



CREATING SUSTAINABLE COMMUNITIES

A GUIDE FOR DEVELOPERS AND COMMUNITIES

REMEDICATION OF CONTAMINATED SITES

New Jersey has the most comprehensive and longstanding state site remediation program in the nation. This is fitting, as New Jersey is the most densely populated state in the nation and it experienced a long history of heavy manufacturing, particularly in the chemical, pharmaceutical, and petroleum industries. The state's jurisdiction for the remediation of contamination covers sites on the federal Superfund list, homeowner underground storage tanks, large former manufacturing facilities that must clean up before the property can be transferred to new uses, gas stations, open space, and brownfield redevelopment sites. The goal of the program is to reduce the presence of and exposure to contamination so that the natural environment and human health is not impacted in any harmful way.

With that goal in mind, New Jersey adopted the Spill Compensation and Control Act (the Spill Act - NJSA 58:10-23.11 et seq), which pre-dates the federal Superfund law; the Spill Act defines hazardous substances, what constitutes a discharge of a hazardous substance, and the reporting requirements and clean up and removal obligations for those discharges. The Spill Act gives the New Jersey Department of Environmental Protection (DEP) authority to conduct cleanups using revenue generated by a tax on the transfer of petroleum and other hazardous substances. The Spill Act also provides DEP with the authority to direct private parties to conduct the cleanups using private revenue. The Spill Act provides liability defenses to certain individuals under circumstances and provides the steps to achieve cleanup finality.

New Jersey laws requiring the remediation of contaminated sites also include the Industrial Site Recovery Act (NJSA 13:1K-6 et seq), the Hazardous Discharge Site Remediation Act (NJSA 58:10B-1 et seq), and the Brownfield and Contaminated Site Remediation Act (PL 1997, Ch. 278). Regulations implementing the laws include the Underground Storage Tank Regulations (NJAC 7:14B), the Oversight Rules (NJAC 7:26C), the Technical Rules for Site Remediation (NJAC 7:26E), and the newly proposed Remediation Standards (NJAC 7:26D).

Site cleanups can be conducted by federal, state, or local government agencies and/or their contractors, by private parties responsible for the discharge of the hazardous substances, or by purchasers of land who did not cause the contamination but are willing to pay for and conduct the cleanup. Private parties can be directed by DEP to conduct cleanups or individuals can come to the department voluntarily and offer to do part of or all of a cleanup.

Cleanups can be conducted to allow for any future use of the land: from residences, schools, and day care centers to commercial buildings, or new industrial uses. Cleanups can also be conducted to turn formerly contaminated sites into parkland for passive and/or active recreation. The level of cleanup required to protect human health and the environment is determined by the end use envisioned for the property. Obviously, cleanup to more stringent standards is required when people will be living on the property, or when sensitive populations such as children will be using the property for schools or recreation. Protectiveness can be obtained by either totally removing the contaminants of concern, or by treating them, or by limiting access to the substances by creating barriers to contact, such as with soil or other types of capping material.

Certain cleanups can be conducted "at risk" by private individuals, with little oversight by the state. However, cleanups involving ground and surface waters must be conducted with DEP's oversight because the state is the trustee for those natural resources. Most parties conducting remediation will come to DEP for oversight if they desire a "No Further Action" (NFA) letter at the end of the process. That letter certifies that the state's regulations have been met as of a specific date, as described specifically in the letter. With the NFA comes a "Covenant Not to Sue," which defines those parties who are no longer liable to conduct additional cleanup at the site.



APPLICABLE NEW JERSEY GOALS AND TARGETS

Per the Department's January, 2007 Priorities and Action Plan, the DEP's public health goals are to:

- Ensure that existing and newly emerging environmental threats to public health and safety are evaluated and addressed; and,
- Educate the public about its role in environmental protection.

