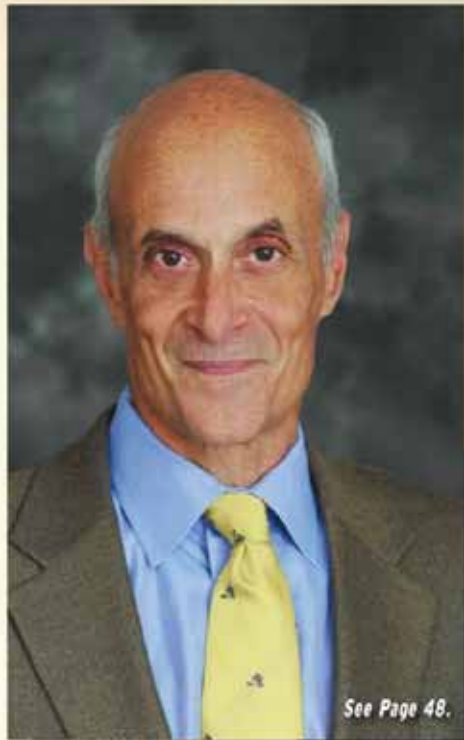


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Teaching The World About Animals Is The Best Way To Save Them, Says Jack Hanna

New Jersey's LSRPs: Rising to the Challenge

The LSRP program has not only established a new profession in New Jersey, but also functions as a tool to assist property owners, developers and persons responsible for remediation to redevelop the state's contaminated properties.



COMPILED BY MILES Z. EPSTEIN
EDITOR, COMMERCE

ENVIRONMENTAL COMPANIES CAN TRANSFORM mountains of contaminated earth and debris into useful land—fallow brownfields are transformed into corporate office complexes, residential developments, warehouse space, and parks and recreation facilities such as golf courses or baseball fields. As of May 7, 2012, most parties responsible for the cleanup of these contaminated sites in New Jersey are now required to do so with a Licensed Site Remediation Professional (LSRP).

"The ability of LSRPs to manage cleanups at New Jersey's approximately 9,000 contaminated sites and move cases along without constant oversight from the New Jersey Department of Environmental Protection (NJDEP) is one of the cornerstones of the Site Remediation Reform Act (SRRRA)," explains Sue Boyle, executive director of the Licensed Site Remediation Professionals Association (LSRPA).

LSRPA is the official nonprofit trade group for LSRPs in New Jersey, and provided the following examples to highlight the early success of the LSRP program:

- A small tool and die shop in Monmouth County was able to retain an LSRP and have due diligence investigations performed, including a Preliminary Assessment (PA) and a Site Investigation (SI). Soil samples were taken and evaluated, and it was determined that no contamination existed in excess of soil standards. An Unrestricted Remedial Action Outcome (RAO) letter was issued within six weeks of bringing on the LSRP, and this quick turnaround supported a fast-track property sale.

- A hospital client in Hudson County had been going through a petroleum Underground Storage Tank (UST) remediation for a UST discharge since 1998 under traditional NJDEP case management. The client was going through the typical former process of submittals, lengthy NJDEP reviews, more field work and reporting, and then more NJDEP reviews. Upon signing on an LSRP in April 2011, a PA and site-wide geophysical surveys

were conducted to look for any additional uses, and additional ground water. Remedial Investigation (RI) sampling was done—resulting in the completion of the remediation within six months and issuance of a site-wide RAO several months later.

- A truck terminal site was having soil contamination issues associated with a leaky spill bucket from an underground diesel UST. Once the UST system was repaired, the LSRP discovered that the soil contamination extended beneath an adjacent building on the site. Since the property was being sold, a \$250,000 escrow account was being held for the site, which was in the "old" NJDEP program for two years and never even had a case manager assigned to it. The seller requested expedited cleanup under the LSRP program so they would be able to release escrowed monies upon completion of the cleanup. The LSRP was able to close the case in less than two months with an unrestricted use remedy using a site specific Impact to Ground Water (IGW) standard and the LSRP-prepared RAO.

In addition, *COMMERCE* compiled the following additional examples of LSRP work in New Jersey and analyses of how the program is performing.



Brilliant Environmental Services, LLC
*By Philip I. Brilliant, CHMM, LSRP,
Owner, Principal Environmental
Scientist*

The LSRP program as a whole has been a positive experience for me personally, as well as for my company. The ability to sit down with clients and map out a course of action and a timeframe that is totally dependent upon my client's needs and my abilities—with no concerns of the NJDEP review delays of the past—has helped expedite remediation and promote business. Of course, all work must be completed in accordance with promulgated rules and guidance documents, but the LSRP has the ability to vary from rules using professional judgment—all without the NJDEP's approval. My current

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best example is a project I am working on in Bayonne that was a former gasoline service station, proposed to be redeveloped into a six-story, mixed-use facility for individuals with special needs. As the LSRP, I was able to complete soil remedial action, prepare a Remedial Action Report and issue a RAO—unrestrictive, soils only—in eight weeks so construction could commence. Ground water remediation is ongoing; however, I would never have completed soil remedial action and received a final remediation document for soil-enabling construction to commence within the required timeframe without the LSRP program.



