



LSRPA Steering Committee Meeting Notes  
Offices of Riker Danzig, Morristown, NJ - March 17, 2011

**ROLL CALL:** By phone: N. DeRose, K. Stetser, A. Robins, C. McGowan, J. Hochreiter, L. Voyce

In Person: R. Katz, D. Bonas, R. Ferguson, M. Fisher, S. Boyle, S. Posten, T. Straka, J. Davies, S. Senior, K. Goldstein, D. Carlson, B. Alter, M. van der Heijden, J. Oberer, Matt Mauro

**PRESIDENT'S REMARKS**

R. Katz provided a briefing on the March 16, 2011 DEP Steering Committee meeting where major discussion included LSRP reliance on NFA letters. This issue also was raised by Assistant Commissioner D. Sweeney during a Licensing Board (LB) meeting. A. Robins and S. Senior formed an Interested Party Subcommittee to review and explain NFAs to the Interested Party Steering Committee and LB. Additional discussion was held on guidance documents and schedule. AC Sweeney is concerned with what the DEP Steering Committee's future role should be including, what should be its function. DEP's Steering Committee should look at NFA and similar issues and suggest policy recommendations to the Department on resolving this issue. The April DEP Steering Committee meeting is postponed; therefore, NFAs will be discussed at the May meeting. Five guidance documents have been released for comment, an additional ten are scheduled for release by the end of March, with several scheduled for release after March. The DEP Steering Committee may become more issue-driven and develop policy. There is concern with guidance, including with fill guidance, and identifying guidance policy issues. How will the Department address these and what opportunity is there to go back to stakeholders who raised the issues before releasing the guidance? In-depth conversation on fill guidance as too prescriptive and subject to potential lawsuit from regulated community..

R. Ferguson provided briefing on the March 16<sup>th</sup> Alternate Fill Committee meeting. The consensus of the comments, including the LSRPA's, regarding the Alternate/Clean Fill guidance was that the NJDEP's draft read like regulation rather than guidance and was, as a result, overly prescriptive, burdensome, and did not allow the LSRP to exercise their professional judgment. At the working group meeting on March 16<sup>th</sup>, the comments were discussed and after much deliberation NJDEP conceded that there were three core issues:

1) the like on like policy, wherein only those contaminants already found on a specific AOC can be moved onto that AOC as alternate fill (e.g. lead onto lead); 2) the 75th percentile rule wherein one can only bring up to the 75th percentile of the contaminant concentration onto the site as alternate fill; and 3) the default sampling frequency. DEP requested that we come up with alternatives to these three issues for the next meeting, now April 1.

J. Davies advised that the Fill Subcommittee come up with suggestions on fill guidance document and timeline and he would contact T. Cozzi recommending not trying to finalize this document so quickly. Concern over Interested Party Subcommittee being overlooked in the process. Decisions cannot be made without considering all comments. S. Senior discussed a possible overlap in comment period between the issuance of regulations in June and guidance document issuance.

Discussed Presumptive Remedies and defining “discrete areas”, which will be included in the rule and guidance. J. Davies explained the generic process for guidance documents. Concern with DEP not yet responding to our comments on guidance documents.

N. DeRose suggested another review of the priority comments before submitting to AC Sweeney. J. Davies suggested adding avenue to provide input to DEP on policy issues. Concern with process transparency. J. Davies to contact AC Sweeney to advise on afterthoughts on the guidance documents process.

C. McGowan advised that her committee was asked to draft language regarding a complete RI. Requested the Steering Committee’s input on defining off-site contamination, specifically LSRPs in multi-party cases.

### **SECRETARY’S REPORT**

Organization chart was recirculated and will be posted on March 21 pending additional comments/input.

Awaiting final comments from BOT on January Steering Committee minutes.

SEVIEW(SESOL and AT123D model used for development of IGW alternative standard) training information and disclaimer posted on website.

Circulated regulatory citation regarding non-Spill Act liable parties being required to post RFS if property purchased after May 9, 2009 but no RFS required if purchased before that date.

### **TREASURER’S REPORT**

Treasurer not in attendance.

### **NEW BUSINESS**

Award presented to M. van der Heijden and Tracy Straka for their service to the Board of Trustees.

