

# Site Remediation Reform Act (S.1897/A.2962)

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# WILL NEW JERSEY'S APPROACH PORTEND THE IMPLEMENTATION BY OTHERS?

- New Jersey is a bellwether state
  - New Jersey Spill Act and CERCLA
  - New Jersey CRTK and SARA CRTK
  - New Jersey TCPA and SARA Extraordinary Hazardous Chemicals
  - But – ECRA/ISRA
- Other States-Licensed Professionals
  - MA, CT, NC, OH, IL, WA (?), DE (?)

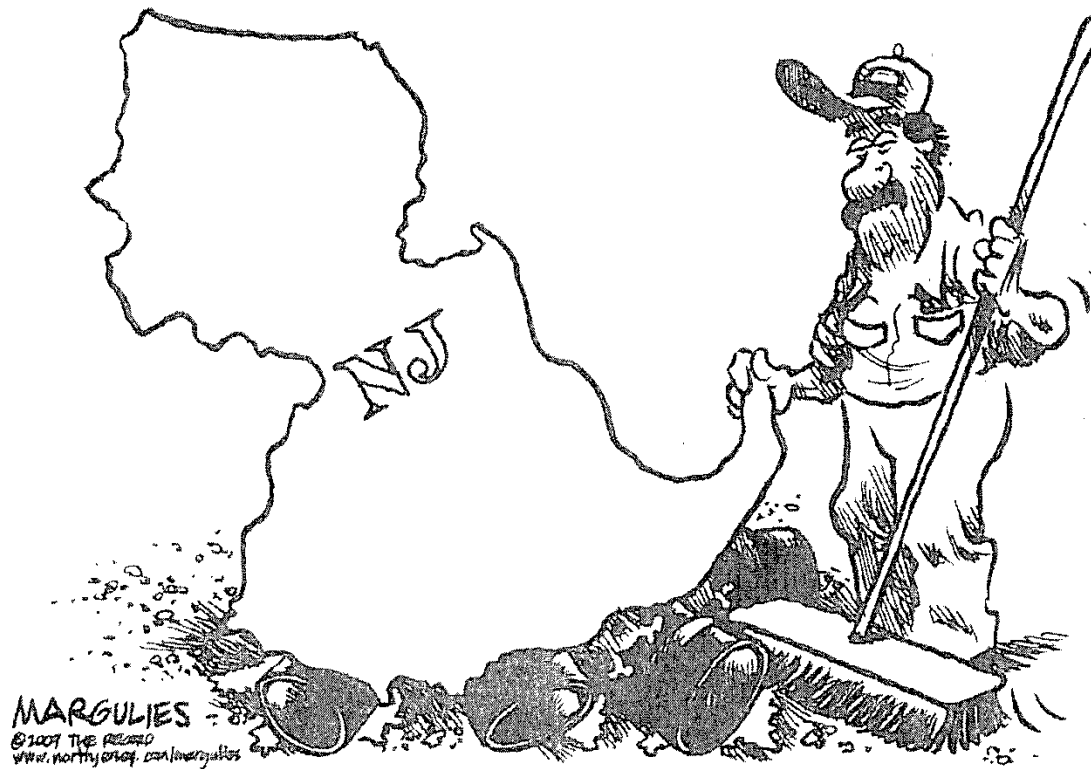
# NEW JERSEY'S SITE 'REMEDIATION REFORM ACT' How did we get here?

- Need to recycle Brownfields
- "Kiddie Kollege" and the growing backlog of site remediation cases at DEP
- Commissioner Lisa P. Jackson testifies to Legislature (October 2006)
- DEP Legislature Reform Stakeholder Process
- DEP "white papers" on site remediation reform
- S.1897 introduced June 2008

# NEW JERSEY'S SITE 'REMEDIATION REFORM ACT'

How did we get here?

