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SITE REMEDIATION

By Bruce Katcher and Christopher Ball, Manko, Gold, Katcher & Fox, LLP Major New Jersey Site Remediation Reform Legislation Becomes Law

On May 7, Governor Jon S. Corzine signed legislation into law significantly reforming the way contaminated sites are cleaned up in New Jersey. Designed to move cases through the remediation process more quickly, the new Site Remediation Reform Act (SRRA) brings privatization to the clean-up process by placing primary oversight responsibility for most remediations into the hands of environmental consultants who will be licensed as Licensed Site Remediation Professionals (LSRPs) by a newly created state licensing board. Significant elements of the SRRA include:

- All remediations, with limited exceptions, must use an LSRP (subject to a phase-in period extending up to three years depending on the nature of the case);
- Until the LSRP board is established and its regulations are developed, the New Jersey Department of Environmental Protection (NJDEP) will issue temporary licenses;



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- The licensing board will oversee LSRP conduct under a new detailed code of conduct;
- While most cases will proceed under the primary oversight of an LSRP (subject to NJDEP audit), a select group of cases will remain under direct NJDEP oversight based on criteria in the SRRA;
- New limitations will be imposed on the ability of a remediating party to select the remedial action for the site for certain sensitive land uses (e.g., residential and schools



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which may select from NJDEP-specified presumptive remedies) and direct oversight cases (as to which NJDEP will select the remedy);

- Mandatory timeframes will be established by NJDEP for initiating and completing various remediation activities for all cases;
- A new permitting program will be established for monitoring and maintenance of engineering and institutional controls; and
- The statute of limitation applicable to claims

by the State for natural resource damages associated with many sites will be extended.

Governor Corzine also issued a potentially significant Executive Order to accompany the SRRA. The Executive Order, touted by the Governor as establishing comprehensive oversight and transparency within the LSRP program, requires NJDEP to file annual reports on the progress of the LSRP program with the Governor and the Legislature, and to post all documents submitted by LSRPs on the Internet.

Of greater concern to parties conducting remediations, the Executive Order requires NJDEP to increase its oversight of any site containing groundwater contaminated above remediation standards, or which may be used for residential or educational purposes. The Executive Order further requires NJDEP to conduct a review (audit) of case documents submitted by every LSRP within the next two years (the SRRA

only requires audits of at least 10 percent of all LSRP submittals annually), and to promulgate rules "insulating an LSRP's professional judgment from economic pressures to the maximum extent practicable." This could minimize the role of cost as a factor in the remedy selection process.

NJDEP is now required to set up the temporary licensing program for LSRPs within 90 days, and develop interim program rules within six months. The interim rules and temporary licenses should enable the program to move forward pending the development of final program regulations.

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