S. Boyle summarized the recent Brownfields Roundtable event. Event included discussion on whether DEP will commit in writing to exempt municipalities from Mandatory Timeframes, obligation of payment by municipalities for post-remediation fees, and; without DEP’s oversight, municipalities will need to play a larger role. An additional concern is the DEP review process, whereby if two LSRPs or an LSRP and client did not agree, the DEP would mediate, which would undermine the process. S. Boyle will find out whether that was an issue at the event.

The Brownfield 2011 Conference will be held in Phila. from April 3-5, 2011. It was decided that the Association will have a booth and Lisa Voyce will manage the booth, with Joe Hochreiter helping out when possible. S. Boyle will circulate email to recruit volunteers to work the booth. It was suggested to identify the conferences and costs involved for upcoming conferences as part of our budget forecasting. A. Robins will look for the one-page summary to use at the Conference.



Use of our logo – S. Boyle contacted the firm who inappropriately used the LSRPA logo on their corporate website, and they agreed to remove from their website within several days.

March 15, 2011 conference call between Risk Management and Continuing Education Committee was not addressed.

## **OLD BUSINESS/COMMITTEE REPORTS**

### **Legal and Legislative Committee**

Reporting on the recent Committee meeting, which was well attended, S. Senior summarized the robust discussion on LSRP reliance on NFA letters. Further discussion is needed on this issue because the LSRPs and attorneys on the committee could have differing opinions. General invitation for formation of a subcommittee to discuss this issue and additional LSRP volunteers would be welcomed. Another issue of discussion during the Committee meeting was how the LSRPA and other stakeholders provide input to the LB in a timely manner. The public comment period during an LB meeting does not appear to be an adequate process. Questioned whether the LSRPA wants to provide suggestions to LB on process to receive input. A suggestion was made whenever an issue is addressed by a particular committee of the LB, we may want to possibly meet with that committee. S. Senior reported on two sub-issues, whether there is a process for the LB to entertain and issue advisory or opinions on statements on issues (i.e., looking behind an NFA, record keeping). Legal and Legislative Committee developed a concept to address scenario. Second issue was the need to try to submit to the LB an approach for a more interactive discussion between the LB and subcommittee, rather than submitting written comments or commenting at the end of the LB meeting. Need for LSRPA to advise the LB of an avenue for interactive discussions on issues and rule proposals before the LB. Second proposal regards advisory opinion. It is a good idea for LB to issue advisory statements on certain issues with the Committee proposing specific structure. Three-step process includes the broad topic is issued by the LB; opportunity provided for the public to help frame the issue; framed issue is then put out for input (subcommittee, interactive process with LB or written comment), comment on framed issue and comments on draft response to framed issue. Legal and Legislative Committee wants LSRPA Steering Committee and Board of Trustees to move as action item. S. Senior and A. Robins will draft document for review during April BOT call. J. Oberer will advise LB that a document will be submitted for input on the stakeholder process.

### **Regulatory Outreach Committee**

Reporting on the Status of Groundwater SI Tech Regs document, J. Davies advised that weekly meetings are conducted. The tech reg document will be written with several subsets. The present subset will be circulated to the Steering Committee for review and comments before submitting comments to DEP.

K. Stetser reporting on the Soil PA/SI/RI guidance document advised that the Preliminary Assessment is complete. The Soil SI/RI is broken into committees. It is still a bit prescriptive in nature. Although this is the best document everyone could agree on, there is no agreement on the landfill section. The document will be circulated for comments. Rail lines is a new issue and if there is an active rail line going to a facility, there will be an extra notice to RAO



since if there is an active rail line, it is assumed to contain impact. When sampling below the water table, it is expected to delineate to the direct contact standard, but not the impact to groundwater standard. A suggestion was made that it would be helpful if the organization knew where trouble exists with a technical guidance document (for example, the need to eliminate compliance sampling relative to soil direct contact criteria below the water table).