The specific public health goals for the Site Remediation Program are to:

- Undertake legislative, regulatory and management initiatives to more effectively ensure the protectiveness of site remediation remedy selection;
- Use existing environmental and public health data to apply site remediation resources to sites of greatest public health concern; and,
- Increase the transparency of decision making under the site remediation programs.

New Jersey cleanup law has a stated preference for permanent remedies to the unrestricted use standard these remedies would leave the least amount of contamination behind once the cleanup is completed. The law backs this preference with some financial incentives. (See P.L. 1997, c. 278, section 13).

That said, the law does allow for non-permanent cleanup remedy approvals that rely on reporting, inspection, and maintenance conditions being met in the future. The DEP is undergoing an extensive examination of whether residential redevelopment, especially single family housing redevelopment, and other redevelopments for sensitive populations, such as school children, should be allowed at remediated sites that rely on less than permanent remedies. One reason for concern is the lack of a legal and financially stable association to take on the requirements to inspect and maintain engineering (caps, pump and treat systems, etc.) and institutional controls (deed notices or deed restrictions, etc.) required when less than a permanent remedy is performed. The Legislative White Papers from the Site Remediation Program, which currently exist on the DEP web at www.nj.gov/dep/ under the "Hot Topics" section deal with many current issues that may require legislative, regulatory, and/or policy changes.

SUGGESTED ACTIONS AND STRATEGIES

- Perform cleanups with permanent remedies that meet residential standards. By doing so, take advantage of state incentives provided for this purpose. Permanent remedies will also maximize all options for future use of the remediated property and limit liability for the maintenance and operation of engineering and institutional controls.
- If non-permanent remedies are approved by DEP, clearly identify who has the on-going responsibility for investigating, maintaining, and replacing the controls if there is failure. Assure that sufficient funding is readily available for these purposes. These are remedial costs and they may be eligible for up to 75% reimbursement under a remediation agreement with Commerce and Treasury. For more information go to the NJ Commerce and Economic Growth Commission.
- Determine if insurance should be purchased, by whom, and know the period of time and conditions covered by the policy.



- Conduct thorough due diligence before purchasing property with known or suspected contamination. Due diligence in New Jersey is defined as conducting a Preliminary Assessment and, if necessary, a Site Investigation. The “Tech Rules” lay out the requirements for the site remediation process.
- Request a copy of the case file. Find out who the DEP case manager is or was, and if you have any questions, contact that person or the manager and ask. Ask for a pre-purchase, pre-application meeting.
- When reviewing the files, developers, future owners and municipalities may want to consider some questions like the ones posed here: If there is a No Further Action letter issued by DEP for the property, know the date of the letter and the specifics contained in the letter: is it an NFA for the entire site or just one area of concern? Are there conditions for the NFA and do you as a future owner have an obligation to maintain the conditions? What were the cleanup standards at the time of the approval and have they changed significantly since then? If yes, is the change by more than an order of magnitude and do you as a future owner have any obligation to do additional remediation? Are there use restrictions on the property (can't be used for residential purposes, etc.) and have they always been met?
- Use qualified attorneys and consultants who are expert in the New Jersey cleanup process and know New Jersey's laws and regulations.

STATE TECHNICAL/FINANCIAL ASSISTANCE

The [DEP Site Remediation Program \(SRP\) website](#), is filled with useful information. Laws and regulations governing the cleanup of contaminated sites are linked, and the “What’s New” section keeps you up to date.

FURTHER INFORMATION

The SRP holds Site Remediation Advisory Group meetings on a quarterly basis. Contact (609) 292-1250 to obtain the schedule of the meetings. In addition, Brownfield Roundtable meetings are held by DEP quarterly; the schedule is available on the brownfields section of the SRP web site. Both meetings provide excellent opportunities to learn what is new and what is evolving in the program.

Funding is available for permanent remedy selection (See P.L. 1997, c. 278, section 13). The [New Jersey Economic Development Authority](#) has information on financial assistance available through the Hazardous Discharge Site Remediation Fund (HDSRF) for permanent remedies.

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