

Locke Lord QuickStudy: Tale of Two States: Changes in Environmental Cleanup Regulations in Connecticut and New Jersey ?

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Two states that have long had environmental transfer laws are making some changes – in seemingly opposite directions. While Connecticut is saying goodbye to its Transfer Act, New Jersey is keeping its transfer act, Industrial Site Recovery Act (ISRA), and adding more regulations to the mix. In this QuickStudy, we provide a high-level summary of the changes, and some timelines to watch.

Connecticut: Stakeholder groups in progress

Connecticut land owners and prospective purchasers should be familiar with Connecticut's Transfer Act. Conn. Gen. Stat § [22a-134a et seq.](#) For properties meeting the definition of "establishment," the Transfer Act requires one of the parties to conduct a thorough investigation based on the potential for releases of hazardous materials. Often seen as overly burdensome and out of step with typical national standards, the framework was unique to Connecticut, and cumbersome to all sorts of corporate and real estate transactions.

In September 2020, the Connecticut legislature passed Public Act 20-9, which provides the framework to replace the Transfer Act with a release-based cleanup program, focusing on identified contamination and increasing efficiency of cleanup efforts in the state. Public Act 20-9 requires the Connecticut Department of Energy and Environmental Protection ("CT DEEP") to adopt comprehensive regulations to establish the new program. CT DEEP adopted its first set of amendments to the Remediation Standard Regulations ("RSRs") and Environmental Use Restriction Regulations ("EURs") in February 2021. Currently, CT DEEP is working with stakeholders to continue to develop the new program, and information about CT DEEP's stakeholder meetings is available [here](#).

New Jersey: Six month phase in for new regulations

Further down the coast, the New Jersey Department of Environmental Protection ("NJDEP") is not only keeping its transfer-triggered requirements, but doubling down on one of the nation's strictest site remediation regimes. In March 2021, NJDEP adopted several significant revisions to its remediation standards that govern all cleanup efforts in New Jersey.

The more notable amendments include: establishing residential and non-residential soil remediation standards for the ingestion-dermal and inhalation exposure pathways; revising standards for regulated substances, some of which establish more stringent standards while relaxing others; creating new soil and soil leachate remediation standards; and adopting indoor air standards for vapor intrusion for the first time.

Currently, the standards are in the six-month phase-in period. Sites that attain regulatory closure by November 17, 2021 are not required to comply with the new standards. However, additional sampling and remediation is required where the new remediation standard became more stringent by a factor of 10 or more (an “Order of Magnitude”). The Order of Magnitude requirement applies to sites not yet closed, as well as certain sites that have achieved regulatory closure. Reevaluation of closed sites will be triggered by a site’s re-entry into the remediation process via, for example, compliance with ISRA or a submission of a biennial certification for sites with engineering and/or institutional controls. NJDEP has issued guidance to provide information on the constituents to which this applies, [here](#).

While the Order of Magnitude changes only affect a limited set of constituents, the potential for reopeners is always a worry for property owners, particularly when an owner has given a release to prior owners or other responsible parties. Potential purchasers of properties subject to ISRA or engineering or institutional controls will need to perform a close review of any prior closures.

Certainly a constant in environmental law is changing regulatory standards. These changes emphasize the need to conduct thorough environmental reviews on property transactions, even when the matter looks settled.

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