

NJDEP REMINDS PARTIES DOING CLEANUPS TO BE MINDFUL OF  
COMPLIANCE OBLIGATIONS

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Although it doesn't seem possible, the Site Remediation Reform Act ("SRRA") has been fully in operation for more than 5 years. As the program continues to mature, the New Jersey Department of Environmental Protection ("NJDEP") has begun to focus more on enforcement. Parties responsible for remediating sites need to make sure that they are complying with all aspects of the site remediation regulations or face the risk of becoming subject to direct oversight by NJ DEP and/or penalties.

One of the important parts of the SRRA was the establishment of deadlines for the completion of certain steps related to the investigation and remediation of a contaminated site. Certain of these deadlines are established in the statute; others are established by regulation. Additionally, certain deadlines are regulatory dates that may be extended depending upon the circumstances; others are mandatory deadlines that may not be extended. The deadlines are summarized at:

[http://www.nj.gov/dep/srp/srra/training/matrix/new\\_responsibilities/timeframe\\_req.pdf](http://www.nj.gov/dep/srp/srra/training/matrix/new_responsibilities/timeframe_req.pdf)

The deadline to complete a remedial investigation at a site where the discharge was discovered before May 7, 1999 has been subject of much discussion. That deadline was originally May 7, 2014. However, based upon an amendment to the SRRA, parties who were subject to that deadline could apply for a one time extension until May 7, 2016, a date that is rapidly approaching. As of now, there are no further extensions available of that deadline.

Failure to meet a deadline will subject the party conducting the remediation to enforcement. Enforcement can include assessment of penalties, or placing a site under direct oversight by NJDEP or both. A party in direct oversight is required to:

1. Post a funding source to cover the full costs of investigating and remediating a site;
2. Have its Licensed Site Remediation Professional ("LSRP") submit all documents to NJDEP at the same time they are submitted to the responsible party (meaning that there is no ability for comment on a draft document before submittal to NJDEP)
3. Complete a feasibility study and implement the remedy selected by NJDEP; and
4. Have all work reviewed and approved by an NJDEP case manager.

In some circumstances, such as failure to meet the statutory deadline to complete the remedial investigation, direct oversight is mandatory and not subject to the enforcement discretion of NJDEP.

At a recent meeting of the Site Remediation Advisory Group, NJDEP reminded representatives of the regulated community that if a party is subject to mandatory direct oversight, it is incumbent upon that party to comply with the direct oversight regulations whether or not NJDEP has taken the initiative to commence an enforcement proceeding. If a party fails to do so, it can be subject to significant penalties of \$25,000 per day for each day of non-compliance. It was further noted at this meeting that once a party is subject to direct oversight, there is no statutory mechanism to be removed from that status.

Parties performing remediation need to take heed of NJDEP's advice. All parties performing remediation need to make sure of the deadlines applicable to their work and if it appears difficult to meet one or more of them to take steps to obtain an extension when available. For parties now subject to the May 7, 2016 remedial investigation deadline, every effort should be made to ensure compliance. If it appears that achievement of this deadline is at risk it may be important to focus on defining what constitutes completion of the remedial investigation and to understand how compliance may still be achieved.

In some instances, parties may have already missed a deadline. If this is the case, it is important to consult with counsel and the LSRP to understand how compliance may be achieved as quickly as possible and to consider how to approach NJDEP about resolving potential enforcement issues; noted failure to do so may lead to substantial penalty exposure and direct oversight by NJDEP.