (1) a potable water well is found to have contamination in excess of DEP groundwater standards;
 - (2) there is a confirmed toxic or harmful indoor air quality condition, with unacceptable human health exposure, due to vapor intrusion of contaminants; or demonstrated physical damage to essential underground services due to such vapor migration;
 - (3) there is confirmed contamination of a nature that could result in acute human health exposure in the event of dermal contact, ingestion or inhalation of the contamination; or
 - (4) any other condition that poses an immediate threat to the environment or to the public health and safety.
- When an LSRP obtains specific knowledge that a discharge has occurred on a contaminated site for which the LSRP is responsible, the LSRP must report the condition to the DEP hotline and to the person responsible for conducting the remediation; except that the reporting requirement does not apply where the discharge may be caused by historic fill material.
- When an LSRP learns of an action or decision by a client that deviates from the LSRP's Remedial Action Workplan or other report, the LSRP must promptly notify DEP and the client, in writing, of the deviation.
- When an LSRP learns of material information subsequent to submission of a report to DEP, which would materially change the report, the LSRP must promptly notify DEP and the client of the information.
- When an LSRP learns, before issuance of an RAO, of material information concerning a report submitted by a prior LSRP, which information was not disclosed in a prior report, the LSRP must promptly notify DEP and the client.
- Other than as required by law and as to information in the public domain, an LSRP may not reveal information obtained in a professional capacity without the prior consent of the client, provided the client has advised the LSRP in writing that the information is confidential.
- The LSRP's reporting obligations survive discharge by the client.
- SRRA protects LSRPs against retaliation actions that result from the LSRP properly exercising its duties of disclosure, reporting, providing information on violations of law, or refusing to engage in activities and practices that the LSRP believes illegal or incompatible with the mandate of public policy concerning protection of human health or the environment.
- While due diligence activities are exempted from the circumstances under which LSRPs must be engaged, there is no exception to the reporting obligation that otherwise applies to an LSRP no matter whether the LSRP is engaged by the person responsible for conducting the remediation; namely, the obligation to report identification of an immediate environmental concern.

7. Disciplinary Proceedings, Civil and Criminal Actions and Inspections

- LSRPs are subject to Board proceedings, and to civil and criminal proceedings, for violations of their responsibilities.
- The Board's actions against LSRPs may include license suspensions or revocation, civil or administrative actions for injunctive relief, damages, costs and/or penalties, and referral of matters to the Attorney General for criminal proceedings.
- DEP and the Board have the authority to enter any location to investigate, sample, or copy records concerning activities pursuant to SRRA.
- DEP and the Board may seek a warrant to enter where entrance has been denied or for other good cause.
- The Board is to annually audit the submissions and conduct of at least 10% of the total number of LSRPs, and the LSRPs and those for whom they are working must cooperate with the audits.

8. DEP Review of LSRP Submissions and RAO

- DEP is to inspect all documents and information from LSRPs upon receipt, and may conduct additional review if it determines that: (1) the LSRP has not fulfilled its responsibilities under SRRA; (2) deficiencies, errors or omissions will result in the inability to determine whether the remedy will be protective of health, safety or the environment; or (3) the remediation will not be protective.
- DEP is to perform additional review of documents or performance of the remediation if:
 - (1) the contamination poses a significant detriment to health, safety or the environment based on a receptor evaluation, or the site is in the highest category of the new ranking system (see below);
 - (2) contamination may affect a child care center, school or other sensitive population;
 - (3) the site is located in a low-income community of color that has a higher density of contamination sites and discharges, with potential for increased environmental and health impacts, than other communities; or
 - (4) state grants or loans are being use for remediation of a site or area of concern.
- DEP may elect to perform additional review of documents or performance of the remediation if:
 - (1) a site is in a designated Brownfield Development Area or other economic development priority area;
 - (2) remediation is subject to federal oversight;
 - (3) the person responsible for conducting the remediation, or LSRP, has been out of compliance with SRRA or its rules or regulations;
 - (4) a site has impacted a natural resource;
 - (5) an oversight document, administrative order or Remediation Agreement is in effect for the site that requires DEP review and approval of submissions;
 - (6) there is substantial public interest in the site;
 - (7) use of alternative or site specific remediation standards have been proposed for the site;

- (8) remediation requires issuance of a permit by DEP;
 - (9) use of a site is changing from any use to residential or mixed use;
 - (10) submission may not be in compliance with any rules or regulations applicable to site remediation; or
 - (11) remediation may not be protective of health, safety or the environment.
- In any event, DEP is to perform additional review of a minimum of 10% of all documents submitted annually by LSRPs.
 - DEP is empowered to invalidate an RAO if:
 - (1) DEP determines that the remedial action is not protective of public safety, health or the environment; or
 - (2) a presumptive remedy (see below) has not been implemented pursuant to SRRA, unless DEP determines that the remedial action is as protective of public safety, health and the environment as the presumptive remedy.
 - DEP may not audit an RAO more than 3 years after it has been filed by the LSRP, unless:
 - (1) undiscovered contamination is found on the site;
 - (2) the Board conducts an investigation of the LSRP; or
 - (3) the LSRP's license has been suspended or revoked by the Board.