- Further dialogue with interested parties
- Senate and Assembly hearings by Environment Committees
- Revisions, revisions, revisions...
- Hearings, hearings, hearings...
- Bill approved by Senate and Assembly Voted – March 16, 2009
- Bill signed into law May 7, 2009



State okays private cleanup of toxic waste

3-20-09

# WHERE WE ARE

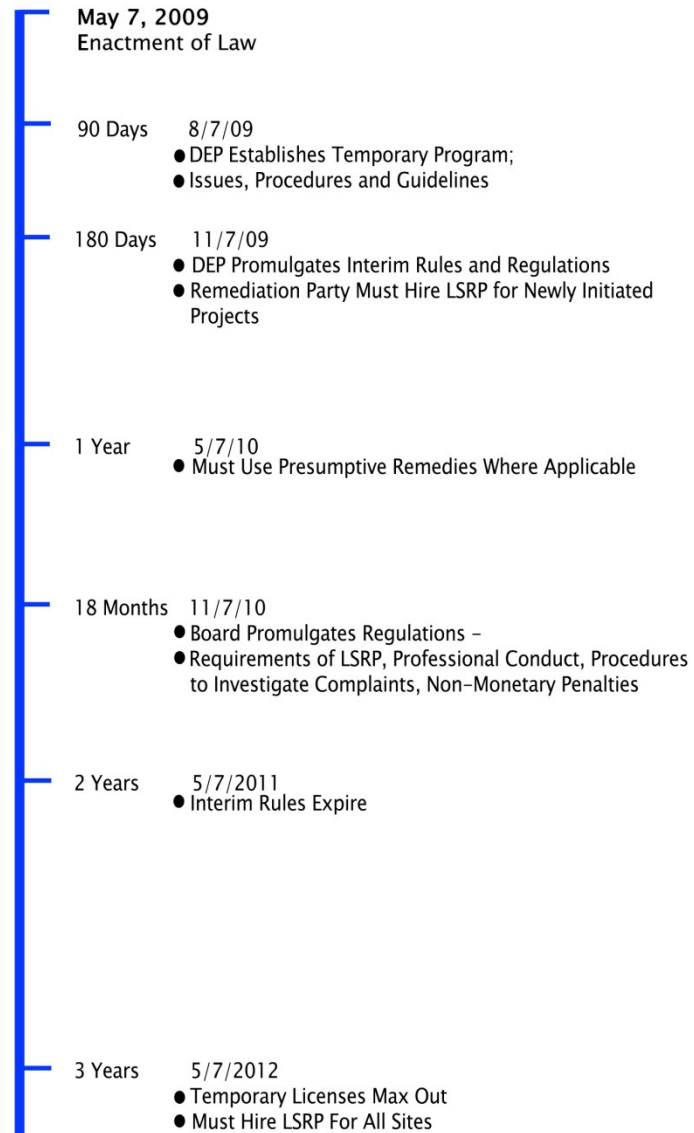
- No Bill is perfect
- Includes some flexibility for LSRP
- Could be cultural change for government
- Will result in faster cleanups netting environmental improvement
- Creates a true Environmental Professional

# PROCESS: How It's Supposed to Work

## BIFURCATION OF RESPONSIBILITIES

- NJDEP controls sites and responsible parties
- Licensing Board governs LSRP-Huge win!!

## Langan Engineering & Environmental Services Timeline Site Remediation Reform Act



# SRRA FEATURES

- Program relies on Licensed Site Remediation Professional (LSRP) who is licensed by a 13 member board
- Board is “in but not of” NJDEP
- LSRP’s highest priority is protection of public health, safety, and the environment
- Program has Fast Start – Temporary Program
  - DEP issues regs within 90 days of enactment
  - No comment period

# SRRA FEATURES

- 180 days after enactment, new cases must have LSRP (Temp) November 7, 2009
- LSRP performs studies and remediation without NJDEP approval
- However, all key documents are screened or “inspected by NJDEP”
- If screening shows potential problems, DEP performs “ Additional Review”

## SRRA FEATURES

- NJDEP obligated to perform “Additional Review” on an least 10% of yearly submissions.
- If DEP finds work of LSRP does not comply with Code of Conduct, can refer to Licensing Board for audit. (“Any person may trigger audit.”)
- All sites, as of May 7, 2012, must have LSRP (Three years)

# SRRA FEATURES

- LSRP issues a Response Action Outcome (RAO) which is equivalent to No Further Action and has “as an operation of law” a Covenant Not to Sue.
- Remedy can only be overturned if it is not protective of human health, safety, and the environment.

