



## PROPOSED REGULATORY AND LEGISLATIVE CHANGES TO OVERHAUL THE STATE'S SITE REMEDIATION PROGRAM

### DESCRIPTION

Site remediation, the clean-up of contaminated properties to bring them back to beneficial use, plays an important role in economic development and is an essential component of any economic growth strategy. There are over 18,000 known contaminated sites in New Jersey. These are sites that lay fallow and unused, often for decades, because no private-sector company is ready to assume the cost and risk of cleaning it up. This leaves sites abandoned and the public continually exposed to the contamination lurking below the ground.

The scope of the problem and the number of sites far outstrips the ability of the State to pay for these clean-ups. The only way the State can make progress in cleaning up these problems is to maximize private-sector investment.

But any private company thinking about tackling one of these sites must deal with DEP's prescriptive, cumbersome, process-oriented approach. Each step they must take is detailed in the 140-page Technical Requirements for Site Remediation (Tech Regs), and DEP is required to review and approve every submittal before a project can move to the next step. Worse yet, the DEP faces a severe backlog on the number of submittals awaiting approval.

Despite this arduous permitting process, some environmental groups want to make it even tougher by requiring all sites to be cleaned up to a pristine standard. This will further drive private-sector investment away from the site remediation program and exacerbate the problem.

Instead the Legislature should allow for more cost-effective cleanup methods and encourage common sense in matching the cleanup remedy to the intended future use of the property. If the site is going to be a parking lot, there is no need to clean it up to residential standards. This will attract more private-sector investors into the process and more sites will get cleaned up, reducing exposure to contamination the people of New Jersey will face. And that benefits everyone.

### Alleviate Backlog by Licensing Professionals

One of NJBIA's priorities is licensing site professionals instead of DEP case manager to oversee site cleanups. Under a licensed site professional (LSP) program, an LSP would assume liability for actions taken at the site and submit the approved paperwork to the DEP. This has been successfully done in Massachusetts, and NJBIA believes that this would reduce the backlogs and speed up the process here by alleviating the burden on the DEP staff. More sites would get cleaned up, more ratables would be generated for municipalities, more

tax revenues would be generated for the State, and there would be less suburban sprawl, as most of these sites are in already developed areas.

**Legislation:** A-1555 establishes a licensing board for professionals who work on low priority site cleanups. This bill was introduced on January 8, 2008, and was referred to the Assembly Environment and Solid Waste Committee.

NJBIA supports A-1555, but would like to the bill to be expanded beyond the stipulated low priority contaminated sites.

### **Maintain Flexibility to Use Cost-Effective Remedies**

The DEP should maintain flexibility in selecting remedies for cleaning up contaminated sites. Depending on the past use of the site and its intended future use, so-called non-permanent remedies can be employed to make the project more affordable, and hence, more attractive to private-sector investment. Non-permanent remedies allow a certain amount of contamination to be left in the ground as long as the exposure pathway is eliminated. In other words, if the contamination cannot get out, there is no reason to clean it up. This remedy should be limited to nonresidential sites, such as a cap for a site destined to be a parking lot.

Environmental groups have asserted that all sites should be cleaned up to pristine standards regardless of the future use of the site or the cost of such a project. We believe this would drive the cost of cleanups too high, to the point that it would literally bring the Site Remediation Program to a halt.

The remedy should be based on the use of that property, not an unattainable desire to simply clean every site to pristine standards regardless of its use. Requiring strict cleanup standards for properties destined to become schools or daycare centers makes sense. Common sense says that when sites are not used for residential purposes or do not impact vulnerable populations, such as children or the elderly, such sites should not require the most extensive and expensive cleanup remedies. NJBIA believes that the Legislature should only provide DEP with the authority to require the strictest standards to those sites that impact vulnerable populations or those sites that are residential developments. On other sites more cost-effective engineering controls or caps should be allowed. In short, the remedy should fit the use of the site.

**Legislation:** A-1556 provides DEP with the authority over remedy selection for cleanup of contaminated property to be used for residential purposes or schools. The bill was introduced on January 8, 2008 and referred to the Assembly Environment Committee.

### **Environmental Insurance**

The DEP proposed the idea of requiring environmental insurance on sites in an effort to have a “deep pocket” if the site changes use, and there is an impact to the environment or human health. The impetus for this proposal was the highly publicized tragedy of Kiddie Kollege. In this case, the owner of a site that was

previously a thermometer factory changed its use to, among other things, a day care center. The site was never cleaned up before this change of use and subsequently children were exposed to mercury.

There were many causes for this breakdown in the system, not the least of which was the willful disregard of the law by the owner. Subsequently, fines and penalties were increased for such violations.

While NJBIA supports the idea of creating safeguards against changes of use, environmental insurance is not the answer. It would be prohibitively expensive and would not serve the purpose intended by the DEP. We believe that there is a better alternative. Right now, permits focus solely on the owner and the owners' operation of that site. Instead, NJBIA supports the idea of a permit that follows the site throughout its useful life. If a permit followed the site any changes in use would then be brought to the attention of the department, creating an additional safeguard beyond notice from a municipality.

### **NJBIA POSITION**

In tackling the flaws in New Jersey's Site Remediation Program, legislators should not lose sight of the ultimate goal: cleaning up as many contaminated properties as possible and protecting human health and the environment.

Any legislative changes should attempt to prudently utilize existing DEP resources and at the same time, keep the Site Remediation Program moving in the right direction. Any economic growth strategy must encompass the promotion of site remediation in an effort to bring such sites back into productive use in a safe and effective manner. Furthermore, site remediation facilitates the State's goal of protecting "greenfields" and promotes the use of sites located where there is existing infrastructure.

We must provide a mechanism to reduce the time it takes to clean up contaminated sites in a manner that is appropriate for each individual site. We must remove some of the burden faced by the DEP case managers. And we must provide safeguards to prevent the mistakes of the past from happening again. These goals can be accomplished through: establishing cleanup requirements that are based on risk; implementing an LSP program to reduce the workload on DEP case managers; and creating a permit that follows the site. By doing so, the State's environment, citizens and economy will all benefit.

NJBIA stands ready to work with the Legislature to facilitate the changes illustrated above.

### **CONTACT**

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