



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION CONTAMINATED SITE REMEDIATION & REDEVELOPMENT

401 East State Street

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

Trenton, New Jersey 08625-0420

Tel. (609) 292-1250 • Fax (609) 777-1914

www.nj.gov/dep

www.nj.gov/dep/srp/

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

SHAWN M. LATOURETTE

Commissioner

May 2, 2023

Re: Contaminated Site Remediation & Redevelopment
Remediation Process Improvement Initiative

Dear Stakeholders:

Thank you for your participation at the February 22 virtual listening session and for your written comments. The Department of Environmental Protection (DEP) is eager to build upon the success of the Site Remediation Reform Act (SRRA), which streamlined and expedited the remediation of contaminated sites across New Jersey, in part by authorizing licensed site remediation professionals (LSRPs) to carry out certain responsibilities historically performed by DEP case managers. Notwithstanding the cleanup progress New Jersey has seen since SRRA's implementation, DEP recognizes that aspects of the remediation process can and should be improved. To that end, and as you know, with direction and support from the Commissioner and Deputy Commissioner, DEP Contaminated Site Remediation & Redevelopment (CSRR) plans to launch a Remediation Process Improvement Initiative (RPII) with input from interested stakeholders.

DEP intends RPII to be a collaborative effort between the Department, LSRPs, the regulated community, and other interested stakeholders. DEP expects the RPII effort to unfold over the next nine to twelve months, with multilateral remediation process and communication improvements its primary goal. As we prepare a schedule of forthcoming RPII stakeholder engagements, DEP offers this brief summary of stakeholder feedback and Department reflections to date.

Your comments have sounded several common themes: CSRR reviews take too long; CSRR's comments on remedial phase reports are often provided long after the work was completed or is nearly complete; reviewers require additional work based on their preferences, rather than a regulation or guidance document, and often give no reason or rationale for their requirement; and CSRR conducts too many reviews, instead of simply "inspecting" submissions. Commenters further noted that these combined inefficiencies can then lead to it taking many months for a remedial action permit (RAP) application to be reviewed and processed. In turn, these delays may postpone the issuance of the response action outcome (RAO), which responsible parties may require to move ahead with redevelopment plans. CSRR recognizes these concerns and is committed to evaluating and implementing process improvements in further collaboration with the regulated community.

Some commenters also acknowledged that licensed site remediation professionals (LSRPs) do not always adequately explain or document their conclusions, despite repeated CSRR efforts to inform LSRPs that sufficient documentation and explanation are critical to achieving closure and therefore are not optional. It is also important to recognize that even if additional justification (whether a matter of documentation or field work) requested by CSRR does not change the protectiveness

determination, such justification nonetheless serves a critical role by providing information that completes the investigative record, which will be used by the Department, other LSRPs, future purchasers and lenders, and members of the public interested in the status and protectiveness of the remediation.

Importantly, DEP's programmatic review to date suggests that the process and communication issues underlying existing inefficiencies are complex and not simply a function of a purported lack of CSRR staff deference to the professional judgment of LSRPs as some stakeholders have suggested. Notwithstanding DEP's respect and appreciation for the expertise and considerable efforts of LSRPs, our review to date points to a need for concerted process and communication improvements on the part of CSRR, LSRPs, and the regulated entities LSRPs represent.

As DEP commits to this collaborative improvement effort, including the nature and extent of CSRR reviews, it is important that all stakeholders understand that SRRA does not permit CSRR to simply defer to an LSRP conclusion in all instances. Such a position misunderstands the role that the professional judgment plays in the remediation process. SRRA establishes strict standards LSRPs must meet in exercising their responsibilities, including the primary requirement that LSRPs "highest priority in the performance of professional services shall be the protection of public health and safety and the environment," and requires that LSRPs "exercise independent professional judgment" in performing all of his or her duties, free from outside interests that may not hold the protection of public health and safety and the environment as the highest priority, including the potentially competing interests of an LSRP's client.

SRRA Section 16.i lays out an LSRP's fundamental obligations:

A licensed site remediation professional shall exercise independent professional judgment, comply with the requirements and procedures set forth in [SRRA], make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports and other information evidencing conditions at a contaminated site for which he is retained that is in possession of the owner of the property, or that is otherwise available, and identify and obtain whatever additional data and other information as the licensed site remediation professional deems necessary. The licensed site remediation professional shall disclose and explain in any document submitted to the department any facts, data, information, qualifications, or limitations known by the licensed site remediation professional that are not supportive of the conclusions reached in the document.

As the Site Remediation Professional Licensing (SRPL) Board has noted in its May 1, 2017 Statement of Interpretation 2017-01, using professional judgment means applying one's knowledge, skills, training, and experience to the facts and circumstances of a given site; it "does not require an LSRP to make decisions in a vacuum. An LSRP can *and should* consider the opinions of other site remediation professionals, *including Department staff*." (emphasis added) The Statement goes on to state that the requirement of independence means that the LSRP's judgment "should be free from outside interests that do not have the protection of public health and safety and the environment as the highest priority [such as] financial or personal interests, direct or indirect, of clients, persons responsible for conducting remediation and any other persons, that are not compatible with the LSRP's highest priority to protect public health and safety and the environment." It does not grant LSRPs independence from appropriate, statutorily authorized regulatory oversight.



