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## ASK AN EXPERT

Ask an Attorney

### By Jonathan Spergel Manko, Gold, Katcher & Fox, LLP

**I understand that the NJ Department of Environmental Protection (NJDEP) has recently proposed major legislative changes to its Site Remediation Program. How would this proposed legislation affect site cleanups in NJ?**



*Jonathan Spergel*

On November 13, 2008, representatives of NJDEP testified to the New Jersey Senate Environment Committee on its proposed legislation to revamp NJDEP's Site Remediation Program. Of most significance, the proposed legislation would partially privatize a significant portion of NJDEP's Site Remediation Program through the creation of a License Site Professional (LSP) program. The bill would require most cleanups in New Jersey to be performed under the oversight of an LSP, who would be a private en-

vironment professional licensed by NJDEP, but retained by the party performing the site remediation. Under the legislation, LSPs would be subject to a strict code of conduct, with significant penalty provisions of up to \$50,000 per violation. The proposed LSP program, which is largely based on the successful Massachusetts LSP program, is primarily being driven by NJDEP's desire to reduce the Site Remediation Program's sizeable

case backlog, and allow for the speedier completion of site remediation in New Jersey.

Although LSPs would be empowered to determine whether remedial actions at a site were complete, in most instances, the LSPs' determinations would be subject to the possibility of audit and reversal by NJDEP.

In addition to the proposed LSP program, NJDEP's proposed legislation contains a number of other significant changes to the Site Remediation Program. For example, the bill would revise the remediation

funding source provisions (financial assurance) by limiting a party's ability to use financial self-guarantees by only allowing self-guarantees to cover 50 percent of the cost of planned remedial actions. Given that the majority of parties performing remediation in New Jersey that require a remediation funding source utilize the self-guaranty provisions, this proposed change would significantly impact the regulated community. The bill would also set mandatory timeframes for initiating and completing remedial activities, as well as provide NJDEP

with more authority over remedy selection, such as a requirement to implement unrestricted use remedial actions or presumptive remedies established by NJDEP for new residential construction projects.

Further legislative action on the bill is not anticipated until January 2009. Please contact the author for more detailed information about the proposed legislation, or if you are interested in commenting on the bill.

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