9. Mandatory Timeframes

- SRRA directs DEP to establish mandatory timeframes, and where necessary expedited timeframes, for every stage of an environmental investigation and cleanup, including preliminary assessments, site investigations, remedial investigations and remedial actions.
- In establishing the timeframes, DEP was directed to take into account factors including potential health and safety impacts, ongoing commercial or industrial operations at the site and whether there are any discharges to groundwater or surface water, and the complexity of the site.
- The timeframes apply whether direct oversight is by DEP or an LSRP.
- To date, pursuant to the ARRCs rule, DEP has only established mandatory timeframes for Preliminary Assessments and Site Evaluations, Receptor Evaluations, areas of Immediate Environmental Concern and recovery of free product.
- DEP must grant timeframe extensions where:
 - a. DEP has delayed in reviewing or granting a permit, provided the permit application was timely and complete;
 - b. the State has delayed in providing funding, provided the funding application was timely and complete; or
 - c. DEP has delayed in issuing an approval or permit for long-term operation, maintenance and monitoring of an engineering control, provided the request for approval was complete.

- DEP may grant timeframe extensions where:
 - a. there has been a delay in obtaining access to a property, and notwithstanding good faith efforts to obtain access it has not been granted, and the person conducting the remediation has been compelled to commence an access lawsuit in Superior Court;
 - b. the delay has been caused by circumstance out of the person's control, such as fire, flood, riot or strike; or
 - c. other site-specific circumstances warrant an extension as determined by DEP.

10. Liability protections under an RAO, including Covenant Not to Sue

- Once an LSRP issues an RAO to the person responsible for conducting the remediation, that person is deemed, by operation of law, to have received a Covenant Not to Sue from the State of New Jersey.
- This differs from recent practice and procedure, pursuant to which DEP has undertaken direct oversight and has been issuing a case-specific Covenant Not to Sue in conjunction with issuance of an NFA.
- SRRA provides that once licenses are issued to LSRPs, DEP will no longer issue Covenants Not to Sue, except that DEP may issue such a covenant in conjunction with an NFA concerning an unregulated heating oil tank.
- As with a DEP- issued Covenant Not to Sue, the new Covenant by operation of law will release the person who undertook the remediation from civil liability to the State to perform further cleanup, or for natural resource damage, loss or restoration, in all areas of concern addressed in the RAO; and it is subject to any conditions and limitations in the RAO.
- The Covenant may apply to the entire property provided a preliminary assessment, and if necessary a site assessment and any necessary remedial actions, are undertaken for the entire property.
- The Covenant also protects subsequent owners, tenants and operators.
- The Covenant will not protect dischargers, or those deemed "responsible" parties under the State's Spill Compensation and Control Act ("Spill Act").
- This includes parties who are responsible solely due to property ownership, unless those parties can establish their innocence under the State's "innocent purchaser" protections (see New Jersey Brownfields Program overview below).
- The Covenant does not apply to any new discharge occurring after the issuance of the RAO, and its effectiveness is conditioned on the recipient -- or any subsequent owner, tenant or operator -- abiding by the conditions and limitations of the RAO; in particular the monitoring and maintenance of any institutional or engineering controls required by the RAO.
- By operation of law, the Covenant is also deemed to provide that:
 - a. the Covenant is revoked if the engineering or institutional controls are not being maintained or are no longer in place (see below);
 - b. where the remediation involves use of engineering controls, the person benefiting from the use of the engineering controls may not make a claim against the State's Spill Fund or Sanitary Landfill Facility Contingency Fund ("Landfill Fund") for costs or damages concerning the property or its cleanup; and

- c. where the remediation involves use of an institutional control only, claims against the Spill Fund or the Landfill Fund are not barred if DEP orders additional remediation after a validly-issued RAO, except that the Covenant is deemed to bar such a claim if DEP orders additional remediation in order to remove the institutional control.
- If DEP finds that the property no longer meets the conditions of the RAO, it must provide notice to the person responsible for maintaining compliance with the RAO, and DEP has the option of allowing a reasonable period of time for the person to achieve compliance with the RAO terms.
- If the party fails to come into compliance in the required period of time, or if DEP does not allow such a period of time, then the Covenant Not to Sue is deemed to be revoked by operation of law.
- Where a Covenant Not to Sue is revoked, liability for further remediation does not apply retroactively to a party for whom the Covenant remained effective during its ownership, tenancy or operation.

