

THE MARKET'S

DOW	0.33	Close: 11,842.36
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ASK A LAWYER

Recovery act's reach depends on three criteria

Q. I am planning to sell a business located in New Jersey. Is the business required to comply with the Industrial Site Recovery Act?

Depending on the type of business, the sale of the company may trigger a requirement to comply with the Industrial Site Recovery Act. There are three criteria that must be present for a business to be required to comply with ISRA. These are: (1) ISRA-subject operations, (2) an ISRA-triggering event that may include closing of the business's operations at the current location or the sale or transfer of the business, and (3) the business's use of hazardous substances.

The ISRA law defines which businesses are subject to its requirements based on the business's industrial classifications. ISRA-subject businesses include manufacturers, wholesalers of certain non-durable goods including chemicals, pharmaceuticals and cosmetics, and certain repair operations.

A sale of a business usually will meet the second criterion, which includes "sale or transfer" of the business or the real estate on which it operates. There are specific rules to determine which transfers meet the criteria for an ISRA-triggering cessation or transfer. For transfers, generally a sale of more than 50 percent of the business's assets (not including the real estate of the industrial establishment) or a sale of a controlling interest in stock of the company will be considered triggering events.

Finally, for ISRA compliance to be required, the business must have used "hazardous substances" as defined by New Jersey Department of Environ-

mental Protection rules. Many businesses use a small amount of hazardous substances and may still qualify for an exemption so long as the quantity that the business has ever used falls below the "de minimis" quantity established under ISRA rules.

If the business operates on a

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leased property, you should know that ISRA imposes joint and several responsibility on both the landowner and the tenant when ISRA is triggered. Therefore, tenants should consult their leases to determine the respective responsibilities of landlord and tenant.

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Do you have a business question for a lawyer? Send it to BusinessNews@northjersey.com.