

PRE-PURCHASER ADMINISTRATIVE CONSENT ORDER

The Site Remediation Reform Act (SRRA, N.J.S.A. 58:10C-1 et seq.) established a statutory timeframe for the completion of the remedial investigation [either May 7, 2014 (N.J.S.A. 58:10C-27) or May 7, 2016 provided certain criteria for an extension were met (N.J.S.A. 58:10C-27.1)] for sites where a discharge had been discovered prior to May 7, 1999. In addition, SRRA authorized the New Jersey Department of Environmental Protection (Department) to establish mandatory and expedited site-specific timeframes for certain aspects of the remediation, including but not limited to the submission of a complete report for each phase of remediation, submission of an initial receptor evaluation, and addressing immediate environmental concern conditions. [see the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C-3.3 and 3.4]. These defined timeframes apply to the site, not the person responsible for conducting the remediation, and therefore do not change if there is a change in the person responsible for conducting remediation.

If a statutory, mandatory, or expedited site-specific timeframe is missed, the site is subject to the direct oversight by the Department (see ARRCS, N.J.A.C. 7:26C-14.2(a)). The direct oversight requirements are a more proscriptive process for the person responsible for conducting the remediation. Some of the direct oversight requirements include, but are limited to, the posting of a remediation trust fund in which only the Department can authorize disbursements, Departmental approval of all submissions, and the Department will direct how the remediation proceeds. A complete list of the direct oversight requirements can be found in ARRCS at N.J.A.C. 7:26C-14.2(b).

ARRCS does include a provision that allows the Department to make adjustments to certain direct oversight requirements when the Department determines that such adjustments are in the public interest and protective of public health and safety and the environment.

The Site Remediation and Waste Management Program, Bureau of Enforcement and Investigations (BEI) is executing Pre-Purchaser Administrative Consent Orders (Pre-Purchaser ACOs) with buyers of a contaminated site subject to direct oversight. The Pre-Purchaser ACO allows for adjustments to the regulatory direct oversight requirements. Without the benefits of a Pre-Purchaser ACO, a buyer of a site subject to direct oversight becomes a Spill Act liable party once they close on the property and must strictly comply with all of the direct oversight requirements set forth at N.J.A.C. 7:26C-14.2(b).

1. What is a Pre-Purchaser ACO?

A Pre-Purchaser ACO allows certain adjustments to the direct oversight requirements to parties who are under contract to purchase a site that is subject to direct oversight. The Pre-Purchaser ACO enables a buyer who is not in any way related to the responsible party (see item 5 below) to purchase and remediate a site while maintaining compliance with the requirements of direct oversight. This will allow the remediation of sites that may have languished for years. In addition, new timeframes for the buyer to complete the remediation are established in the Pre-Purchaser ACO.

2. What is the timing for a buyer to enter into a Pre-Purchaser ACO?

A Pre-Purchaser ACO must be fully executed with the Department (signed by all parties) **prior** to the buyer closing on the property (prior to becoming a Spill Act Liable Party). The date of a court order transferring ownership of the property to the buyer is considered the closing date and not the date of the actual recording of the deed with the County Clerk's office.

3. When a buyer enters into a Pre-Purchaser ACO, what types of adjustments are made to the direct oversight requirements?

A Pre-Purchaser ACO allows the buyer to purchase a site that is in direct oversight and have new timeframes established for completion of the remediation. The Pre-Purchaser ACO also includes the following adjustments to the direct oversight requirements:

- Any type of remedial funding source (RFS) mechanism (except self-guarantee) can be used;
- The 1 percent RFS annual surcharge fee is waived;
- Proceed with the remediation without prior Department approval;
- Pay annual remediation fees in lieu of the direct oversight costs;
- Submittals continue to go through the Inspection/Review process;
- Feasibility Study is not required to be submitted; and,
- Person responsible for conducting the remediation chooses the remedy.

4. What direct oversight requirements are not being adjusted?

- A licensed site remediation professional (LSRP) must be retained;
- The entire contaminated site must be remediated;
- A Remediation Cost Review must be submitted;
- An RFS must be established for the full cost of remediation; and
- A date is established for the completion of the remedial investigation with no extensions.

5. What are the eligibility requirements to enter into a Pre-Purchaser ACO?

For a buyer to be eligible for a Pre-Purchaser ACO they must be able to certify to the following three conditions:

- The buyer must not be related to any person that is a discharger (predecessor, successor, subsidiary, partner, shareholder, assign, trustee in bankruptcy, or receiver appointed), a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs at the site, including, any other prior owner of the site, or any prior tenant, at the site;
- The buyer is not currently and has never been the owner or operator of the site; and
- The buyer must not be a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs at the contaminated site.

6. How does a buyer request a Pre-Purchaser ACO?

If the buyer meets all three requirements listed in item 5 above, then the buyer should send a letter to the Bureau of Enforcement and Investigations at the address listed below. In this letter, the buyer should reference the three conditions noted in item 5 above and certify that they do meet these conditions. In addition, the buyer should include the following information in the letter:

- Program Interest Number (PI#) and block and lot numbers of property which they are going to purchase
- Anticipated date of closing
- Complete name of corporate entity that is purchasing the property, including their business address and month/year corporation formed or name and address if an individual is the purchaser

Send letters requesting a Pre-Purchaser ACO to:

Bureau Chief
NJDEP/SRWMP
Bureau of Enforcement & Investigations
PO Box 420
Mail Code 401-06U
Trenton, NJ 08625

Note: The Pre-Purchaser ACO must be signed by both the buyer and the Department **PRIOR** to the buyer closing on the property. The Department appreciates a three to four-month lead time to draft and fully execute the ACO, if possible.

7. Who should the buyer contact if they would like more information on Pre-Purchaser ACOs?

Please contact the Bureau of Enforcement and Investigations at (609) 633-1480 and ask for the Duty Officer with questions.