2017 may see a number of changes to New Jersey's Site Remediation Program – both legislative and regulatory.

First, modification of the Site Remediation Reform Act (“SRRA”), the law that established the licensed site remediation professional (“LSRP”) program in 2009, is a distinct possibility. This effort, often referred to as SRRA 2.0, may examine a variety of issues including the following:

- Providing greater flexibility under the direct oversight provisions that place sites that miss certain mandatory deadlines under an extremely restrictive regime of direct New Jersey Department of Environmental Protection (“NJDEP”) oversight (versus LSRP oversight);

- Expanding the limited nature of financial assurance mechanisms for engineering controls under remedial action permits and direct oversight;

- Defining the degree of deference afforded by LSRPs to previously issued NJDEP no further action letters when an LSRP is subsequently re-evaluating a site, for example, when the site is sold post-NFA and triggers a new round of compliance with the Industrial Site Recovery Act;

- Developing a flexible mechanism to vary the timing of mandatory and regulatory deadlines to facilitate cleanup and redevelopment of brownfields sites;

- Assessing whether historic fill ought to be regulated differently than other discharges and if so how;

- Determining whether contamination associated with the historic application of pesticides ought to be considered a discharge or subject to special statutory treatment distinct from other types of contamination; and

- Considering whether pre-1993 purchasers of property should be subject to the same liability regime as post-1993 purchasers (as determined by the Appellate Division in New Jersey Schools Development Authority v. Marcantuone) and concurrently, whether a bona fide prospective purchaser defense similar to that under CERCLA ought to be afforded under the Spill Act.
Second, it is also possible that some of these issues could be addressed through regulatory mechanisms. For example, NJDEP has been taking a flexible view of its discretion under the direct oversight provisions. In this regard, NJDEP included specific language to this effect in a recently published consent judgment noting that, "[a]t the sole discretion of the Department, the Department may adjust the Direct Oversight requirements pursuant to N.J.A.C. 7:26C-14.4." Such discretion could include relieving "innocent" developers that undertake to remediate a site from compliance with the direct oversight provisions.

Third, NJDEP is also planning a variety of regulatory changes during 2017. Most importantly, sometime in the spring of 2017 the agency expects to propose a set of comprehensive amendments to the remediation standards for the first time since they were adopted in June 2008. In preliminary discussions of the changes under consideration, NJDEP has indicated that it is looking at dropping as many as thirteen contaminants from the list, adding at least sixteen contaminants and evaluating three contaminants of interest (dioxins, extractable petroleum hydrocarbons, and 1,4 dioxane). Remediation concentrations for contaminants on the list may change, falling by more than an order of magnitude, which may trigger the need to re-evaluate completed remediations in some cases. In addition, NJDEP is planning to propose a new set of regulations for underground heating oil tanks that are not covered by the N.J.A.C. Chapter 14B regulations (also known as “unregulated heating oil tanks” or UHOTS) in early 2017. Neither the UHOT regulations nor the remediation standard changes are likely to be adopted in final before 2018.