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## The Evolution of a New Jersey Environmental Program

by Terri Smith

The State of New Jersey has always been in the forefront in its efforts to address environmental issues within the state. Over the past 26 years the New Jersey environmental programs have undergone many reviews and refinements.

In the late 70's and early 80's environmental issues, specifically the environmental legacies left behind at former industrial facilities, were finding their way into the headlines. Such newsworthy events as Times Beach in Missouri and Love Canal in New York were making headlines and citizens were looking for answers. These events and others like them spurred federal legislation to address the contamination that was left behind on these properties and its impact on the citizens who live and/or work at or near them.

The Comprehensive Environmental Response Compensation and Liability Act (CERCLA) was one of the first innovative Federal environmental legislative initiatives to address the contamination that remained behind at these industrial properties. CERCLA was passed in 1983 and established the Superfund and the National Priorities List. Seeing other Love Canals in their midst, states and municipalities nationwide began working to get contaminated properties placed on the National Priorities List and cleaned up under Superfund.

At the same time in New Jersey, as in other states, the legislature was evaluating the need to address these types of situations before public health and the environment were compromised. In New Jersey this legislation was known as the Environmental Cleanup Responsibility Act (ECRA), which became effective on in December 1983. The need for the ECRA program was well documented. Former industrial properties that were closed and/or abandoned were found to be the source of soil, ground water, and surface water contamination in the state. Too often, unsuspecting buyers of these properties were finding out after they purchased the property that it contained hidden environmental problems that as new owners they were responsible for cleaning up.

### Burden shift

ECRA attempted to place the burden of the responsibility for a cleanup where it belonged by requiring owners of industrial establishments to clean up their facilities as a precondition to closure, sale, or transfer of their operations and property. The premise of the law was that the costs associated with these cleanups would be borne by the owners, thereby, relieving the taxpayers and citizens of the state of this burden.

ECRA used the U.S. Department of Labor, Occupational Safety & Health Standard Industrial Classification (SIC) Manual as its basis for identifying applicable properties under the statute. ECRA applied to industrial establishments falling into the major Standard Industrial Classification Code groups 22-39; 46-49; 51 & 76. In addition to possessing the SIC number, the industrial establishment must be engaged in the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes; and must be closing or transferring the ownership of the property or business or ceasing operations. All three conditions (SIC code, hazardous substances or wastes, subject transaction or cessation) must be present for ECRA to apply.

The positive impacts that resulted with the implementation of ECRA were that citizens and taxpayers benefited from these properties being cleaned up without the use of tax dollars. In addition, it provided for the early identification of environmental concerns, assisted in preventing future abandonment of industrial properties and benefited buyers who received properties without environmental problems. However, some owners saw it as a costly impediment to selling their properties, resulting in some cases in which owners were fencing off the property and maintaining ownership to avoid the provisions of the law.

To address these impacts and to further facilitate cleanups at these properties the New Jersey Legislature developed a new law that would further enhance ECRA. The Industrial Site Recovery Act (ISRA), passed in May 1993, amended the ECRA statute and facilitated the implementation of the voluntary cleanup program that was established as a means to encourage private parties as well as municipalities to clean up contaminated properties. Through the use of a memorandum of agreement (MOA) the program provided some flexibility to parties conducting cleanup activities using their own time frames. ISRA also provided guidance concerning historic fill, as well as establishing a funding program, known as the Hazardous Discharge Site Remediation Fund (HDSRF). This fund provides low interest loans and grants for the assessment, investigation, and cleanup of contaminated properties.

### Making matters 'EOZ'

Since 1993, additional laws have been passed to enhance the state's ability to encourage the cleanup of these tainted abandoned properties, by now commonly known as brownfields, and in turn spur their redevelopment. In January 1996, the Environmental

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Opportunity Zone Act was passed which empowers municipalities, by ordinance, to define an environmental opportunity zone (EOZ) and allow property tax relief for the cleanup of contaminated sites within that zone.

In July 1996, the New Jersey Urban Redevelopment Act was passed which established the New Jersey Redevelopment Investment Fund to provide grants and low interest loans to facilitate redevelopment in New Jersey's urban core. It also established neighborhood empowerment zones to assist municipalities in the planning and redevelopment efforts being undertaken in their communities.

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In November 1996 the Municipal Landfill Site Closure, Remediation and Redevelopment Act was passed to facilitate the cleanup of abandoned municipal landfills. This Act provides for the use of newly generated sales tax from the redeveloped site to reimburse the developer for 75% of the cost of the cleanup.



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As the programs evolved and policies were implemented, new strategies to encourage the cleanup and redevelopment of brownfields properties were also being developed, such as the Brownfields Contaminated Site Remediation Act, which was signed into law in January 1998. Known as the Brownfield Act it provided additional provisions to advance the cleanup and redevelopment of brownfield sites and to enhance an already comprehensive cleanup program for urban redevelopment efforts, including the establishment of the redevelopment agreement which provides up to 75% reimbursement of cleanup costs associated with the cleanup and revitalization of a contaminated property.



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All of this leads us to the current state of the environmental programs that address contaminated properties in New Jersey. On May 7, 2009 another enhancement of the site remediation program took place when the Site Remediation Reform Act was signed into law, establishing a licensing program for site remediation professionals, as well as amending current environmental cleanup laws.

Modeled after the Massachusetts licensing program, New Jersey has again taken an innovative approach to ensuring the timely cleanup of the environment while also ensuring the protection of public health. This new approach is being seen as a way to facilitate the cleanup of properties and their impact on natural resources as well as the health of the citizens who live nearby. In addition to the licensing of site remediation professionals the Act also establishes a permitting program for the use of land use controls and amends numerous environmental laws including ISRA, the Spill Act, and Brownfield Contaminated Site Remediation Act.

While states across the country are evaluating existing environmental programs to enhance the cleanup of these abandoned contaminated properties in hopes of rebuilding our urban areas and preserving green space, New Jersey appears once again to be in the forefront with its evaluation of its environmental programs and its innovative approaches to efficiently and effectively facilitate the cleanup of the contaminated properties located within its borders.

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