

New NJ Licensed Site Remediation Professional (LSRP) Rules Finalized

Pointers for Parties Retaining LSRPs

In light of the new LSRP Rules, here are a few things for the PRCR to consider when retaining an LSRP to oversee its cleanup:

- An LSRP has a duty to maintain the confidentiality of client confidential information, but only “if the client has notified the LSRP, in writing, that the information is confidential” and the information is not otherwise publicly available. There is also an exception that allows an LSRP to disclose confidential information where it “may be authorized or required by law.”
- According to the LSRP Rules “an LSRP may be required to take action that is adverse to a client ... in order to protect public health and safety and the environment, or otherwise carry out his or her professional services in compliance with the SRRA and any rule, regulation, or order” As noted above, an LSRP is required to notify NJDEP in various circumstances, including when he or she learns about a previously unreported “immediate environmental concern (IEC).” This should not be surprising since, as noted by the LSRP Rules: “An LSRP’s highest priority in the performance of professional services shall be the protection of public health and safety and the environment.”
- If you are undertaking due diligence work on someone else’s property in connection with a pending transaction, an LSRP’s duties may be inconsistent with a contract purchaser’s contractual confidentiality obligations to the property owner. This would include an LSRP’s duty to report an IEC and possibly the separate LSRP duty to report a discharge. As to the latter, the Board deleted language that it had inserted in its original rule proposal designed to clarify when an LSRP would be responsible for a contaminated site, including the LSRP discharge reporting obligation. Consider whether an LSRP should be involved in such projects. The same caution applies when retaining a consultant who is also an LSRP for other environmental projects where IECs or discharges may come to their attention (e.g., preparing spill plans, permit applications, etc.).
- Do not try to strong-arm or interfere with the independent judgment of your LSRP. Not only is this unethical, the LSRP Board has jurisdiction over anyone (not just LSRPs) to enforce the new LSRP Rules, presumably including the authority to enforce its rules

against the people who hire LSRPs. The Board's authority includes the investigation of complaints brought against any person and subsequently the institution of litigation in Superior Court; the issuance of administrative orders; instituting civil penalty actions; assessing civil administrative penalties; and petitioning the Attorney General to bring criminal actions. Retaliation against an LSRP can result in the imposition of any of the foregoing actions against the PRCR.

- Keep in mind that your LSRP has a duty to reopen or revise a Response Action Outcome (RAO) or other document if new information comes to his or her attention that would change the LSRP's opinion as stated in the RAO or other document. Furthermore, an LSRP has a duty to disclose information that is inconsistent with his or her conclusions in any documents submitted to the State.
- Finally, keep in mind that the LSRP Board is required to audit at least 10 percent of all LSRPs each year and that your LSRP is required to retain his or her files for ten years. That means that wholly aside from NJDEP's authority to audit RAO's issued by a LSRP, there is a good chance that sooner or later the LSRP Board may be looking at your LSRP's work on your site.