

New NJ Licensed Site Remediation Professional (LSRP) Rules Finalized

Themes in the New Regulations

The final regulatory package includes the Board's response to comments submitted by the public on the proposed regulations, which in turn reveal some important themes running through the LSRP Rules. Among those themes are the following:

- The Board's stated intent was to develop the LSRP Rules in a manner that minimized conflict between the LSRP and PRCR. For example, the new LSRP Rules clarify that the LSRP's duty to respond to public inquiries only arises when the client identifies the LSRP as the point of contact, that the LSRP is not responsible for notifications to NJDEP for matters arising after the LSRP is discharged and clarify the types of actions for which retaliation by a PRCR against a LSRP is inappropriate.
- The response to comments also attempts to resolve the conflict between third parties seeking to obtain LSRP data and records before they are submitted to NJDEP by taking the position that such data and records are not subject to the Open Public Records Act until included in a report or other document submitted to NJDEP. This may not be the final word on this subject if the judiciary is asked to weigh in.
- The Board also wanted to clarify when the Board, versus NJDEP, has jurisdiction – deferring to NJDEP in a number of responses to comments (e.g., the Board refused to prescribe when the NJDEP could file a complaint concerning an LSRP with the Board and deferred to NJDEP as to defining the circumstances under which a party must retain an LSRP and the responsibilities of an LSRP for a site after the issuance of a response action outcome), and asserting its exclusive jurisdiction in others (e.g., licensing and conduct of LSRPs).
- The LSRP Rules also reflect the Board's jurisdiction over a broad range of persons beyond LSRPs. For example, in responding to comments (and in the rules themselves), the Board expressly called out that the Board was given jurisdiction under SRRA to investigate and take enforcement action against any "person" (defined to include an individual, public or private corporation, the U.S., the State and any of its political subdivisions or agents) who violates SRRA or any related rule or regulation, or that has

knowingly made a false statement, representation, or certification in any document or other information required to be submitted to the Board or NJDEP.

- The LSRP Rules expand upon the rules of professional conduct in SRRA, potentially to the PRCR's detriment (e.g., various circumstances when an LSRP is obligated to notify NJDEP, such as the duty to notify that may arise when a new LSRP that has taken over the responsibility for remediation of a contaminated site before the issuance of a final remediation document learns of material facts, data, or other information that was not disclosed to NJDEP in a previously submitted report, or when an LSRP learns of a client's action or decision that deviates from a remedial action work plan or other report concerning the remediation).