11. HDSRF Grant and Loan Subrogation Condition

- The State's Hazardous Discharge Site Remediation Fund ("HDSRF") is a loan and grant program for a range of eligible parties including those who voluntarily undertake cleanups (see Brownfields Program overview below).
- HDSRF conditions grants and loans on subrogation to DEP of specific rights of the recipient to recover remediation costs from certain third parties.
- SRRA specifically adds insurance carriers as targets against whom claims must be subrogated to DEP.
- SRRA also provides that the State's Economic Development Authority may not award grants and loans to parties who relinquish, impair or waive rights of recovery against insurance carriers, dischargers, or persons in any way responsible for a hazardous substance.

12. Impact on ISRA

- Now that the new LSRP program is established by DEP and in place, parties subject to New Jersey's transaction-triggered environmental law – the Industrial Site Recovery Act ("ISRA"; see Overview below)
- will be proceeding under the oversight of an LSRP rather than DEP, unless one of the exceptions apply pursuant to which DEP maintains or takes on direct oversight (see section 4 above).
- As to the pre-conditions to closing of title under ISRA:
 - a. Rather than entering a Remediation Agreement with DEP, the subject party will be able to close pursuant to an LSRP's Remediation Certification, which includes the LSRP's evaluation of the appropriate financial assurance and certification that the assurance has been established (see below as to financial assurances).
 - b. Rather than awaiting DEP approval of a Remedial Action Workplan ("RAW"), an LSRP-certified RAW will suffice.
 - c. Rather than seeking a DEP NFA, whether as a pre-condition to closing or as a post-closing requirement, a subject party will conclude its ISRA requirements through an LSRP-issued RAO.
- As to the ISRA submission process:
 - a. The initial notice of the ISRA trigger, including the description of the anticipated transaction or cessation of operations, is still to be provided to DEP by the owner or operator of the industrial establishment under existing regulatory timeframes.

- b. The balance of the ISRA program requirements are to be submitted by the LSRP.
- c. In ISRA cases under DEP oversight, where complete submissions have been made to DEP, including details of any remedial action, and DEP determines that further remediation is required, those further activities may be performed using an LSRP.

13 Impact on the Spill Act and the Brownfields Program

- The State's Spill Compensation and Control Act ("Spill Act") and Brownfields program, as well as ISRA and the State's UST program, are amended to provide that LSRP-certified work is deemed equivalent to that overseen and approved by DEP.
- This includes work undertaken to achieve the liability protections, including "innocent purchaser" protections, of the Spill Act that insulate qualifying parties against liability to the state and third parties.
- As to the liability protections that apply to parties such as Brownfield developers who knowingly buy contaminated sites but clean them up to DEP standards:
 - a. RAOs are acknowledged as the equivalent of an NFA; and
 - b. the responsibility to commence remediation of a discharge within 30 days after acquisition, pursuant to a DEP oversight document executed prior to closing, is modified to provide that after enactment of SRRA, the party seeking the protections is instead to:
 - (1) notify DEP of the acquisition by the date of closing; and then
 - (2) proceed with remediation pursuant to the new LSRP program.
- The Spill Act's private party statutory cause of action, allowing parties who clean up a discharge to pursue others for contribution, is amended as follows:
 - a. the contribution protection provision is amended to protect parties who receive an RAO from Spill Act claims by third parties for contribution concerning matters addressed in an RAO; and
 - b. the right to pursue treble damages from third parties in particular circumstances is expanded to include cases not only where a contribution plaintiff is remediating a site under a DEP oversight document, but also where plaintiffs are cleaning up under the LSRP program.
- Developers seeking to recoup cleanup costs under the state's Brownfield Site Remediation Fund need no longer enter a Memorandum of Agreement or other oversight document with DEP provided they are proceeding under the LSRP program.

14. Ranking system

- The Spill Act already requires DEP to keep a master list for the cleanup of hazardous discharge sites, and to rank the sites in the order in which DEP intended to clean them up.
- SRRA revises the requirement by directing DEP to maintain a database of all known hazardous discharge sites, cases and areas of concern in the State, and, within one year of enactment of the reform law, to establish a new ranking system based upon:
 - a. the level of risk to public health, safety or the environment;
 - b. the length of time each site has been undergoing remediation;

- c. the economic impact of the contaminated site on the municipality and on surrounding properties; and
 - d. other factors deemed relevant by DEP.
- The database is to include information identifying the location of each site, the status of remediation, the contaminants of concern, and the existence of any engineering or institutional controls; and is to be available to the public on the DEP website.
- As noted above in section 4, DEP may elect to maintain and/or take on direct oversight of sites that rank in the highest priority category of the new ranking system.

