

## INTRODUCTION

This is a guide to the [Industrial Site Recovery Act \(ISRA\)](#) (N.J.S.A. 13:1K and N.J.A.C. 7:26B), which is implemented by the New Jersey Department of Environmental Protection (NJDEP). This guide was developed to provide members of the regulated community with an understanding of the Industrial Site Recovery Act, its concepts, and its basic implementation requirements.

ISRA imposes certain preconditions on the sale, transfer, or closure of "industrial establishments" involved in the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances or wastes.

[Senate Bill No. 1070](#) was introduced on July 23, 1992 and represented the Legislature's efforts to reform the process by which contaminated sites are remediated. On July 16, 1993, Senate Bill No. 1070 was signed into law as P.L. 1993, c.139. Sections 1 through 22 of P.L. 1993, c.139, supplement and amend the 1983 Environmental Cleanup Responsibility Act (ECRA), including renaming the law to ISRA. Additional provisions of P.L. 1993, c.139 established the Hazardous Discharge Remediation Act, N.J.S.A. 58:10B-1 et seq. and amended the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq.

The Brownfield and Contaminated Site Remediation Act was signed into law on January 6, 1998 and provides for the latest changes in New Jersey's environmental cleanup structure. The Act, formally a part of Senate Bill Number 39 (Public Law 1997, c.278), adds new provisions that advance brownfields reuse as part of a comprehensive program for urban redevelopment. The overall law amends the Hazardous Discharge Site Remediation Act, Spill Compensation and Control Act, Industrial Site Recovery Act, Environmental Opportunity Zone Act and other key statutes.

As a result of the 1993 North American Free Trade Agreement (NAFTA) with Canada and Mexico, the Federal Office of Management and Budget (OMB) replaced the SIC coding system with a new, international North American Industry Classification System (NAICS) coding system. Consequently, it became necessary for the Department to redefine the ISRA regulated community in terms of NAICS codes. Legislation was enacted effective August 15, 2003, directing the Department to adopt rules identifying with the NAICS codes the generally equivalent universe of employers and facilities that have been to date covered by the SIC codes listed in ISRA and the Department's implementing rules at N.J.A.C. 7:26B.

The most recent ISRA Regulations ([N.J.A.C. 7:26B](#)) were re-adopted and published in the September 20, 2004 New Jersey Register and are available at <http://www.state.nj.us/dep/srp>.

### Why ISRA?

In 1983, the Legislature found that discharges of toxic chemicals dating back to early industrialization have left a legacy of contaminated industrial property in this State. In response to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the Legislature enacted the "Environmental Cleanup and Responsibility Act". The Legislature also found that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup are in the general public interest by ensuring the discovery of contamination, by ensuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by ensuring that contaminated property is not abandoned to the State for cleanup. ISRA furthers the policy of this State to protect the public health and safety, and the environment by promoting efficient and timely cleanups and by eliminating any unnecessary financial burden on the persons responsible for remediating contaminated sites. This has been achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will ensure the same degree of protection to public health, safety, and the environment. The procedures in ISRA guard against redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

The NJDEP's goal is to ensure that industrial establishments have been remediated to an acceptable condition upon sale, transfer, or closure without jeopardizing the time needed to finalize real estate and business transactions. However, accomplishing this goal not only depends upon the timely responses of the NJDEP, but is also contingent

upon the timeliness in which ISRA subject parties submit their administrative and technical data for the NJDEP's review.

### **Who do I contact regarding ISRA?**

The NJDEP Site Remediation Program implements ISRA. The Office of Community Relations handles all General Questions. They can be contacted at (609) 984-3081.

