

# Site Remediation Reform

Len Romino  
Assistant Director  
Site Remediation Program

10/27/2009

work in progress

# Site Remediation Reform Act

---

- LSRP program
- Plus new authority for NJDEP
  - DEP required to develop mandatory timeframes for completion of each step of a remediation
  - Presumptive remedies for residential, schools, and childcare facilities
  - No single family homes, childcare or schools on landfills
  - No rendering a property “unusable” for redevelopment or recreation

# Temporary licenses

---

- Application and Annual Fees on website now
- [http://www.nj.gov/dep/srp/srra/l srp/application .htm](http://www.nj.gov/dep/srp/srra/l srp/application.htm)
- Approximately 50 applications in house
- First licenses out in early October
- Need to be temporary LSRP to be nominated as an LSRP board member

# The Board

---

- 13 members – Commissioner, State Geologist, Academia, Business, 3 environmentalist (1 is LSRP), 6 LSRPs.
- Interest? - Go to Governor's website for Boards and Commissioners at:
- <http://www.state.nj.us/governor/boards>
- Governor's Office will provide applicant with appropriate questionnaires and forms

# New Guidance Documents

---

- Some administrative, some technical
- Second category requires stakeholder input
  - Immediate Env. Concerns
  - Petroleum Hydrocarbons Cleanups/Analysis
  - RAOs
  - Vapor Intrusion Guidance changes
  - Contaminated AOC summary
  - Presumptive remedies
  - Rendering property unusable

# Other Guidance Documents

---

- Linear construction projects
- Ecological receptor investigations and standards
- “Closing” a case

# Presumptive Remedies

---

- Apply to Sensitive populations - unrestricted, presumptive, alternate
- DEP will propose unrestricted only can be used in some cases
- Must use unrestricted/presumptive unless
  - RP demonstrates that presumptive is impractical due to conditions at the site
  - RP demonstrates an Alternate Remedy is equally protective over time
- Alternate remedies need DEP review and approval
- No preapproval, comprehensive audit/other action

# Draft Unusable Criteria

---

- DEP will consider these remedies in evaluating this issues:
- permanent fencing or barriers that preclude all access;
- treatment systems (wells and associated plumbing) that occupy greater than 20% of the developable land;
- interred material, capping systems or containment systems that present structural challenges/ impediments for greater than 20% of the developable land;
- remedial actions that result in 30% or greater slope over 20% or more of the developable land;

# Draft Unusable Criteria

---

- remaining levels of contamination that impose regulatory limitations on site reuse, such as PCB contamination as subject to the federal Toxic Substances Control Act, or radioactive materials;
- remaining physical hazards such as munitions and explosives of concern (MEC); or
- conditions that would result in an Immediate Environmental Concern (IEC) if the property is developed including, but not limited to, vapor intrusion issues that cannot be addressed with engineering controls, and acute contaminant concentrations.

# Interim SRRA Rules

---

- Effective upon filing November '09 - effective for 18 months, no public comment period
- Published in December register
- Considering operative dates for some components in the rule; permits as ex.
- Grace Period changes
  - Modifying list of potential violations
  - Increasing the # of “non-minor” violations
  - Submittals are key to mandatory timeframes

# Mandatory Timeframes

---

- PA/SI, IEC, Receptor Evaluation and Free Product Recovery on web now
- Remedial Investigation out shortly
- Regulatory vs. Mandatory timeframes
- Regulatory timeframes track compliance along the way
- Enforcement when regulatory timeframes are missed
- Direct Oversight when mandatory timeframes are missed

# Extension of Mandatory Timeframes

---

- Some will be deemed approved if you certify you meet specific conditions in rule
  
- Others need DEP prior approval

# Responsible Party fees

---

- Some document submittal fees
- Primary fee will be an annual Fee
- Based on Contaminated Areas of Concern or categorical (LF and UST) = Fee Unit
- Plus media add-ons: Ground Water, Sediments, unpermitted groundwater discharge to surface water above applicable standards
- Adjusted on anniversary date up or down if new AOCs found or if AOCs cleaned up
- Direct billing will remain in place under certain limited conditions (IECs)

# Initiating Remediation – “New Cases”

---

- Section 30(b): 180 days after enactment, anyone **initiating remediation** needs an LSRP; and complies with 1-9.
- New discharges, notification of an ISRA event, new PA,SI,RI,RAW,RAR (key document) which creates a new case in NJEMS, case with existing NFA which is reopened, key document for existing case that never submitted any information, new property owner.
- Not a “new case” if you pass two prong test:
  - Reported the original discharge/discovery of contamination as required by law, AND
  - Have continuously remediated the site since then.

