

Minutes

Steering Committee Meeting

April 16, 2015

2 pm – 5 pm

GEI Consultants

Mt. Laurel, NJ

ROLL CALL

In Person: C. Barnes, J. Hochreiter, S. Boyle, S. Posten, R. Ferguson, J. Oberer, K. Stetser, D. Toder, J. Postorino, B. Call, K. Goldstein, R. Katz, K. Long, M. Pietrucha, M. Fisher, J. Donahue, T. Toskos,

Phone D. Warner, S. Senior, E. Palko, C. McGowan, S. Drew, B. Alter, L. Voyce

Guests: M. Selover, Gaspare Campisi, Jeff Entin, Ellen Hancock and Dawn Bradley

Guests on Phone: Rich Shorter, Pat Cummings

Absent: D. Morris, J. Davies, A. Robins, D. Bonas, J. Scagnelli, M. van der Heijden, J. Haus

PRESIDENT'S REMARKS

- V-CEA Comments

J. Oberer will coordinate efforts on the V-CEA on behalf of the LSRPA, including providing comments and staying involved in the process. A meeting was held in Jersey City with George Vallone and a group involved through the NJ Builders Association on the issue of groundwater in large urban areas with low levels of contamination. The process is designed to allow for the classification of groundwater to assist redevelopers. It's difficult getting this information from NJDEP's database and few comments from the LSRPA. R. Ferguson spoke with the new Assistant Commissioner for Water.

A discussion followed including B. Call asking if individual property owners within the CEA can opt out and what about property values? J. Hochreiter commented if they wanted to make individual submittals, properties can be carved out. Builders take the view that compounds such as PCE are everywhere and groundwater is not owned by the property owner. This makes it difficult to make a diminution of value claim. Vapor intrusion would be evaluated separately and it may make more people evaluate VI. If there is a regional issue, they would have the responsibility of evaluating trigger values. Does the NJDEP acknowledge there are attenuation problems? What about professional judgment and level of care? It is acknowledged there is a laundry list of concerns. J. Oberer commented on the potential of human health concern.

- SRRA 2.0

S. Posten advised that the SRRA 2.0 subcommittee is collecting information. During a recent meeting, Commissioner Pedersen stated that the LSRPA needs to do more work to identify what we want amended. Possibly Safe Harbor for LSRPS (An LSRP should not be the target of a lawsuit if rules and guidance are followed); Affidavit of Merit (number of licensed entities..surveyors, engineers, etc). In order for a lawsuit to be filed against a licensed individual, a peer review by a licensed individual in the profession is needed to determine if reason exists to file suit. Identification of other issues is also needed. S. Posten also advised of an NJBIA business meeting with Senator Smith at the Wilentz law firm on the 22nd. The question of supporting a risk-based approach to clean-up standards in NJ will be raised. Sen. Smith was willing to talk about the concept in the past, noting that the LSRP program in itself is a huge change and suggested waiting to see how the LSRP program plays out over five years. We are at the point where that conversation could be initiated with the Senator for his feeling on pursuing.

S. Boyle suggested that copies of the magazine be brought to the seminar to show Senator Smith the Op-Ed piece. Requested suggestions of who else in the Legislature should receive magazine copies. S. Posten suggested that the LSRPA try to have a discrete meeting with Senator Smith after the 22nd meeting to discuss SRRA 2.0 committee and determine the Legislature's position. This is the committee to take our ideas to discuss not only with DEP, but also the Legislative group. Discussion of affidavit of merit and safe harbor. S. Posten spoke with N. DeRose about the meeting and learned that I. Kropp will attend. J. Oberer or another LSRPA attendee should call I. Kropp before the meeting.

- Magazine event

This March 30th event went well, had a good turnout and saw people that weren't at our other events. The editor of the magazine attended and wants to pick our brains for an upcoming environmental issue.

- Repeat Offenders/BIR (Bureau of Inspection and Review) Meeting

S. Boyle and J. Hochreiter led a discussion on if there is a "hit list" that the NJDEP internal reviewers see as repeat offenders. There is no written list, but Myrna Campion indicated there is a list of 50 folks the Department continually has issues. Most are sole practitioners and not LSRPA members. J. Hochreiter commented that we are hearing from attorneys that they seem to have access to this information, and it comes up when the LSRP is suggested for retention. S. Boyle suggested we conduct an education outreach.

- April 8 meeting with AC Pedersen

S. Boyle advised of a proposal made during the SRAG meeting regarding the property line as the Point of Compliance. A well-received discussion whose dialogue should continue, although Assistant Commissioner Pedersen was not in agreement. The next SRAG meeting is June 10th with Professional Judgment as the discussion topic. Case studies and hypotheticals are requested for this meeting. NJDEP's perception is that professional judgment isn't grounded in science, but is "what the LSRP's feel like doing". It was suggested that some LSRPs may be bowing to pressure from clients.

