

Status of Administrative Consent Orders and Remediation Agreements

6 February 2012

Parties currently conducting remediation pursuant to an Administrative Consent Order (ACO) or a Remediation Agreement (RA) have asked for clarification regarding the status of their ACO/RA in light of the 2009 amendments to the Brownfield and Contaminated Site Remediation Act. N.J.S.A. 58:10B-1.3. This notice is intended to provide that clarification.

The Brownfield Act amendments mandate that remediation proceed without prior Department approval and under the oversight of a Licensed Site Remediation Professional (LSRP). This mandate applies to parties currently conducting remediation pursuant to an ACO or a RA.

With the exception of some RCRA, CERCLA and Federal Facilities, all parties in any way responsible for a the remediation on a site where a discharge was discovered prior to November 4, 2009, including those sites with an ACO or an RA, are required to hire an LSRP immediately if they miss a mandatory timeframe, or no later than May 7, 2012, whichever occurs first. Additionally, parties may choose to opt into the LSRP program prior to May 7, 2012. Upon the date that a party enters the LSRP program, the Department will hold in abeyance all requirements in ACOs/RAs that concern obtaining the Department's preapproval of reports, workplans, progress reports, and all requirements to meet ACO/RA-specific timeframes. Parties are expected to proceed with remediation using an LSRP in accordance with N.J.A.C. 7:26C-2.4, and to meet all regulatory and mandatory timeframes contained in the applicable rules, including N.J.A.C. 7:14B, N.J.A.C. 7:26B, N.J.A.C. 7:26C and N.J.A.C. 7:26E.

For details regarding which RCRA, CERCLA and Federal Facilities are exempted from these requirements, refer to http://www.nj.gov/dep/srp/srra/training/matrix/quick_ref/rcra_cercla_fed_facility_sites.pdf.

All other requirements of the ACO/RA remain in effect and are not held in abeyance, including, but not limited to, requirements for a remediation funding source (RFS), the RFS surcharge, and stipulated penalty provisions. The person responsible for conducting the remediation pursuant to an ACO or RA should be aware that the ACO/RA remains in effect and will not be terminated until remediation is complete or all remaining remediation is covered by a remedial action permit.