EWMA

*By Sharon McSwieney, LSRP,
Assistant Vice President*

It has been somewhat of a challenge over the past three years to keep current with the evolving guidance and regulations. However, the NJDEP has been very helpful with providing advice on how to navigate this shifting landscape to keep projects in compliance. The agency has shown a genuine willingness to work with developers to ensure that projects can proceed through redevelopment in accordance with applicable laws. We at EWMA have found that the LSRP program has been a great success



Tracking and streamlining the remediation of New Jersey's approximately 9,000 contaminated sites is now in the hands of LSRPs.

with regard to the brownfield redevelopment process and the implementation of our SECUR-IT® guaranteed fixed-price remediation program. In most cases, projects can proceed at a much quicker pace and with more flexibility because we no longer have to wait for agency review and approval of work plans and reports. Also, the increased reliance on professional judgment, as opposed to strict adherence to set remediation processes, allows us to proceed much more efficiently and effectively, often using innovative remediation technologies. Overall, the LSRP program has allowed us to work more closely with our clients on dozens of projects to

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The ability of LSRPs to manage cleanups and move cases along without constant NJDEP oversight is one of the cornerstones of the Site Remediation Reform Act.



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develop and implement customized and inventive solutions that meet both the environmental needs of the project and our clients' business needs and goals.



Fox Rothschild LLP

By David Restaino, Partner

The 2009 SRRA provided a three-year transition to a new dynamic in site remediation. The most significant change has been from the NJDEP command-and-control approach to one managed by LSRPs. In short, gone are the days of reports languishing for months on the desks of overburdened NJDEP managers. However, new challenges exist. Experience with the new LSRP program has shifted the focus. LSRPs now make the substantive decisions about investigation and cleanup, acting like a quasi-NJDEP. This shift has led to an increased focus upon hiring the "right" LSRP for the assignment. Changes with respect to brownfield redevelopment have been more subtle. Focus often switches to how a redeveloper can gain liability protections surrounding the remediation-ending issuance of a RAO (replacing the former "no further action" letter). Also, some are concerned that their LSRPs have a license to "make work" and generate fees. For example, some parties are hiring a second LSRP to oversee the first. Other concerns surround sites at which the party owning the liability is not the party owning the property—so each hire an LSRP. The SRRA promised to change site remediation. It has. The promise of quicker cleanups is a reality at many sites. But a different set of challenges have presented themselves. Hopefully, the promised benefits to the environment and to the economy will soon follow.



Gibbons P.C.

*By Susanne Petcolas, Director,
Real Property & Environmental
Department*

We counsel many clients regarding ongoing environmental remediation actions in New Jersey. The mandatory transition of oversight of remediation from the NJDEP to the private LSRP program has significant continuing ramifications. The SRRA that created the LSRP program has delineated new roles for the NJDEP, consultants and

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remediating parties. The NJDEP has moved many of its former oversight personnel into its enforcement branch. Consultants, once environmental advocates and scientific advisors to their clients, as LSRPs have been thrust into the role of protector of the environment—with new obligations to disclose discharges, client information and documents in many circumstances. We have seen consultant agreements for LSRP work that include overreaching indemnification clauses, apparently out of concern for new statutory obligations and liabilities. In response, we have worked with clients to negotiate favorable contract terms. Additionally, where the remediation is particularly complex, we have advised clients to retain separate LSRPs for remediation work while retaining a different consultant as a trusted advisor with historical knowledge as possible work-product protection for

its deliberative analysis records. At sites where there is a possibility of litigation, having a separate LSRP should prove a prudent investment.



Greenbaum, Rowe, Smith & Davis LLP

*By David B. Fare; Chair,
Environmental Department*

From our perspective, a particularly challenging aspect for clients and counsel alike has been transitioning from the role of environmental consultant as advocate to a new paradigm of LSRP as overseer of the laws and regulations. The role of counsel as advocate has become commensurately more important. Time and cost saving impacts on brownfield redevelopment projects have not been remarkable. While a significant percentage of the NJDEP oversight costs have been eliminated, LSRP costs are considerable and, accordingly, we have not noted an overall decrease in project costs. There also remains a good amount of interaction with the NJDEP on projects still transitioning to an LSRP. Developer clients have yet to demonstrate any sizeable impact in their willingness to commence projects, with economics remaining the primary brake on initiation of redevelopment efforts. The primary program benefit for clients



The New Jersey Licensed Site Remediation Professionals Association (LSRPA) is a non-profit professional membership organization established to provide information, education and technical resources to LSRPs, other professionals involved in environmental remediation in the State of New Jersey and students pursuing an education in a discipline related to environmental remediation.