K. Stetser noted that there is a red flag when a NJDEP Reviewer sees a variance and calls the LSRP to discuss. Sometimes the LSRP is indignant rather than discussing the rationale. Providing a few bullets on their approach/line of reasoning would resolve the issue. Assistant Commissioner Pedersen requested the Association come up with ideas and case studies, as there is a feeling of Professional Judgment abuse.

K. Long gave a presentation to the EBC on professional judgment. The takeaway is that there is no real professional judgment without backup analysis. The technical basis has to support the protection of human health and the environment. This presentation, which was provided to David Haymes, will be sent to S. Boyle. Experience doesn't equate to good judgment. J. Hochreiter discussed exercising professional judgment in complex sites where contamination left behind can lead to opinion differences.

The list of 50 people may be individuals who don't justify their professional judgment. J. Hochreiter suggested individuals on "list" should be invited (through ListServe) to SRAG and it would be good for the clients to hear this and it would bring the temperature down on the topic. We can't assume that everyone understands professional judgment. If those individuals are brought into compliance, then it benefits decision making. B. Call noted that the list has no LSRPA members. NJDEP is also wrestling with how to address these individuals.

EXECUTIVE DIRECTOR'S REPORT

S. Boyle reported that an Ethics Course will be held in June or July for a small group. DEP provided a list of all LSRPs who are not members and this list was cross referenced against previous registration lists for ethics courses. There are 22 who need to take course in order to file for the July/Oct/next February. Recommendation to hold at GEI or Riker's conference room in Trenton. Do we hold the course for only eight people and what should be the fee? No other courses have been approved for credit. Rutgers has a two credit ethics course, but it is not approved by Licensing Board for credit. CT had an approved course, but not given electronically. S. Posten is ok with holding the course for a small group only if it is held in someone's office. This is first time this situation has occurred.

S. Boyle requested approval on a policy to charge \$25 charge for re-issuing certificates. Payments can be accepted through Paypal.

Responding to a question by J. Oberer on the policy for people who register for a course and don't attend, S. Boyle explained that when an individual calls, we try to push for credit towards another course. If we give credit, then we deduct the cost for food. Discussion on reasonable timeframe for cancellation and post policy on website indicating the registration fee is nonrefundable.

S. Drew provided an update on the Soil Remediation Standards meeting, Sections 6 and 7. Terry S. indicated they are struggling with drafting the section on alternate remediation standards. At least two meetings will be held to discuss this.

C. Barnes added that public notification was a hot topic and concern about getting through the process without public input. George Tyler advised that any change requires public notification and JoAnn Held agreed that the process needs public notification.

K. Long indicated that cost recovery issues are the reason for the importance of the next two meetings. It is important to have a lot more flexibility in what we can do for ARS.

L. Watson brought up the possibility of having a baseball event box/suite, where member firms can participate.

SECRETARY'S REPORT

March BOT Meeting Minutes – Motion made by C. Barnes, seconded by J. Oberer and voted in favor by the BOT. L. Watson will have S. Danyew post on the website.

TREASURER'S REPORT

R. Ferguson reported that \$252,000 balance in the bank account. J. Oberer advised that the Finance Committee is reviewing insurance packages. A few questions were raised, including, should we have an audit and the cost of one? Should money be moved into an interest-bearing account? Set up something to make the scholarship fund self sufficient. How can the Finance Committee help the Treasurer?

Finance Committee meeting was held and decision made on what the Committee should focus on and how to help the Treasurer. The topic of insurance is tabled for next meeting. Questions discussed during Committee meeting included, do we need an audit; cost of audit, moving money into an interest-bearing account and do we have enough funds to set up scholarship.

OLD BUSINESS

- Update of the Soil Remediation Standards February 10th meeting - S. Drew

S. Drew provided an update on the Soil Remediation Standards meeting, Sections 6 and 7. Terry S. indicated they are struggling with drafting the section on alternate remediation standards. At least two meetings will be held to discuss these sections, which will be open for comments, followed by a review period and response back. In a meeting with Assistant Commissioner Pedersen, it was clear he expects to see tie-ins between this section and guidance. Look at guidance for developing methodology in developing alternative standard. JoAnn Held, as the Licensing Board Public Representative, commented on the necessity of public review.

COMMITTEE REPORTS

Nominating Committee

D. Warner reported that the following terms expire at the end of 2015: C. Barnes, B. Call K. Stetser, S. Posten and R. Ferguson. Call for Nominations is released in mid-August with mid-September as the deadline for applications. Call for nominations are done by eblast a couple times and then posted.

Bylaws Committee

The Committee will meet during Sept/Oct.

External Stakeholder Committee

- C. Barnes presented the Committee update, which included holding a future Aspiring Professionals event to connect with junior levels attorneys in law firms. Planning to hold an established professionals event so more senior-level people can network with Association. A winery event for aspiring professionals is being planned for the fall.

Membership Committee

C. Barnes advised that membership numbers include 549 members, 471 renewals and 420 on the inactive list (anyone who has not renewed). We notify people who have not renewed by March 31 that they are going into inactive status.

A Membership Breakfast may be held in the southern area during June.