When reviewing submittals, CSRR relies on several principles derived from Section 16 of SRRA and the Board's statement. First, an LSRP's judgment must always be exercised to ensure that the remediation is protective. This is CSRR's first priority as well. Second, the LSRP's judgment and decision making must be free from outside interests and influences that are not consistent with the statutory goal and requirement of protectiveness. Third, the LSRP must provide sufficient information to support their conclusions and exercise of professional judgment.

To ensure proper execution of the broad responsibilities it conveyed to LSRPs, SRRA mandated DEP evaluation of LSRP submissions. This fundamental feature of SRRA (Section 21.a) requires DEP to "inspect" all submitted documents and further authorizes NJDEP review of submissions if it determines that the LSRP did not comply with the statute; that deficiencies in the submission will make it impossible to evaluate the remedy's protectiveness; or that the remedy will not be protective. Section 21.b mandates that DEP conduct additional review in four circumstances: where the contamination "poses a significant detrimental impact on public health, safety, or the environment;" where the contamination may affect a licensed childcare center, school, or other sensitive population; where the site is located in an overburdened, low-income community of color; and where State grants or loans are being used for the remediation. Section 21.c authorizes additional review in numerous other situations. Lastly, Section 22 requires that DEP invalidate an RAO if it determines that it is not protective.

When CSRR staff conduct reviews and request additional information from LSRPs, they are fulfilling DEP's continuing statutory oversight responsibilities. CSRR does not seek to override an LSRP's decisions or conclusions. Rather, CSRR's responsibility is to ensure that remediation case records clearly demonstrate the achievement of the shared DEP-LSRP goal, *i.e.*, that remediation be protective of public health and safety and the environment. In certain instances, submissions may lack the degree of detail that explains an LSRP's exercise of professional judgment.

Overall, your comments have raised important questions regarding *how* and *when* CSRR exercises its authority to review submissions. DEP appreciates these requests for greater transparency regarding CSRR's process for making a required determination under SRRA Section 21.a and for deciding that additional review is warranted under Section 21.c. Through our collaborative RPII effort, CSRR will endeavor to improve and make more transparent its submission inspection and review process. This would include providing more information regarding which case types prompt varied levels of review and improving CSRR's articulation of statutory bases and justifications for additional field work.

On the timing issue, due to the sheer volume of submissions, and the rush of certain submissions on or around certain regulatory and mandatory timeframes, CSRR often conducts reviews after the RAR/RAP application have been submitted, *i.e.*, after the investigation and remediation are complete. This understandably engenders some frustration, although earlier or more frequent reviews would also likely cause their own delays.

In sum, while SRRA has invested LSRPs with significant responsibilities, it does not elevate an LSRP's professional judgment above statutory and regulatory requirements or supersede the fundamental obligation to protect public health and the environment long vested in the Department. At the same time, while SRRA maintained DEP's substantial authority to conduct a detailed review of remediation submissions, DEP's review to date has found that it is likely that CSRR sometimes exercises that authority without sufficiently justifying or explaining its decision to do so. In addition, there is a need for DEP to improve processes and better articulate criteria guiding CSRR reviews and any resulting requests for additional documentation or field work.



DEP believes that remediation process improvements are achievable with collaboration and mutual acknowledgment of the changes all parties to the process must undertake. For its part, DEP is in the process of considering amendments to ARRCs and the Technical Requirements that address some of the issues discussed above. In addition, DEP is evaluating a variety of procedural reforms, including:

- Ensuring reviewers are adequately trained to review permit applications and issue permits.
- Developing guidance/training for LSRPs on the importance of documentation and the avoidance of common mistakes.
- Communicating common errors (and their solutions) found in RAP applications by providing the FAQs produced by the Effective Collaborative Communication Committee.
- Providing the flowcharts produced by the Effective Collaborative Communication Committee that describe the process for CSRR review of RAP applications and other submissions.
- Evaluating CSRR's current processes and criteria for conducting additional reviews, level of approval needed when determining when additional work is needed, and ways of communicating these decisions (and their rationale) to the LSRPs.
- Developing a formal and transparent process for discussing CSRR comments/deficiency letters.
- Reviewing the Massachusetts and Connecticut programs and how they have changed and responded since they were put in place.
- Considering regulatory amendments, potentially including the establishment of a general permit and/or a permit-by-rule.

We will be scheduling a meeting with Department staff and stakeholders in early June. In the meantime, if you have questions regarding this letter, please email us at remediation.process@dep.nj.gov. Thank you for your interest and input. We look forward to improving the remedial process and ensuring efficiency in the LSRP program.

Sincerely,



David E. Haymes, Assistant Commissioner
Contaminated Site Remediation & Redevelopment



Paul Stofa, Chief Advisor
Office of the Deputy Commissioner



Gwen B. Zervas, Director
Division of Remediation Management
Contaminated Site Remediation & Redevelopment