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has been a shortened timeframe within which smaller projects and remediations have moved towards completion. With the LSRP still in its early stages, there are many new rules, guidance documents and compliance deadlines to contend with. Once we move beyond these near-term requirements, we should see the efficiency of the program improve and start generating the time and cost savings predicted by many.



GZA GeoEnvironmental Technologies, Inc.

*By Frances Schultz, PG, LSRP,
Environmental Consultant*

In 1985, the cessation of chemical manufacturing at a facility triggered Industrial Site Recovery Act (ISRA) compliance issues. Thus, an extensive series of environmental investigations followed including six rounds of site investigations; four rounds of remedial investigations; six years of quarterly ground water monitoring; various remedial actions (including AST and UST removal, hot spot excavation, and capping); and building demolition. A RAW was approved by the NJDEP prior to the LSRP program. Advantages and disadvantages of this site's acceptance into the LSRP program include: (1) Under ISRA, the client worked with the NJDEP to negotiate site-specific cleanup standards and variances, but progress was slow, taking up to two years to receive NJDEP comment and



Some 80 percent of New Jersey's temporary LSRPs passed an exam in April 2012, and became permanent LSRPs.

RAW approval. (2) Based on technical data, this site's LSRP-of-Record eliminated passive sub-slab venting. Material cost savings exceeded \$100,000 and there was little construction down-time. (3) However, \$10,000 in additional expenses were incurred when the LSRP was required to review all previous work and prepare a case inventory document spanning 20 years of soil and ground water sampling for 35 AOCs, which identified data gaps requiring additional study.



Riker Danzig Scherer Hyland & Perretti LLP

By Steven T. Senior, Partner

Since the enactment of the SRRA, LSRPs have begun to facilitate the cleanup and redevelopment of New Jersey's brownfield sites. Undoubtedly the program has given rise to new questions and even increased costs at the outset. Parties performing remediation are learning new requirements, grappling with how to apply them to projects overseen by LSRPs, and dealing with new administrative procedures and forms. It is a new world, and Riker Danzig has been closely involved in the development of the LSRP program and has advised clients on many ways that LSRPs can facilitate their projects. In a corporate transaction, an LSRP promptly performed and approved the PA of facilities subject to the ISRA in order to issue a RAO, establish a remediation funding source for another site and complete this work to accommodate a quick closing. LSRPs have begun to exercise professional judgment to our clients' benefit, by promptly resolving difficult questions of background or off-site contamination, thereby reducing the cost to resolve the issues, or simply by issuing RAOs to close sites appropriately and more quickly than under the former program. We expect to continue working strategically with clients and their LSRPs on ways to improve remediation projects.



Whitestone Associates, Inc.

*By Christopher Seib, LSRP, Director,
Environmental Services*

Whitestone Associates, Inc. (Whitestone) was retained to conduct a PA pursuant to the NJDEP regulations for an Industrial Establishment located in

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East Windsor, Mercer County, New Jersey. The PA, completed pursuant to the ISRA upon the initiation of a corporate merger, identified 44 areas of concern (AOCs). Whitestone's LSRP was able to confirm that no further action was required for the majority of the AOCs, however, SI was deemed necessary to address three AOCs. SI activities included calculating a site-specific IGW Soil Remediation Standard (SRS) in association with the investigation of historic agricultural impacts to shallow site soils. Based on the SI findings, an Unrestricted Use RAO for the entire Industrial Establishment was issued for the ISRA case. These activities were able to be completed and a RAO issued in only a few months due to the LSRP's ability to move forward with site evaluation and remedial efforts under the LSRP program. This quick turnaround of the RAO allowed the ISRA-subject transaction to occur before the client's required deadline.



Wolff & Samson PC

*By Dennis M. Toft, Esq.,
Member of the Firm*

The LSRP program has had a positive impact on the ability to move cleanups ahead more quickly. However, there have been a number of issues that have arisen in the implementation of the program. By selecting the correct LSRP, and working with the LSRP to incorporate the development into the remediation, a redeveloper



The key issues for LSRPs include administrative process and regulatory framework; general technical principles and concepts; information gathering; general site remediation; and case and site closure.

may be able to expedite both the remediation and the permitting for a brownfield project. For example, at a site that had been languishing for a number of years in the site remediation program and in the land use regulation program at the NJDEP, use of an LSRP has enabled a Wolff & Samson client to develop a RAW, using NJDEP presumptive remedies, that will allow the site to be capped and redeveloped and obtain wetlands permits. Care must be exercised in selecting an LSRP who does not try to reinvent the wheel at every site. Even though the LSRP program is not supposed to involve micromanagement by the NJDEP, it still conducts reviews of certain LSRP filings in a way that is inconsistent with the intent of the SRRA. Overall, the program holds promise, but the kinks still need to be worked out. ■

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