

## Sen. Smith / Asm. McKeon Op-Ed on Site Remediation

President Obama in his inaugural address said that “The question we ask today is not whether our government is too big or too small, but whether it works . . . Where the answer is yes, we intend to move forward. Where the answer is no, programs will end. Those of us who manage the public's dollars will be held to account.”

In New Jersey, especially in these troubled economic times, we must also find solutions that work. That is why, as chairmen of the State Senate and Assembly Environment Committees, we have sponsored a far-reaching reform of the state's contaminated site cleanup laws.

Everyone agrees the problem exists – over 20,000 known contaminated sites in the state are not being cleaned up fast enough. Public health is at risk. Cleanup at many of the most polluted sites has languished for years. These dormant, shuttered industrial sites help contribute to our economic distress. We must start cleaning up these sites more quickly. And we must ensure that these cleaned up sites are safe to use today, and 50 years from now.

The present system, with cleanups micro-managed by Department of Environmental Protection case managers, does not work. Hiring more staff, even if we could afford it, is not the answer. The approach that is most effective and efficient is a Licensed Site Professional (LSP) program similar to one that has been highly successful in Massachusetts, but adapted to meet New Jersey's needs and concerns.

We take this step fully aware of the potential shortcomings. The people who are required to clean up the site currently pay Licensed Site Professionals: this relationship will remain. However, it is important to understand that in many cases contamination occurred decades ago by companies that have long since vanished. The people who volunteer to clean up these old industrial sites are often municipalities and developers whose goal is to transform warehoused property into productive economic engines once again.

To protect the public interest, we have included many safeguards in the bill. New Jersey's program will require that consultants meet rigorous licensing standards and adhere to a strict code of conduct, ethics and conflict of interest. They must certify that their work complies with all statutory and regulatory cleanup standards. Our legislation also creates a new independent licensing board that can take strong enforcement action when necessary. The members of the board will be the top representatives of their profession, and their motivation will be to maintain high professional standards.

Not every site will be managed by a Licensed Site Professional. The DEP will be heavily involved in cleanups that pose serious public health threats. If the person who is responsible for the cleanup has a history of recalcitrance, the DEP will be required to take over the direct oversight of the cleanup. If

the cleanup does not meet mandatory timeframes, or if the site is heavily contaminated or impacts sensitive receptors, we will permit the DEP to assume direct oversight.

The legislation also requires the DEP to maintain an extensive audit function for all cleanups. The DEP will screen all documents submitted by an LSP, and will be required to perform additional review if specific conditions exist or the DEP believes the public is at risk. If these audits lead the DEP to conclude that a cleanup is being performed incorrectly, the DEP can invalidate the cleanup and require further work.

Even more important than these various safeguards are the new environmental protections in this legislation. Current law allows the person doing the cleanup to decide whether to actually remove the contaminated soil or to leave it in place and cap it with clean fill. This bill gives DEP more authority to mandate how the cleanup will be done.

When the future use of a site includes a school, child care facility or residential housing, the DEP can establish remedies that will be more protective than currently required in law. The bill also prohibits the development of schools, child care facilities and housing on landfills. Both the persons responsible for cleanups and the LSPs will now have an affirmative duty to report discharges and conditions at a site that poses immediate environmental concerns. And for the first time all sites will be required to be remediated in accordance with set strict time frames that do not exist now.

We have worked with the DEP and a diverse group of stakeholders for over two years to develop the best legislation we could. This is an effort by a broad array of groups to fix a broken site remediation program. This is a law that is good for both our environment and our economy. This is, we believe, government that works.