



January 6, 2023

VIA ELECTRONIC FORMAT

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Attn: DEP Docket Number: 06-22-09

Dana Haymes, Esq. – Regulatory Officer

New Jersey Site Remediation Professional Licensing Board

c/o Office of Enforcement Policy

P.O. Box 420, Mail Code 401-06

401 East State Street, 6th Floor – East Wing

Trenton, New Jersey 08625-0420

Re: Comments on Proposed Amendments to the Regulations of the New Jersey Site Remediation Professional Licensing Board, N.J.A.C. 7:26I (DEP Docket Number 06-22-09, Proposal No. PRN 2022-138)

Dear Ms. Haymes,

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) and the Site Remediation Industry Network (SRIN) appreciate the opportunity to provide comments to the New Jersey Site Remediation Professional Licensing Board (SRPLB) on the proposed rule amendments published in the New Jersey Register on November 7, 2022. Below are CCNJ/SRIN's comments on this rule proposal for your review and consideration:

N.J.A.C. 7:26I-1.3 Definitions

CCNJ/SRIN request that the SRPLB revise the definition language in the rule proposal to match the definitions set forth in the Site Remediation Reform Act (SRRRA), which was most recently revised in August 2019 (SRRRA 2.0).

Existing definitions in rule proposal do not match definitions currently provided in SRRRA. Several, if not most, definitions provide references to other regulations instead of providing the definition directly in the rule language. There are a number of instances where the SRPLB definitions cross-reference the statute or regulatory definitions. Importantly, however, the proposed regulation has not addressed all of the definitional changes in the August 2019 amendments to SRRRA, specifically "remediation or remediate" and "immediate environmental concern", presumably because the New Jersey Department of Environmental Protection (NJDEP, Department) has not yet had a substantive stakeholder process for changes to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS, N.J.A.C. 7:26C) and the Technical Requirements for Site Remediation (TRSR, N.J.A.C. 7:26E). As a result, the rule

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proposal, if adopted in its current form, will be in substantial conflict with the TRSR until it is revised to incorporate the updated definitions from SRRA 2.0.

The best example of this is the definition of "remediation". The current SRPLB regulations at N.J.A.C. 7:26I-1.3 cross-reference TRSR at N.J.A.C. 7:26E-1.8. The proposed regulation has not included a change to this important definition; however, the August 2019 amendments to SRRA deleted several words and added the broad term "or any portion thereof" to the list of typical key documents, as well as excluded the payment of natural resource damages as shown in an excerpt from the amended statute at Section 3 of P.L.1983, c.330 (C.13:1K-8) below:

"Remediation" or "remediate" means all [necessary] actions to investigate [and], clean up, or respond to any known, suspected, or threatened discharge of hazardous substances or hazardous wastes, including [, as necessary,] the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

We note that subsequent amendments of the definition at Section 3 of P.L.1976, c.141 (C.58:10-23.11b); Section 23 of P.L.1993, c.139 (C.58:10B-1); and Section 2 of P.L.2009, c.60 (C.58:10C-2) did not need to add the reference to natural resource damages and read as follows:

"Remediation" or "remediate" means all [necessary] actions to investigate [and] , clean up, or respond to any known, suspected, or threatened discharge, including [, as necessary,] the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

The reliance on cross-references to the NJDEP's existing regulations causes conflict with the current definitions set forth in the August 2019 amendments to SRRA. For definitions that have not been revised by SRRA 2.0, the cross-references to the applicable regulations (e.g. TRSR) is appropriate because, if those definitions change via future revisions to the regulations, it will automatically change for the SRPLB rules.

N.J.A.C. 7:16I-6.8(a)4 Exercise of independent professional judgement

CCNJ/SRIN request that the SRPLB clarify the meaning of the following excerpt from the rule proposal, and also define "outside influence" as used below:

4. Make decisions and conduct remediation free from outside influence that is not protective of public health and safety and the environment; and

"Outside influence" could be interpreted very broadly (e.g. political, client, supervisor or employer influence, etc.) and beyond the intended scope if not properly defined. What is the referenced "outside influence that is not protective"? Do we assume this means the opinion of other professionals, regulators, clients, etc.? If so, these ethical duties are more clearly set forth elsewhere in the rules.

Based on the proposed language, one could infer that submitting to outside influence that is protective is allowed or even required. Does this mean that Licensed Site Remediation Professionals (LSRPs) have

to submit to NJDEP influence because, in its view, it is always acting in a manner that is “protective”? Should the rule not, instead, be written so that LSRPs should make decisions and conduct remediation free from outside influence that removes the LSRP’s independent professional judgement?

N.J.A.C. 7:26I-6.10(a)2&3 Responsibility to report a discharge

CCNJ/SRIN support the responsibility for reporting a discharge being the obligation of the Person Responsible for Conducting Remediation (PRCR) if the newly discovered contamination is not in an area that the LSRP has been retained to address.

We also support the responsibility for notifying other LSRPs of a discharge being the obligation of the PRCR due to private party contractual prohibitions and potential legal damages.

N.J.A.C. 7:26I-6.11 Deviation from workplan by client

CCNJ/SRIN recommend that any deviations from the Remedial Action Work Plan or other report concerning remediation that will not otherwise require a response from the NJDEP (e.g. deviation requiring a Land Use permit, permit-by-rule determination, alternative fill use approval, etc.) be submitted in the next phase report rather than adding an additional reporting requirement.

