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## New Requirements to Address Immediate Environmental Concerns

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The Site Remediation Reform Act enacted on May 7, 2009, and codified at N.J.S.A 58:10C-1 et seq. (“SRRA”), its implementing regulations, and amendments to the Technical Requirements for Site Remediation include new requirements in addressing environmental issues that the New Jersey Department of Environmental Protection (“NJDEP”) deem to be a public health threat and categorize as an Immediate Environmental Concern (“IEC”). Not only does the SRRA impose sweeping changes to the site investigation and remediation process in New Jersey after November 3, 2009, but it also affects properties that are currently undergoing remediation with state oversight if an IEC is present.

There are three categories of IEC conditions: (1) potable water; (2) vapor intrusion; and (3) direct contact. A potable water IEC exists if (a) there is contamination associated with a discharge of hazardous substances at levels at or above the Class II Ground Water Remediation Standards in potable wells; or (b) if contamination is found in surface waters used for public water supplies above federal and state drinking water standards. A vapor intrusion IEC exists if there is a discharge of a hazardous substance that results in contaminant levels in indoor air above the Indoor Air Screening Levels (dated March 2007) contained within the NJDEP’s Vapor Intrusion Guidance (dated October 2005). The Indoor Air Screening Levels represent triggers for action to address indoor vapor contamination and contain both residential and non-residential exposure levels. A direct contact IEC exists if soil contamination is identified above

the acute health effect levels in the upper two feet of the soil column and there is actual or a potential for human contact.

If at any point an IEC is discovered, the responsible party or Licensed Site Remediation Professional (“LSRP”) must immediately report the IEC condition by either phoning an assigned NJDEP case manager, or if one is not available or assigned, call the NJDEP’s Hotline (1-877-WARN DEP) and inform the operator that they are reporting an IEC condition. If the case does not have an existing case manager, the NJDEP will assign an IEC case manager. Even if the case has an assigned LSRP, the NJDEP will maintain direct oversight of the IEC condition until NJDEP approves its remediation.

Further, the new requirements impose mandatory timeframes for abating an IEC condition. Within 5 days from discovery of an IEC, the person responsible must address any receptors impacted by contamination from the site by implementing interim response actions such as providing bottled water to areas where the potable water supply is affected, change indoor ventilation and seal cracks or sumps if there is vapor intrusion, and construct site fencing or restrict access for a direct contact IEC. In addition, within 5 days from IEC discovery the following must be submitted to the NJDEP: (1) an IEC Response Action Form; (2) a completed IEC Information Spreadsheet; (3) a map identifying the location of the site and IEC condition; and (4) all analytical results with a full laboratory deliverable.

Sixty (60) days after discovery of the IEC, the person responsible for conducting the remediation must concurrently delineate its extent and implement an engineered system to remediate the IEC. The person responsible must submit an IEC engineered system response action report with an updated IEC Response Action Form to the NJDEP within 120 days from discovery. Thereafter, within 270 days after identifying the IEC, the person responsible must have completed a focused remedial investigation of the IEC contaminant source, begun source control by reducing the contaminants causing the IEC, and submit to NJDEP an IEC contamination source control report with an updated Response Action Form. The goal of source control is to eliminate the cause of the IEC condition to protect human health. The nature of the tasks for each of these requirements depends on the type of the IEC.

Please note that an IEC must be addressed in specific conformance with the requirements found in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.14 and applicable guidance. The guidance is still in draft form and can be found at [http://www.nj.gov/dep/srp/guidance/srra/draft\\_iec\\_guidance.pdf](http://www.nj.gov/dep/srp/guidance/srra/draft_iec_guidance.pdf). Generally, the regulations identify receptor control and source control as the two key components to abate an IEC condition. In other words, the person responsible must stop the ongoing exposure posing a human health threat and remediate any contamination sources associated with the IEC. Both these measures have specific timeframes for compliance, notification, remedial action, and reporting requirements some of which are outlined above. Failure to follow the requirements may lead to a \$20,000 penalty.

It is not clear under the Technical Requirements for Site Remediation and guidance how an IEC will be closed. However, according to NJDEP, if an IEC is part of a case with a Licensed Site Remediation Professional, the IEC will be closed upon issuance of a Response Action Outcome by the LSRP provided that the NJDEP approved the final IEC report. If the IEC is part of an older case with an assigned case manager, the IEC will be closed upon issuance of a No Further Action letter for the site or specific area of concern that was the source of the IEC.

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