# New cases

---

- DEP will consider the sale of a property, which is undergoing remediation, to a new entity that will assume responsibility a “new case”.
- LSRP will be required.
- However, the clock will not “restart” for mandatory timeframes that have not yet been achieved. New party must meet existing timeframes.

# New cases

---

- There will be case manager assigned to certain cases based on criteria in Section 21
- All cases will go through new review process
- DEP is still evaluating how it will process and communicate the result of our reviews
- New annual fees will apply unless case manager assigned

# Reviews

---

- Three Types
  - Component
  - General
  - Comprehensive
- Increased Field Presence
- Limited staff will perform reviews in first months of program – consistency, work out details
- Random reviews

# Existing cases

---

- Same traditional oversight process unless you opt into the new paradigm
- Same oversight costs
- Mandatory timeframes supersede ACO/RA timeframes
- ACO timeframes may still apply unless trumped by Mandatory timeframe or Regulatory timeframe

# Section 30 – “Opting in”

---

- Anyone who wants to volunteer before 3 years.
- Comply with Sec. 30(a) 1-3 plus the 4-9.
- Process to opt in will be a request to DEP via a standardized form
- Current thinking – DEP will be saying yes, with limited exceptions, such as outstanding oversight costs

# Stop Work Points

---

- LSRP/RP must communicate with DEP before proceeding with remediation under 3 conditions:
  - IEC conditions
  - Alternative Presumptive Remedy
  - Alternative or site-specific remediation standard that requires modeling
  - Potentially others as we finalize the rules

# Remediation Certifications

---

- Replaces ISRA Remediation Agreements which allow ISRA triggering event to occur prior to NFA/RAO or Remedial Action Workplan approval.
- DEP will not issue Amendments to existing RA or ECRA ACOs; Changes will require a RC
- No new RA's will be issued after November 2<sup>nd</sup>.
- RC application will be on web by mid-October.

# New Site Remediation Permits

---

- Issued whenever Institutional or Engineering Controls are utilized
- 2 types:
  - Soil Remedial Action Permit – Issued for engineering controls
  - Ground water Remedial Action permit – Issued for:
    - Classification Exception Areas
    - Ground Water Natural Attenuation
    - Ground Water Pump and Treat

# New Site Remediation permits

---

- Permits for ground water will be issued after initial monitoring confirms “success” with treatment or Natural Remediation
- RAO can be issued at this point and the permit will be used to ensure groundwater cleanup
- Permit can be reopened if cleanup unsuccessful
- Annual fee

# New Site Remediation Permits

---

- Biennial Certification requirements still apply
- They will be incorporated in permits for new and existing sites
- DEP will not begin to issuing permits until May 2010 for new cases
- As Biennial Certs come due they will be converted to permits
- Conversion of all Biennial Certs will occur as part of the final rule

# RAO and Covenant Not to Sue

---

- DEP will no longer issue NFAs;
- Exceptions:
  - Unregulated USTs
  - Interim period for DEP oversight cases until 2012
- RAO is equivalent to NFA
- DEP can invalidate if an RAO is un-protective
- DEP has 3 years to audit
- DEP can not issue RAOs

# RAO and Covenant Not to Sue

---

- DEP can no longer issue Covenant Not to Sue once first licenses are issued
- CNS is deemed to apply “by operation of law” once RAO is issued
- Problem – NFAs issued by DEP over the next 3 years will not have CNS language and statutory CNS operational clause does not apply to NFAs
- CNS can be revoked by “operation of law” if RAO invalidated or property is not in compliance with RAO