The **Bureau Case Assignment & Initial Notice (BCAIN)** is within Enforcement and Assignment Element. The BCAIN staff is responsible for the Initial Notice Review, Limited Conveyance and DeMinimis Quantity Exemption applications, Limited Site Reviews, Remediation in Progress Waivers, Regulated Underground Storage Tank Waivers, Area of Concern Waivers, Minimal Environmental Concern Waivers and Expedited Reviews. BCAIN receives all new cases and informs the owners/operators that they must complete a Preliminary Assessment/Site Investigation (PA/SI). BCAIN reviews the PA/SI and if the case requires oversight for remediation, then it is transferred to the lead Bureaus for a more detailed review (i.e. Bureau of Industrial Site Remediation (BISR)). For additional information you may contact the Office of Community Relations at (609) 984-3081. For case specific questions you may call BCAIN at 609-633-1464.

The **Bureau of Enforcement and Investigations** is responsible for the review of Remediation Agreements and Remediation Funding Sources.

The **Bureau of Contract and Fund Management** reviews proposals for financial assistance and grants from the Hazardous Discharge Site Remediation Fund.

The **Bureau of Industrial Site Remediation (BISR)** is located within the Responsible Party Remediation Element. The BISR staff is responsible for case management of contaminated sites. BISR case management oversees primarily active contaminated ISRA cases until a No Further Action (NFA) or a Remedial Action Workplan (RAW) is approved and oversees the implementation of approved RAW's. Other Bureaus may be the lead on a case by case basis. For additional information you may contact the Office of Community Relations at (609) 984-3081. For case specific questions you may call BNCM at (609) 777-0899.

The **Bureau of Operation, Monitoring and Maintenance (BOM&M)** is within the Remedial Management & Operations Element. Based upon the progress of the remediation at a property, BOM&M will provide oversight for cases that are essentially in a long-term operation and maintenance mode. For additional information you may contact the Office of Community Relations at (609) 984-3081. For case specific questions you may call BOM&M at (609) 984-2990.

### **How do I get forms or applications?**

ISRA applications and forms are available from the NJDEP Site Remediation Program Web Page. The Web Page can be accessed at: <http://www.nj.gov/dep/srp>. Most of the applications and forms are available from the Internet in three different formats: PDF, Word 97 and zipped applications.

If you are not able to access the above referenced Web Page you may call the Office of Community Relations at (609) 984-3081 to acquire the forms and applications.

### **The ISRA Process**

The ISRA process begins with determining if the Act applies to your type of business and transaction. The provisions of ISRA only apply to *industrial establishments*.

#### **What is an industrial establishment?**

The term "industrial establishment" refers to the type of business operations and transactions that would subject a facility to review under ISRA. An industrial establishment must meet each of the following three criteria:

1. The place of business or real property at which such business is conducted, having a North American Industry Classification System (NAICS) code listed in [N.J.A.C. 7:26 B - Appendix C](#) subject to the specified exceptions and limitations.
2. The place of business must have been engaged in operations on or after December 31, 1983; and
3. The place of business must involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes.

### **What is the mechanism that triggers ISRA compliance requirements?**

ISRA requires owners or operators of an industrial establishment planning to close or transfer ownership or operations to notify the NJDEP. After the submittal of the notice, an owner or operator of an industrial establishment is required to obtain a no further action letter from the NJDEP or NJDEP approval of a remedial action workplan or remediation agreement as a precondition for the closing of operations or transferring of ownership or operations at these facilities.

### **Who must comply with ISRA?**

Both the owner of the real property and operator of the industrial establishment are jointly liable for compliance with ISRA.

### **How do I determine if I am required to comply with ISRA?**

An owner or operator who answers "Yes" to each of the following questions is required to comply with ISRA.

1. Does the business have a subject North American Industry Classification System (NAICS) code as listed in N.J.A.C. 7:26 B - Appendix C subject to the specified exceptions and limitations? Appendix C of N.J.A.C. 7:26B can also be found at [http://www.nj.gov/dep/srp/regs/isra/isra\\_c.htm](http://www.nj.gov/dep/srp/regs/isra/isra_c.htm).
2. Were operations of an industrial establishment conducted after December 31, 1983?
3. Were hazardous substances or hazardous wastes used on-site?
4. Is the owner or operator planning to close operations or transfer ownership or operations of an industrial establishment as defined by ISRA and N.J.A.C. 7:26B?

