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On behalf of the New Jersey Business & Industry Association, the nation's largest statewide business association whose members employ over 1 million people in this state, please accept these additional comments pursuant to the DEP's stakeholder process on the New Jersey Environmental Justice Act (Act). These comments will focus on how site remediation projects should be treated under this law.

The Act establishes a review and decision-making process when certain facilities engage in certain conduct in certain areas. For the Act to be applicable it is predicated upon three conditions being in place. First, the activity must be in a defined overburdened community. Second, the activity must be undertaken by a facility as defined and limited by the Act. Finally, the facility must be seeking a permit from the DEP for that activity. All these conditions must be in place for the Act to be applicable to an activity. If one is missing, the Act does not apply no matter what the activity or presumed impact. Of course, the DEP retains its underlying authority to regulate the activity as applicable, it just cannot apply the Act's requirements or standards to that activity.

The Act specifically provides "that 'permit' shall not include any authorization or approval necessary to perform a remediation, as defined pursuant to section 23 of P.L.1993, c.139 (C.58:10B-1)." The Brownfield and Contaminated Site Remediation Act" (BACSRA), defines "remediation" as:

all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources ...

Further clarification of exempt activities can be found by looking at the definition of "remedial action" under the BACSRA. BACSRA defines "remedial action" as:

those actions taken **at a site or offsite** if a contaminant has migrated or is migrating therefrom, as may be required by the department, including the **removal, treatment, containment, transportation, securing, or other engineering or treatment measures**, whether to an unrestricted use or otherwise, designed to ensure that any discharged contaminant at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable health risk or environmental standards (emphasis added).

The regulations implementing the Act should be clear that the exemption from the definition of "permit" extends to aspects of a remedial action that are supportive of and integral, and thus necessary, to the primary remedial action being conducted. For example, a contaminated sediment dewatering facility located near a sediment dredging remediation project, that serves the sole purpose of rendering dredged sediment from that project

suitable for transport to remote locations for final disposal, should clearly be exempt from the Act.

It is important to also be clear and specific on what permits are excluded from the Act because many of the permits that a remediation will need may be issued by programs other than the site remediation program. For instance, to excavate an area to remove soil, a freshwater wetlands permit may be needed from the land use program. To treat groundwater or dewater materials, a discharge permit or water allocation permit may be needed from the water program. Even though these permit approvals are issued by programs other than SRP, it is clear that these permits or approvals are covered by the Act's exemption as an "authorization or approval necessary to perform a remediation."

Moreover, while the Act defines "remediation" by reference to BACSRA, the exemption for remediation activities can only be logically read to apply not only to remediation activities conducted under BACSRA, but also with respect to "permits" issued under the other State site remediation programs such as ISRA and federal programs such as CERCLA, TSCA and RCRA.

We are requesting that the regulations being proposed make it clear that site remediation and related authorizations and approvals are exempt from the regulatory program. We are concerned that any ambiguity will be used by persons opposed to a site remediation or a particular project, even if clearly exempt or not covered by the clear meaning of the Act. Any ambiguity could be used to try to compel a certain outcome.

Thank you for your consideration and we will be happy to meet with you to discuss in greater detail.

A handwritten signature in black ink, appearing to read "Raymond Cantor", with a long horizontal stroke extending to the right.

Raymond Cantor
Vice President of Government Affairs
New Jersey Business & Industry Association