Meeting with DEP on LSRPA's response to RI/RA Timeframes – J. Davies, M. Fischer and R. Ferguson met with Bill Hose and Gwen Service of NJDEP to discuss the LSRPAs proposed RI/RA timeframe language for inclusion into the TRSR. While NJDEP was very receptive regarding the proposed RI timeframes (e.g. up to 5 years) they felt they could not use the open ended RA provision where the LSRP submits a schedule that becomes the regulatory timeframe. NJDEP was concerned about public opinion - what would be said if someone sent in a schedule that called for a UST to be removed in 10 years. Our response was that a schedule that wasn't protective would be sent to the SRPLB.

S. Posten reporting that the "Top 20" guidance concerns were intended for discussion during a meeting with Assistant Commissioner Sweeney. Since the meeting was postponed, there was discussion on posting document to Members Only section of website. N. DeRose will contact Assistant Commissioner Sweeney to reschedule, but if a meeting doesn't take place quickly, it was proposed that the document get recirculated and modified to reflect further input, then posted to the website.

Complaint Process - Based on an email link to the MA LSP website provided by D. Toder, S. Posten distributed detailed flow chart containing the MA process for Board review of LSP complaints. The handout addresses the issue of when the identity of the LSRP and the nature of the complaint becomes public. Issue needs our focus and decision made how to advocate.

Comments being prepared by S. Ueland on LNAPL letter to DEP on draft guidance document. Question raised on whether the department is considering modifying the CEA so if you have long-term CEA along with exceptions to groundwater standards there could be an exception to impact to groundwater soil standards. K. Stetser advised this could be policy rather than guidance. Issue will be looked into. Department may revise the clean-up standards after release of tech regs and ARRC rules in May. This could be a fix we can address now. Moving compliance point to site boundary should also be reviewed.

Risk Management/Loss Prevention. – Structural changes include S. Boyle is now BOT Liaison and B. Call will be co-chair in place of J. Oberer. B. Call will be contact person in submitting information. Creation of a tab in Members Only on website to include mission statement, org chart for committee, case study, Committee presentation from annual meeting. M. van der Heijden will provide blurb to link to documents.

Motion made by D. Katz that M. van der Heijden contact M. Campion to advise that December meeting notes will be posted on March 24<sup>th</sup> regardless of whether DEP comments are received. M. van der Heijden will draft email blast to general membership advising of upcoming Risk Management meetings.

J. Davies requested that M. Fisher replace him as co-chair of the Regulatory Outreach Committee with S. Posten, as commitments in multiple additional areas of LSRPA and DEP



Stakeholder support were impacting his ability to contribute effectively in that role. M. Fisher accepted role.

### **Licensing Board Subcommittee**

J. Oberer summarized conference call to discuss issues to be raised with LB and aligned with the Legal and Legislative Committee issue on how to interact with the Board. Exam development – RFP released for development of exam with exam scheduled approximately nine months later. Temporary licenses can be issued for three years and nothing in the regs indicating that temporary licenses cannot be reissued after that time. LB will have input into exam subject matter. There was concern that the LSRP will be tested on material not related to their expertise. Contractor will seek input from practitioners, but not necessarily LSRPs. We need to give input not only on the timing of exam, but also its content. K. Goldstein recommended starting with the series of recommendations for exam content and then discuss how to determine our input.

Complaint process – LB has complaint process, which was explained by J. Oberer, but the process has not been posted to website. When a complaint from the public is received it is referred to a screener to determine its validity; then sent to the Complaint Review Team (one LSRP Board member; one non-LSRP Board Member and a Board Counsel) for review and investigation started, then to the LB. No determination on when a complaint becomes public. LB's counsel advised that when a document is submitted to the LB it becomes public knowledge. J. Oberer to draft statement to LB indicating the since the website is now active, documents should be posted. Professional Conduct Committee looking at existing various violations and range of penalties and matching appropriate penalty for each violation. A brochure on Massachusetts's complaint process will be circulated.

Professional Conduct Committee will review the existing violations, range of penalties available and match violation with penalty.

J. Oberer contacted potential Committee volunteers, received responses and will followup with those individuals. E-mail blast to membership to recruit additional volunteers to help cover LB meetings.

Posting of LB meeting minutes notes will shortly be current.