# SRRA FEATURES

- Law establishes:
  - Timeframes for investigating and remediating sites
  - Presumptive remedies for residential, daycare, educational use
  - Direct oversight program
  - Affirmative obligation to clean up
  - Permits for sites requiring institutional and engineering controls
  - Reopeners for RAO – only for three years but...
  - Modifies Spill Act, ISRA, BCSRA

# DUTIES OF LICENSING BOARD

- Issues license
- Continuing Education Requirements
- Adopts standards for professional conduct
- Develops test required of all LSRPs
- Promulgates Rules and Regulations for final program

# DUTIES OF LICENSING BOARD

- Revoke or suspend license
- Bring civil actions
- Issue an Administrative Order
- Assess civil administrative penalties
- Petition to initiate criminal actions
- Impose sanctions and non-monetary penalties

# COMPOSITION OF BOARD

- Commissioner of DEP
- State Geologist
- Six Site Remediation Professionals
- Three members of Statewide Organization who “Promote and protect” the environment and are “Knowledgeable of hazardous substances and one shall be a LSRP”
- One business community member knowledgeable about discharges and cleanups of hazardous substances
- One academician knowledgeable about discharges and cleanups of hazardous substances

# CODE OF CONDUCT

## (Section 16)

- 26 Provisions (a-z)
- “...Highest Priority...Shall be the Protection of Public Health and Safety and the Environment”
- LSRP **MUST** Report **ANY** IEC to NJDEP (v. Reporting Discharge)

# NJDEP INCREASED INVOLVEMENT

## “ADDITIONAL REVIEW” (Section 21)

- “SHALL PERFORM”
  - Significant Detrimental Impact
  - Environmental Justice
  - Child Care/School/Sensitive Population
  - State Grants or Loans

# NJDEP INCREASED INVOLVEMENT

## “ADDITIONAL REVIEW”

- “MAY PERFORM”
  - Brownfield Development Area Sites
  - Subject to Federal Oversight
  - RP non-compliant
  - Impact on Natural Resources
  - Substantial Public Interest
  - Site Use Changes to Residential
- ≥ 10% “Additional Reviews” of Submittals per year by DEP

# HOW TO TRIGGER OVERSIGHT

## DEP **SHALL** UNDERTAKE OVERSIGHT

- History of non-compliance (2 enforcement actions)
- Failure to meet timeframes (1 miss only)
- Failure to complete entire site RI
  - 10 years after discovery of discharge and 5 years after enactment of SRRA

# HOW TO TRIGGER OVERSIGHT

## DEP **MAY** UNDERTAKE OVERSIGHT

- Chromate waste at site
- >1 environmentally sensitive natural resource injured
- Sediments contaminated with PCBs, Dioxins, Hg, As
- Site is ranked as a “Highest Priority Site”

# NJDEP INCREASED INVOLVEMENT

## “DIRECT OVERSIGHT DEP”:

- Reviews each document
- Performs Feasibility Study (!!)
- Selects Remedial Action (!!)
- RP establishes Remediation Trust Fund; DEP approves disbursements

# UNRESOLVED ISSUES

1. Acceptance of lending institutions.
  - Remedial action outcome issued by LSRP v. No Further Action issued by NJDEP
2. Perceived “whistle blowing” by LSRP
  - Reporting of discharge
  - Reporting of immediate environmental concern
  - Reporting termination or hiring to NJDEP
  - Reporting deviation from Remedial Action Workplan or other report to client and NJDEP

# UNRESOLVED ISSUES

## 3. Impact on Due Diligence

- LSRP not required during PA/SI of a Due Diligence by a non-property owner

## 4. To hire an LSRP or not to hire an LSRP

- Developing overall remedial strategy?
- Engaging an expert witness?
- Perception that LSRP will perform ultra-conservative investigations and remediations to protect license

## 5. If the client does not want to perform the work recommended by LSRP, how is it resolved?

## UNRESOLVED ISSUES

6. What will the impact be on costs of having an LSRP?
7. Will the client want to be more involved to watch the LSRP?
8. What impact will the law have on lending institutions foreclosing on properties?
9. To what degree is confidentiality between client and consultant eroded?
10. Is there finality regarding site clean up?