



Brilliant Environmental Services, LLC (*Brilliant*) is a full-service environmental consulting and contracting firm, integrating today's technologies for tomorrow's solutions. Headquartered in New Jersey, *Brilliant* specializes in investigation, remediation, brownfields redevelopment, and underground storage tank services. *Brilliant* is the underground storage tank compliance expert.

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**SRRA 2.0 on Governor Murphy's Desk:  
Will he sign; will he conditionally veto; will he not take action?**

The Site Remediation Reform Act (SRRA), enacted in 2009, transformed the site remediation process in New Jersey through the creation of the licensed site remediation professional (LSRP) program. On June 27, 2019, the Legislature passed and sent to the Governor the first major set of changes to SRRA since its enactment. These changes, embodied in A5293 (Senate version S3682) (sometimes referred to as SRRA 2.0), were an outgrowth of a broad-based stakeholder process that the original sponsor of the legislation, Senator Bob Smith, Chair of the New Jersey Senate Environment and Energy Committee,

promoted for the purpose of evaluating the need for fine tuning the law based on the past ten years of experience. This process stretched out over almost two years and in addition to affecting the SRRA, the revisions also affect related laws, including the Spill Compensation and Control Act and the Brownfield and Contaminated Site Remediation Act. Philip Brilliant, owner of Brilliant Environmental Services, LLC (*Brilliant*) was an active participant in the stakeholder meetings as a representative of the NJ Site Remediation Licensing Board, which he was appointed to in 2010.

Notwithstanding that some industry stakeholders, NJDEP and the LSRP Board sought some significant reforms to the law, the revisions passed by the Legislature do not seriously undercut or add any major elements to the SRRA. Rather, they focus on a number of clarifying changes, elimination of several outdated references, insertion of several conforming changes that were inadvertently omitted in the original law, bolstering NJDEP's authority for administrative changes that the agency already implemented, expanding LSRP obligations to oversee cases and the work of Non-LSRPs, modifications to discharge reporting and direct oversight, and several new or modified requirements for persons responsible for conducting remediation (PRCRs). Since the amendments are effective immediately upon the bill becoming law (as of this writing, the governor has yet to sign the legislation), and many of the changes may not purport to require new implementing regulations, there may be some confusion integrating the new requirements into ongoing cases.

Without claiming to be all inclusive, the following are noteworthy revisions included in the legislation:

**Notice to Municipalities.** PRCRs will now give written notice of any remediation to municipalities and county health departments prior to the initiation of the remedial investigation, instead of prior to the initiation of the remedial action as previously required. The notice must also inform those entities of their right to receive a broader list of documents from the PRCR, upon request, including any workplan, report or validated data required by the NJDEP. The municipality would receive the requested information at the same time it is submitted to NJDEP.

**Response to Public Inquiries.** The PRCR's obligation to respond to public inquiries (which must be in written or e-mail form or forwarded by NJDEP) is also clarified to require either the provision of "information or documents that are responsive" to the inquiry or a "written summary status report" in a form to be prescribed by NJDEP.

**Direct Oversight.** Although the direct oversight provisions of SRRA were initially expected to receive the most modifications under early proposals, many of the changes ultimately included in the legislation simply incorporated statutory authority for NJDEP's current administrative program concerning the enforcement of direct oversight. Thus, the statute confirms that direct oversight "runs with the site regardless of who owns the property and regardless of whether there is a transfer of ownership" – consistent with current NJDEP practice. The effects of this are mitigated to some extent by granting NJDEP authority to modify the direct oversight requirements if (1) the PRCR demonstrates financial hardship, (2) there is a public emergency as declared by the governor or the President that caused a

delay in meeting mandatory deadlines, or (3) DEP makes a written determination that a modification is in the public interest and protective of the public health and safety and the environment (such determination being subject to a public notice and comment process).

NJDEP is also authorized to relieve a prospective purchaser of certain direct oversight requirements through a pre-purchase administrative consent order – again consistent with current NJDEP practice. Further, the new provisions also allow a PRCR to avoid direct oversight altogether if the delay responsible for triggering it was due to access being denied to the site by the property owner or where the site is subject to federal oversight and the delay was caused by the need for additional NJDEP review. All forms of Remediation Funding Sources (RFSs) are now allowed under direct oversight, except a self-guarantee. Previously only a trust fund was allowed.

**LSRP Qualifications; Records; Code of Conduct.** Certain changes were made to the qualifications for all LSRPs and the list of requirements that each LSRP must follow when overseeing a remediation was expanded to include the rules of the LSRP Board and a catch-all, ambiguous category – “any other rules and regulations concerning remediation.” Additionally, LSRP recordkeeping requirements were modified and certain new provisions were added to the LSRP’s Code of Conduct concerning when an LSRP may assist a non-LSRP and prohibiting an LSRP from overseeing a remediation unless the LSRP has been retained and NJDEP notified.

**LSRP Retention.** A new requirement clarifying that any person who is not an LSRP may not perform remediation without the oversight of an LSRP, with certain exceptions, was added. The exceptions include (1) the remediation of unregulated heating oil tanks, which are governed by separate requirements, and (2) where the person is conducting a preliminary assessment or site investigation of a contaminated site for the purpose of conducting all appropriate inquiry into the previous ownership and uses of the property – the prototypical pre-purchase due diligence situation – and does not own and is not responsible for a discharge at the site.

**LSRP Reporting Obligations.** The LSRP discharge reporting obligations were revised, although the NJDEP and LSRP Board discussed expansion to require prospective purchasers to notify NJDEP or their seller of a discharge discovered during due diligence was not included.

First, the amendments clarify that an LSRP will now have to report any discharge at any part of a site and not just that part of the site for which the LSRP was retained (e.g., if retained just for an area of concern). Second, with respect to immediate environmental concern (IEC) conditions, the reporting obligation change removed the reference to the confirmed contamination IEC condition having to be “at a contaminated site.” The LSRP will now also have to notify the PRCR in writing of the PRCR’s obligation to notify the NJDEP.

**IECs in Unoccupied Structures.** The definition of an IEC has been clarified so that it means the “migration of contamination into a structure” producing a toxic or harmful atmosphere or other harmful condition, without regard to whether the structure is occupied. A new carve out from further remediation of the IEC is provided for unoccupied structures if the PRCR provides NJDEP with a written

certification from the property owner that the building (1) is not occupied, (2) will not be occupied, and (3) will be demolished.

**Notice to Surrounding Property Owners, Tenants.** Under current law, notice of the remediation must be given to surrounding property owners and tenants either by sending out a written notice to those residing within 200 feet or by posting a sign at the site. The revisions authorize NJDEP to require both. Current regulations only require one or the other so a change in regulations would probably be needed to implement this part of the legislation.

**Remediation Funding Source.** Several technical changes were made to the administrative requirements associated with remediation funding sources and a new RFS mechanism, the surety bond, was added.

**NJDEP Enforcement Authority.** NJDEP's authority to seek civil penalties for violations of the Spill Act in municipal or Superior Court is clarified. Thus, further authority is provided to NJDEP for its "ticketing" program initiated over the past several years.

**Green Remediation.** NJDEP will be subject to a new requirement to encourage the use of green and sustainable remediation practices.

**Remedial Action Permits.** A person to whom a remedial action permit is issued must retain an LSRP to oversee the permit responsibilities. This was consistent with NJDEP practice, but is now clarified in the law.

**Affidavit of Merit.** A change to add LSRPs to the category of parties deemed to be "licensed persons", has the effect of requiring the filing of an affidavit of merit in connection with bringing a malpractice action against an LSRP, similar to other licensed professionals such as doctors and lawyers.

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