

GARDEN STATE CLE LESSON PLAN

A 1.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUTION

INDUSTRIAL SITE RECOVERY ACT

WITH

**R. KEVIN McGRORY, ESQ.
AND MARYLOU DELAHANTY, ESQ.**

AND FEATURING

ROBERT RAMSEY, SENIOR INSTRUCTOR

Program Description

The Industrial Site Recovery Act is designed to address those deserted industrial sites that are so polluted that even the remaining ants and roaches have lung cancer. This one-credit CLE will teach you how New Jersey has legislatively attacked this problem and what you can do to help clients that have been affected.

I. INTRODUCTION

- **Garden State CLE**

- **Panelists**

**[R. KEVIN McGRORY, ESQ. and
MARYLOU DELAHANTY, ESQ.]**

- **Scope of Topic**
**[1:30 duration and
7 pages of Lesson Plan materials]**

II. ISRA – THE INDUSTRIAL SITE RECOVERY ACT

- **Formerly ECRA – Environmental Cleanup
Responsibility Act**
- **ISRA – N.J.S.A. 13:1K-6 et seq.**
- **Critical to be familiar with ISRA in leases
and in real estate contracts**
- **Typically, the property is an NAICS
numbered property (formerly NIC no.) that
sets the trigger for ISRA: a hazardous
waste or substance facility**
- **Consult the online list, there are
counterintuitive businesses that are
Those that you WOULD expect and those
you would NOT expect**

- **Fault is not a factor under ISRA**
- **Contract attorneys need to concern themselves, in leases and contracts, with testing, inspection, contingencies, responsibility for cleanups, ISRA approval at the END of the lease, etc.**
- **ISRA does not relate to apartment houses. It applies to “industrial establishments” under the statutory definition**
- **ISRA is looking at the best opportunity to cleanup a property: transfers**
- **How should a commercial attorney counsel his client?**
- **The Spill Act**
- **ISRA inspection and testing**
- **Letter of Non applicability no longer available since 2008**
- **Attorneys are now giving opinion letters as to applicability**
- **Site review before sale**
- **Seller and Buyer both have an interest in an accurate review**

- **DEP is looking for cleanup of hazardous materials**
- **DEED NOTICE: contaminants exist in the soil and the property is restricted**
- **Engineers test the soil in many ways**
- **Preliminary assessment**

III. NOTIFICATION

- **After discovery, the engineer will call the DEP hotline and report the environmental problem**
- **Seller will be viewed as an owner of property that has a problem that needs to be remediated.**
- **Responsibility arises under the Spill Act and must be attended to immediately**
- **An exemption may include a transfer of operations at a new property and less than 50% of their operations will remain at the property**

IV. CLEARANCE

- **A “fast track” can be made available in limited circumstances**

V. FAULT

- **Fault is irrelevant**
- **Civil War and the unexploded ordnance examples**
- **Lead and other hazardous materials**
- **Gun clubs could be a huge polluter of the lead contamination variety according to the example cited**

VI. CVS LEASE OF PROPERTY

- **Lease will address the issues of hazmats and liability**
- **Business deals are done quickly, but on the ISRA requirements for cleanup, the process takes years**
- **DEP retains oversight approval of all work**

- **These matters are complicated and nuanced and require that attorneys with experience are at least consulted during the contract formation phase**

VII. WHEN DOES ISRA APPLY?

- **Cessation of operations, in order to prevent an owner to walk away from a property**
- **But really, anytime that a transfer of occupancy takes place**

VIII. IS THE INDUSTRY AN 'ISRA-REGULATED' ONE

- **Some industries simply are not ISRA-subject**

IX. WHEN DOES ISRA APPLY?

- **Licensed professionals now ensure compliance**
- **Opinion letters by attorneys**
- **Environmental lawyers often serve as counsel to other attorneys in closings**

X. CESSATION OF OPERATIONS

- **Government can step in and cleanup and impose liens upon the property**

XI. TOXIC TORT LAW

- **Is alive and well**
- **And Deputies Attorneys General can proceed via the Environmental Rights Act**
- **Civil RICO under NJ law is another possible enforcement arm**

XII. GOVERNMENT OWNED AND POLLUTED PROPERTIES

- **ISRA applies to state and federal governments**
- **Ventron case, State v. Ventron, 94 N.J. 473 (1983),**
- **NJ Supreme Court relied on an 1899 law, the Rivers and Harbors Act, in making its decision**
- **All sorts of relief is available, not the least of which is injunctive relief**

XIII. INITIAL DETERMINATION

- **Is your client dealing in a covered waste?**
- **Is the industry covered by a covered NAICS number?**