N.J.A.C. 7:26I-6.18 Duty regarding client communications

CCNJ/SRIN request that the SRPLB add the following citation:

(c) In cases where the regulatory, mandatory, or expedited site-specific timeframe exceedance is the result of a Department delay(s) in review/approval of a timely document, permit, or other submittal reviews, the LSRP remains responsible for notifying the client of the anticipated delay but the responsibility for extending the associated timeframe will rest with the Department, with no requirement for a Timeframe Extension Request.

The NJDEP is experiencing widespread and prolonged delays in the review and approval of Remedial Action Permit (RAP) applications. In a number of these cases, the reviews are approaching two years. As NJDEP policy on regulatory and mandatory timeframe notifications is currently applied, the LSRP is required to notify the Department if the application review delays will result in exceedance of a timeframe and request a timeframe extension. In the case of a mandatory timeframe exceedance, the NJDEP has advised LSRPs to ask for extensions in six-month increments. For many cases, this would result in multiple notification/approval cycles requiring at least three touches. This is highly inefficient and unnecessary.

We support the Licensed Site Remediation Professionals Association (LSRPA)’s solution for cases where the timeframe exceedances are the result of backlogged document reviews as it is practical, implementable, efficient, and puts the responsibility/accountability in the hands of the individual/organization best equipped to predict, control, and track the backlog:

1. Currently, every Remedial Action Report (RAR)/RAP submission gets logged into the New Jersey Environmental Management System (NJEMS) and populates the Case Tracking and SRP Detail Activity Tracking Tools in the DataMiner database. With RAPs, the submission,

- administrative review, and technical review are all logged into NJEMS and available for public tracking via Pending Permit Progress Reports (PPPR).
2. The regulatory and mandatory timeframes for every case are already in NJEMS and populate the DataMiner Case Tracking and SRP Detail Activity Tracking Tools.
 3. The PPPR already establishes a targeted RAP review timeframe (e.g. 120 days for groundwater RAPs).
 4. It would not be difficult to add two trackers to the PPPR for the regulatory and mandatory timeframes, each showing the timeframe dates and days remaining before an extension notice is required; as noted above, the data are already in the system and linked to the case for which the submittal is under review.
 5. Instead of further burdening PRCRs and LSRPs who are already overloaded and have no control over NJDEP review times, the system should automatically extend the regulatory and/or mandatory timeframe when the document is under review and the clock reaches 30/60 days prior to the respective deadline.
 6. The extension due to permit review delays should be updated on a continuous, daily basis until the RAP or a Notice of Technical Deficiency (NTD) is issued.
 7. The automated extension should be 60 days beyond issuance of the RAP/NTD for regulatory timeframes and 90 days for mandatory timeframes, which would give the parties (PRCR, LSRP, and the NJDEP) sufficient time to address the questions/NTDs, file for another extension if necessary, and then issue the Response Action Outcome (RAO),
 8. The system should issue a fully automated email notification to the LSRP and PRCR when the NJDEP-imposed review target is expected to be exceeded, a minimum of 60 days before the regulatory timeframe and a minimum of 90 days before the mandatory timeframe.
 9. While LSRPs all track the applicable regulatory/mandatory timeframes and other timeframe obligations by project, it is highly inefficient to engage 700 LSRPs in tracking NJDEP delays over which they have no control and must consult NJDEP data sources to notify the Department of their own delays.

Addressing the issue in this manner would have the following benefits:

1. Accountability – Puts the responsibility in the hands of the party with control over the timeframe exceedance;
2. Implementability – Requires no additional data input from the NJDEP beyond what is already in the system;
3. Practicality – Can be fully automated so that none of the NJDEP staff are further distracted from what is already an overloaded plate;
4. Efficiency – Eliminates the burdensome paperwork currently required of the LSRP and the Department to extend regulatory and mandatory timeframes for regulatory delays (currently, at least three people have to touch/process each extension);
5. Integrity – Avoids piling up Direct Oversight cases and associated costs that were NEVER intended by the statute, code of ethics, or regulations; and
6. Lastly and most importantly, Fairness and Professional Respect – Avoids tarnishing reputations of professionals as a result of regulatory review delays beyond their control.

N.J.A.C. 7:26I-6.19(b)2 Duty regarding public communications

CCNJ/SRIN recommend replacing “submitted” with “electronically submitted” in the following excerpt of the current rule:

2. Information that has been submitted to the Department; and

In general, this requirement is acceptable. However, inquiries are sometimes presented to LSRPs from people bypassing an Open Public Records Act (OPRA) request to go directly to the LSRP because they know a file review will take longer. We suggest limiting the requirement for LSRPs to respond to inquiries for information to documents that can be readily transmitted electronically. An LSRP should not be required to transmit information that is not in the public record or will not be in the public record once remediation and reporting are complete. LSRPs should also be shielded from having to respond to long lists of questions when the information can be gleaned from materials in the public record.

Thank you for your consideration of our comments on this very important rulemaking effort. Together, we believe we can work collaboratively to both be protective and allow businesses to continue to operate in the state and provide benefits to the citizens of New Jersey. If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to be 'Dennis Hart', with a long horizontal flourish extending to the right.

Dennis Hart
Executive Director