15. Remediation Funding Sources

- The universe of parties who must establish cleanup financial assurances has not been expanded by SRRA.
- SRRA carves out specific new exemptions for governmental entities, parties remediating primary or secondary residences, owners and operators of licensed child care facilities and parties cleaning up such sites, and parties cleaning up public or private schools or charter schools.
- In matters under the direct oversight of an LSRP:
 - a. the LSRP, rather than DEP, is to determine the amount of the financial assurance;
 - b. when the remediation estimate decreases, the party maintaining the financial assurance may submit written documentation to DEP certified by the LSRP as to the applicable decrease, may decrease the funding source upon submission of the LSRP certification, and may use the released source to pay for the actual remediation costs; and
 - c. for ISRA cases, the financial assurance is to be established within 14 days of the LSRP certifying a Remedial Action Workplan, or upon the LSRP's submission of a Remediation Certification.
- In matters under the direct oversight of DEP, the financial assurance is to be established upon the party becoming subject to DEP oversight, and the only permitted form of financial assurance is a Remediation Trust Fund.
- In matters under LSRP oversight, parties may still use a remediation trust fund, an environmental insurance policy, a line of credit (though only one regulated pursuant to New Jersey or federal law) or a self-guaranty (but see the new conditions below), and may now also use a letter of credit from a New Jersey- or federally-regulated financial institution, which letter of credit will have to conform to a model document to be established by DEP.
- In order to self-guaranty, documentation submitted to DEP will now have to include audited financial statements in which the auditor expresses an unqualified opinion that covers the statements of income and expenses, and balance sheet or similar statements of assets and liabilities, already required by law.
- The Remediation Funding Source surcharge of 1% annually remains in effect. Those exempt by virtue of having voluntarily entered a memorandum of understanding with DEP to remediate property remain exempt so long as they meet the mandatory timeframes of SRRA.

16. Unrestricted Use Cleanups, and Presumptive and Alternative Remedies, for Residential, Child Care and School Sites

- SRRA requires that for any remediations started a year after enactment of the reform law where: (1) new construction is proposed for residential, child care or school use; or (2) there will be a change of use to residential, child care or school purposes, or to any other purpose involving use by a sensitive population (such as residences, schools, child care facilities, parks and playgrounds); DEP must require the use of:
 - a. an unrestricted use remedial action;
 - b. a presumptive remedy; or
 - c. an alternative remedy.
- For any remediations started upon enactment of the reform law at a site to be used for residential, child care or school purposes, or by sensitive populations, DEP may require use of an unrestricted use remedial action or a presumptive remedy.
- SRRA directs DEP to establish presumptive remedies; that is, remedial actions; for use at residential, child care and school sites.
- DEP is to base presumptive remedies on:
 - a. the historic use of the property;
 - b. the nature and extent of contamination there;
 - c. the future use of the site; and
 - d. other factors that DEP deems relevant.
- Presumptive remedies may include institutional and engineering controls.
- In the event the party conducting the remediation can demonstrate to DEP that both unrestricted use and presumptive remedies would be impractical due to site conditions, and that an alternative remedy would be equally protective, then an alternative remedy may be proposed for review and approval.
- DEP may authorize a party undertaking a remediation to divide the site into separate areas of concern, and to employ different remedial actions for each consistent with the planned future use of the property.
- Construction of single family homes, schools and child care centers is prohibited on landfills where engineering controls are required for management of landfill gas or leachate.
- SRRA empowers DEP to disapprove selection of a remedial action that would render the property unusable for future redevelopment or for recreational use.
- DEP may also require treatment or removal of contamination that would pose an acute health or safety hazard upon failure of an engineering control.

17. Permitting Program for Institutional and Engineering Controls

- SRRA directs DEP to establish a permitting program for operation, maintenance and inspection of institutional and engineering controls and the submission of biennial certifications.
- DEP is authorized to issue a permit, permit by rule, or general permit.
- DEP is authorized to require that a person issued a permit establish and maintain insurance, financial assurance or another financial instrument to guarantee the availability of funding to operate, maintain and inspect the engineering controls required for a remedial action, for the period over which the controls are required.
- Parties maintaining such funding sources may petition DEP annually to decrease the amount of funding.
- DEP may also charge application and annual administrative fees.
- Parties exempted from the financial assurance requirements are:
 - a. government entities not otherwise liable for cleanup under the Spill Act;
 - b. parties who acquired contaminated property prior to enactment of SRRA and who undertake a remediation of the property;
 - c. parties who undertake a remediation at their primary or secondary residence;
 - d. owners or operators of licensed child care centers who perform remediation of their sites;
 - e. persons responsible for conducting remediation at a public, private or charter school; or
 - f. owners or operators of small businesses conducting remediation.