If you have very general question regarding ISRA applicability you may call the Office of Community Relations at (609) 984-3081. As of April 30, 2008 the Department no longer answers written requests for an ISRA applicability determination. Telephone calls to the Office of Community Relations should be limited to general questions regarding ISRA they should be made to seek a site-specific determination regarding the applicability of ISRA to a transaction.

### **What if my facility is subject to ISRA?**

If you determine that your facility is subject to ISRA and your facility does not qualify for any of the waivers, exemptions or alternate compliance processes described below, then you are required to perform all necessary remediation at your facility. During the standard ISRA process, the owners or operators of industrial establishments must notify the NJDEP within five days of any triggering event by filing a [General Information Notice](#) (GIN). Triggering events are specifically enumerated in ISRA, N.J.S.A. 13:1K-8 and include the sale of business or property, cessation of operations and bankruptcy. Once the owner or operator notify NJDEP, the owner or operator must conduct a remediation in accordance with the Technical Requirements for Site Remediation N.J.A.C. 7:26E. This includes at a minimum a [Preliminary Assessment](#) (PA) to identify potential Areas of Concern (AOCs) and if necessary a Site Investigation (SI) to determine if any contaminants are present above any applicable remediation standards. If there is contamination documented in the SI Report, the owner or operator must conduct a **Remedial Investigation** (RI) to determine the nature and extent of contamination. The next step is the proposal of a **Remedial Action Workplan** (RAW) detailing the measures necessary to remediate contaminated property to the applicable remediation standard. The owner or operator may submit a [Negative Declaration](#) affidavit when there have been no discharges of hazardous substances or wastes on the property or that any such discharges were cleaned up to the satisfaction of the NJDEP. The NJDEP approves of the Negative Declaration by issuance of a **No Further Action Letter**\Covenant Not to Sue letter.

In the case of a proposed transfer of ownership, the owner or operator must submit either a Negative Declaration or a RAW with the NJDEP prior to the actual transfer. When closing operations, the owner or operator must notify the NJDEP subsequent to closing or of its public release of its decision to close and submit to the NJDEP a Negative Declaration or a RAW. This is all initiated through the filing of the ISRA application forms and/or reports in accordance with the Technical Requirements For Site Remediation, N.J.A.C. 7:26E (General Information Notice, Preliminary Assessment Report forms etc.). The execution of a [Remediation Agreement](#) between the owner or operator and the NJDEP is a third option, in addition to an approved Negative Declaration or RAW, to allow the transaction to be consummated prior to full ISRA compliance. The NJDEP oversees the case until the industrial establishment is satisfactorily remediated and the NJDEP issues a No Further Action (NFA) Letter\Covenant Not to Sue letter.

### **Alternate Compliance Options, Exemptions and Waivers**

This section describes the various applications for alternate compliance options including exemptions and waivers that are provided by ISRA regulations. It is emphasized that whenever an application requires a certification,

evaluation or investigation of a facility, these must be performed pursuant to the Technical Requirements for Site Remediation (TRSR), N.J.A.C. 7:26E.

A [Certificate of Limited Conveyance](#), N.J.S.A. 13:1K-11.8, N.J.A.C. 7:26B-5.7, allows the owner of the real property to transfer up to one third of the appraised value of the real property where an industrial establishment exists without having to remediate the entire industrial establishment. This certificate is valid for three years after the issuance date. Before completing the transfer, the owner or operator must file a GIN, remediate the portion to be conveyed, and obtain a NFA approval for that portion of the industrial establishment subject to the transfer.

