



The Site Remediation Reform Act gets a legislative makeover

By Martin Daks

In 2009, the Site Remediation Reform Act (SRRA) was enacted, which brought private-sector efficiencies into the site cleanup process by establishing LSRPs — licensed site remediation professionals — and turbocharging the state's cleanup activity. In June, the state Senate and Assembly passed the first major set of changes to the law, and it looks like Gov. Phil Murphy is likely to sign the legislation, according to some insiders. The question is: how will the changes in SRRA 2.0 affect developers, LSRPs and the public?

Many experts seem to have adopted an attitude of “if it ain't broke, don't fix it too much.” They said that the success of SRRA 1.0, in 2009, there were more than 20,000 known contaminated sites, but by the end of 2018, the count had dropped to 13,707, according to the New Jersey Department of Environmental Protection, means it's better to tinker with the program instead of overhauling it. Based on the legislation sent to Murphy, lawmakers agreed with that approach.

A nudge, not a shove

“The revisions passed by the legislature do not seriously undercut or add any major elements to the SRRA,” said Bruce S. Katcher, a cofounder and partner in the law firm Manko, Gold, Katcher & Fox. Katcher also chairs the environmental committee at the Chamber of Commerce Southern New Jersey, and was closely involved with the SRRA 2.0 negotiations. “Rather, they focus on a number of clarifying changes, elimination of several outdated references, insertion of several conforming changes that were inadvertently omitted in the original law” and other technical changes.

The proposed changes, at press time, Gov. Murphy had not signed the legislation, could spur some questions because the amendments will be effective “immediately upon the bill becoming law,” he noted. “Many of the changes do not purport to require new implementing regulations, so we anticipate some confusion integrating the new requirements into ongoing cases. Still, the NJDEP expressed some willingness to continue to discuss some issues that were not addressed in the legislation, including improving the remedial action permit process, and potentially address them through

the administrative or regulatory process.”

The legislation didn't meet all the points on Katcher's wish list — many of his clients are doing remediations at industrial sites or redeveloping contaminated sites, and they would have liked to see certain additional reporting requirements kept out of the final version — “but I don't see them getting heartburn over this,” he said. “I think there was sensitivity to not impeding redevelopment. Now that everyone has gotten used to how it works, and lenders are comfortable with the LSRP model, nobody wanted to upset the basic mechanism.”

Katcher thinks the legislation is likely to be signed into law by the governor. “First, it had broad bipartisan support,” he said. “Also, many of the proposed changes were advanced by NJDEP, which presumably has some idea what the governor's thinking, so it appears to implicitly have the administration's support.”

Some people, like Philip I. Brilliant — an LSRP, and owner of Brilliant Environmental Services LLC — have a personal stake in the legislation. “SRRA 2.0 provides some clarity to gray areas that might have put LSRPs in precarious positions about reporting and due diligence,” said Brilliant, who represented the New Jersey Site Remediation Professional Licensing Board during the process. “Among other things, it clarifies when and if LSRPs need to report discharges identified during due diligence. The proposed legislation has no economic downside and clarifies some terms and definitions; but it does strengthen sanctions for violations, so I believe Gov. Murphy is likely to sign it into law.”

An inclusive discussion

Brilliant was impressed with the give-and-take of the negotiations. “Many of the businesses, LSRPs, developers and others who were there in 2008, 2009 for SRRA 1.0 showed up a decade later with [co-sponsor] Senator Bob Smith [D-17th District],” said Brilliant. “It could be a boost to LSRPs, persons responsible

for remediating sites, attorneys and municipalities that will benefit by increasing their tax rolls.”

The existing SRRA regulations “have helped bring positive results for the past 10 years,” said Maura E. Blau, counsel at Greenbaum Rowe Smith & Davis LLP. “SRRA 2.0 offers more legal protection by imposing more formalized requirements in order to bring a malpractice action against an LSRP, including the requirement for an Affidavit of Merit.” It does this by including LSRPs as statutorily defined “licensed persons” similar to attorneys or doctors, she added.

There's good news for site remediation redevelopers, too, she noted. “SRRA 2.0 would expand the type of remediation funding sources available to the person responsible for conducting the remediation, particularly by adding the option for a surety bond and adding a requirement for NJDEP to establish a surety bond model agreement.”

SRRA 2.0 really isn't good or bad, but it “essentially tweaks the existing SRRA legislation that did help to spur more contaminated site cleanup and redevelopment in the state,” said Mike Novak, president of Atlantic Environmental Solutions, Inc. “SRRA 2.0, in its current form, does provide property owners with more clarity about when they're required to retain an LSRP, will likely mean property owners will involve an LSRP earlier, and possibly in more activities at redevelopment projects. This is a positive, since earlier discovery of contamination gives an owner more time to budget for it and to develop a response.”

Novak participated in multiple stakeholder workshops at the DEP, and he was impressed by the interaction between state authorities and private-sector developers, LSRPs and others. “There was a lot of in-

put,” he said. “The state legislature approved the proposed product, and I haven't heard anything that would indicate any reservations on the part of Gov. Murphy. I believe there's a good chance he'll sign this legislation, which will benefit everyone.”

Michael G. McGuinness, CEO of NAIOP New Jersey, said “everyone should be content” since everyone got something with SRRA 2.0. While it addresses developer and property owner liability issues — including an ‘innocent purchaser defense’ that is designed to protect developers from lawsuits if they didn't know a property was contaminated, and then they later retain LSRP and come up with a remediation workplan that's certified by the state DEP — “the proposed regulations also call for more public notification about contaminated sites,” he said.

It's not a “sea change,” he added, “but more of a polishing of SRRA 1.0.”



Novak



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