### **Continuing Education Committee**

S. Boyle advised that the April 20<sup>th</sup> Practical Applications course will be rescheduled. Also, a meeting is scheduled for April 11, 2011 with D. Toder, Tessie Fields and DEP staff, Julianne Moslogo from Rutgers University and Lawra Dodge, representing the LB, on the Fall 2011-2012 LSRP continuing education program.

The Association was asked by DEP to give a case study presentation at the June 15<sup>th</sup> Mayor's Roundtable. D. Toder is looking at case studies for this event.

EBC-sponsored sessions possibly on June 7 and 21 on practical applications. Members of CIANJ, SWEP, DEP and others were invited to attend. The first day's focus will be on Site Remediation 101, including the basics of LSRP. On the second day, representatives from each of the



guidance committees will be invited to explain their particular guidance document, and how an LSRP will use it. Sessions not just for LSRPs, but property owners and environmental managers.

The Brownfield 2011 Conference will be held in Phila. from April 3-5. It was decided that the Association will have a booth and Lisa Voyce will manage the booth, and Joe Hochreiter helping out a few hours when possible. It was suggested to identify future conferences and their costs as part of our budget forecasting. S. Boyle will circulate email to recruit volunteers to man the booth. A. Robins will look for the one-page summary to use at the Conference.

Letter to LSRP Licensing Board regarding banking CEUs tabled until D. Toder is present.

Discussed LSRPA staffing and collecting registration fees at seminars and a decision made that we are not able to be responsible for this at the present time. Our responsibility is to attract Association members and get those members to attend seminars

### **Communications Committee**

K. Goldstein presented plan for member communications. Plan includes the following: Adopt web posting SOP; Modify website to increase visibility of Members Only Section, Train Dave Carlson to be Postmaster, with authority to pursue content – he went through training. Each major committee to appoint a Content Provider to coordinate dissemination of committee content. Prepare frequent (weekly/biweekly LSRPA news email blasts to members to circulate and focus attention on Members Only Section of website.

L. Voyce stated the necessity to get information out quickly to the general membership and on a regular basis, providing information on interpretation and application as the guidance documents are released. News blasts won't address individual questions, rather when many questions are received on one issue, that issue will be addressed. Input will be needed from Stakeholder Committee chairs. Requested comments from Steering Committee. She will reach out to Committee Chairs for information, but will write the text. Schedule will be linked to guidance document release. Board review not needed on all items, with authority going to the Committee Chair.

Members may not wish to receive e-mails on all topics, therefore question on whether mechanism exists for selecting topics of interest. K. Stetser will include categories of communication in Communications Committee agenda. Guidance will be key for Members Only Section. After DEP Committee Chair agrees that a document be released to wider audience, it needs to be posted on Members Only section for review and comment.

K. Goldstein explained that the four categories of SOPs for posting on web are Board of Trustees and Steering Committee meeting minutes, DEP Steering Committee meeting minutes; Committee documents with regulatory focus or new issue and extraordinary requests for web posting (job opportunities, training courses, etc). It was suggested that the document tracking sheet be posted on the web.

E-blasts to advise of new postings was placed on hold until the process is working.



K. Goldstein presented update on webmaster replacement. Three candidates interested in position. K. Goldstein is working on a process to qualify the candidates and anticipates a recommendation at the May meeting.

Reporting on the status of membership cards, K. Goldstein advised that these will be printed shortly. The cards will have 2011 on the card with the mission statement on the back of the card. Currently there are 299 members for 2011. There was an increase of 50 members after an email blast was sent to 2010 members who have not yet renewed membership. There are at least 70 new members.

Information on invoice payments by G. Martin for software and training is in progress.

### **Bylaws Committee**

No new input from members

### **Nominating Committee**

All Committee members have agreed to continue serving for another year.

### **Alternate Track for LSRP Exam**

New member contacted J. Hochreiter with concern over “fairness” issue (whereby individuals on “alternate track” have one chance to take the exam). Recommends that LSRPA advocate on behalf of this membership category to be able to take the exam more than once. An individual would still be able to practice their chosen profession even without a license. Discussed possibility of rather than “once you are out” to “twice you are out”, which would take a legislative amendment. This is part of a larger concern for the Association, whereby consideration should be given to prioritizing what legislative amendments we want to put forward and when.