A [DeMinimis Quantity Exemption](#), N.J.S.A. 13:1K-9.7, N.J.A.C. 7:26B-2.3, the owner or operator to close operations or transfer ownership or operations without conducting a remediation pursuant to ISRA under specific conditions. The owner or operator must submit a DeMinimis Quantity Exemption application and a fee and obtain approval by the NJDEP prior to the transfer or closure. The required DeMinimis quantity conditions exist if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the industrial establishment at any one time during the owner's or operator's period of ownership or operations:

1. does not exceed 500 pounds or 55 gallons; or
2. if a hazardous substance or hazardous waste is mixed with non-hazardous substances, the total quantity in the mixture does not exceed 500 pounds or 55 gallons; or
3. if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons.

A [Limited Site Review](#), N.J.S.A. 13:1K-11.3, N.J.A.C. 7:26B-5.5, allows an owner or operator to remediate only those area(s) of concern at an industrial establishment where a discharge, subsequent to a prior remediation and issuance of a No Further Action letter, has occurred. The owner or operator must submit a limited site review application and certify that this AOC was either not remediated or remediated but the remediation was not approved by the NJDEP. As a result, the NJDEP only reviews that AOC and not the entire establishment.

A [Remediation in Progress Waiver](#), N.J.S.A. 13:1K-11.5, N.J.A.C. 7:26B-5.4, allows an owner or operator of an industrial establishment to close operations or transfer ownership or operations if the site is already undergoing remediation with NJDEP oversight. The owner or operator must submit a Remediation in Progress Waiver application, be able to certify that there have been no discharges at the site during the owner's or operator's ownership or operations, and that a remediation-funding source is in place. If the NJDEP approves the waiver, the remediation proceeds under the existing case until NJDEP issues a No Further Action\Covenant Not to Sue letter.

A [Regulated Underground Storage Tank Only Waiver](#), N.J.S.A. 13:1K-11.6, N.J.A.C. 7:26B-5.3, allows an owner or operator of an industrial establishment to close operations or transfer ownership or operations without conducting remediation pursuant to ISRA if the only AOC is a regulated Underground Storage Tank (UST) or the only discharges at the site are from regulated UST's. The owner or operator must submit an Underground Storage Tank Waiver application and preliminary assessment. If the NJDEP approves the waiver, the remediation continues with the existing BUST case until NJDEP issues a No Further Action\Covenant Not to Sue letter.

An [Area of Concern Waiver](#), N.J.S.A. 13:1K-11.4, N.J.A.C. 7:26B-5.2, relieves an owner or operator of an industrial establishment of the requirement to perform a remediation pursuant to ISRA for any AOC at the industrial establishment for which a NFA approval exists and no new discharges have occurred at the AOC since the NFA was approved. The owner or operator must submit an area of concern waiver application, which includes a preliminary assessment and site investigation.

A [Minimal Environmental Concern Waiver](#), N.J.S.A. 13:1K-11.7, N.J.A.C. 7:26B-5.6, allows an owner or operator to close operations or transfer ownership or operations at an industrial establishment with two or less soil AOCs requiring remediation. The AOCs cannot be a threat to drinking water or an immediate environmental concern. The owner or operator must submit a minimal environmental concern application, which includes a preliminary assessment, site investigation and remedial investigation. If the NJDEP approves the waiver, the transaction can occur without NJDEP approval of a RAW or Remediation Agreement however the owner or operator is required to establish a remediation-funding source. Within six months after NJDEP's approval of the waiver, the owner or operator shall implement the remedial action and submit the remedial action report to the NJDEP.

An [Expedited Review](#), N.J.S.A. 13:1K-11.2, N.J.A.C. 7:26B-5.1, allows an owner or operator of an industrial establishment, that previously received a No Further Action letter, to close operations or transfer ownership or operations, without remediation when there has been no discharge subsequent to the No Further Action letter or a subsequent discharge occurred and the subsequent discharge has also received a No Further Action letter. The owner or operator must submit an expedited review application and a Negative Declaration.

# A GUIDE TO REMEDIATION FUNDING SOURCE REQUIREMENTS

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