



NJDEP's proposed rule changes regarding implementation of Site Remediation Reform Act

October 25, 2010 - Long Island

I heard that the NJDEP recently issued proposed rule changes for public comment regarding the implementation of the Site Remediation Reform Act (SRRA - N.J.S.A. 58:10C-1 et seq) and related statutory amendment's. What are the changes?

On October 4, 2010, the NJDEP published a rule proposal in the New Jersey Register that is open to public comment for the next 60 days. The proposed rule is based on the department's extensive stakeholder outreach and is intended to address stakeholder concern over various aspects of the department's interim rules that were adopted on November 4, 2009. The purpose of the interim rules was to detail the means by which the Site Remediation Reform Act (SRRA) enacted on May 7, 2009 would be implemented. Under the interim rules, site remediation could proceed in most instances without prior department approval, assuming the remediation was progressing under the supervision of a Licensed Site Remediation Professional (LSRP). This represented a fundamental shift in the manner in which environmental remediation is performed in the state of New Jersey.

The interim rules established mandatory time frames under the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS - N.J.A.C. 7:26C) for the following remediation milestones to ensure remedial actions would progress without the department's direct involvement: (1) Submission of an initial receptor evaluation; (2) Addressing Immediate Environmental Concerns (IECs); (3) Interim remedial measures to address free product; and (4) Submission of Preliminary Assessment (PA) and Site Investigation (SI) reports. In addition, other regulatory timeframes for remedial performance were established in the Technical Requirements for Site Remediation (TRSR - N.J.A.C. 7:26E).

Over the course of the last year, the department consistently heard from stakeholders during its outreach that the mandatory timeframes established were too short. As a result, the department is, "proposing to amend the mandatory remediation timeframes established in the ARRCS rules at N.J.A.C. 7:26C-3.3 by extending them for one additional year, and is also proposing to amend the regulatory timeframes set forth in the TRSR in order to afford the person responsible for conducting the remediation a full one-year safety cushion." So depending on when your remediation project began, if the interim rules are adopted as proposed, the mandatory timeframes to complete certain milestones will be extended as much as one year (from March of 2011 to March of 2012). Other milestones, such as those required for performance of investigations and submission of associated reports relating to immediate environmental concerns for indoor air are being extended from 5 days to 14 days. If adopted, these extensions will still require responsible parties to move projects through the remedial process at a quicker pace than under the prior NJDEP oversight rules.

Other rule changes proposed by the department revolve around changing definitions and trigger levels within the various rules and guidelines already established so as to provide better consistency

between the various rules and guidelines and will ultimately provide more clarity to those entities and LSRP's executing remediation projects. For example, the SRRA definition for an "immediate environmental concern (IEC)" for indoor air generally indicates that the contamination is of the nature that when exposed, poses a risk of an acute human health exposure. The TRSR uses the indoor air screening levels contained in the department's Vapor Intrusion Guidance (VIG) as the trigger for identifying an IEC for indoor air. The indoor air screening levels, however, are not typically considered to present a risk of acute exposure, let alone any significant short term risk. Therefore, the department is proposing a change to the definition in the TRSR for an IEC in indoor air from the current "exceedance of the indoor air screening level" to the "exceedance of the rapid action level" as identified in or to be developed consistent with the department's VIG.

The changes that are contained in the proposed rules would become effective upon adoption. These proposed rule changes will help to further streamline the site remediation process while addressing concerns on the practicality of the mandatory timeframes from the original rule adoption.

For more information on the Licensed Site Remediation Professional, you can visit the NJDEP website at www.state.nj.us/dep or the Licensed Site Remediation Professional Association at www.lsrpa.org.

Bill Parry is the department manager - environmental services at H2M, Parsippany, N.J.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540