Legal and Legislative Committee

Sean Monaghan, Chair of the NJSBA, Business Law Section's ISRA and Environmental Issues Committee requested the Association's review on the proposed changes to SRRA, especially the following three issues: Restoring the Letter of Nonapplicability to the ISRA Program; the public notice requirement, specifically the property within 200 feet is a condominium or cooperative, and to correct the "brownfield redeveloper defenses" under the Spill Act, which is not amended to provide for reliance on a Remedial Action Workplan approved by a LSRP. Notice is provided to condo manager, rather than all the residents. Impacts apartment complexes with 300 residents. Public notice is a regulatory, not a legislative reform issue.

The Legal and Legislative Committee will review and add to list for SRRA 2.0 Committee. S. Boyle will contact S. Monaghan.

S. Senior reported that after the Licensing Board Rules and RAO comments, the Legal Committee has been reconstituted, but nothing active at the moment. Follow up on OPRA issues raised by Committee; a focus on Safe Harbor and discussion with Assistant Commissioner Pedersen. Send any legal issues needing Committee review to S. Senior.

R. Ferguson reported that Section 12 of the Brownfields Act may include text for groundwater as the driver for remediation. Is a legislative change needed?

K. Stetser noted that there is pressure from Solid Waste regarding BUD applications. Some Reviewers are kicking them back. LSRP's certification that application meets the soil quality standards is needed. How to certify? M. Pedersen thought this issue was resolved

Regulatory Outreach Committee

M. Fisher reported that the balance of the guidance documents are languishing.

Groundwater and surface water – inactive.

Clean fill was released.

Pesticides – inactive since comments were received. Reconvening on April 29th. Requested the latest draft and comments, but not provided.

Permit by Rule – Need to finish guidance. Questions include why do we need a permit? They should be automatic. Frees up workload. Marianne Kuserk focusing on this.

Permits – Taking a long time with deficiencies. DEP recognizes it is a problem. Keep on AC Pedersen agenda.

S. Posten advised bringing issues to Assistant Commissioner Pedersen if reasonable answer for stalling is not received.

Discussed Administrative guidance and reason for guidance and technical documents. Offsite source has never been handled correctly with no resolution.

M. Fisher asked whether we are ready to suggest new guidance topics. When commenting on existing documents, send comments to the LSRPA rather than submitting individual comments. Documents without stakeholder input, such as EPH, should be readdressed.

Discussed compliance averaging. Advised to contact AC Pedersen a month before meeting to look into certain issues.

Risk Management and Loss Prevention Committee

- Technical Consultation Subcommittee.

D. Warner reported on the Sounding Board, a new initiative, where technical questions are received through the Members Only portal and forwarded to the Subcommittee, where the group will collaborate, come up with advice, which is given orally to the requestor. Changes are being made to the website in order to forward questions received directly to the Technical Consultation Subcommittee for review. No liability issues since information is not in writing. J. Scagnelli is working on a disclaimer. May attract solo practitioners to the organization. A three-month pilot test is underway. Information gathered during pilot will be brought to the BOT at the end of the test period. S. Posten reported that Massachusetts has a similar mechanism and to contact MA representative.

D. Katz commented that solo practitioners have their own network and this initiative could be a liability. T. Toskos cautioned that we cannot become a consulting company to consultants. This could be a very valuable valid and valuable initiative.

- Meetings with NJDEP SRP Bureau of Inspection and Review

M. van de Heijden gave update on the March 11 Technical Review Meeting. Discussed submitted documents being lost; not adding additional language to forms and being responsive to DEP calls.

Pre-RAO Review – utilize Myrna Campion if necessary.

Looking for better process for orphan case numbers – although DEP suggests calling duty officer, this doesn't always work. Trying to work on mechanism to make database doable and upgrade. Offered DEP to get word out to all LSRPs who are not in Assoc. by making their database available to us.

- Expanding the list of White Papers

Due diligence with LSRPs – J. Scagnelli

RAO dismissal – K Goldstein / W. Call

OPRA-Ability of LSRPs – J. Oberer (awaiting final SRPLB rules)

Document Retention – J. Oberer (awaiting final SRPLB rules)

Clean Fill – R. Ferguson – final guidance is pending (w/Ken Kloo)

Historic Fill – Discharge? – M. Pietrucha

Urban Fill/DAP – need author

- Licensing Board Update

S. Posten attended recent meeting. Reported on the exam results...41 new LSRPs, first time test takers vs multiple times.

SRP requested new (additional and replacement Board members), but request was kicked back from the Senate (reason not discussed) and now routed back to the Governor's Office for reroute to the Senate.

Seventy-two individuals sat for the exam; 41 passed (57 percent) Out of the 49 first timers, 71 percent passed; 23 repeat exam takers with 26 percent passing. These numbers were consistent with previous exam.

License activation and renewal dates for this group will be based on the date annual fee payment is confirmed.

- Renewal applications

Currently 143 renewal applications submitted, 160 fees paid with April 9th deadline.

Much discussion that DEP was not geared up to notify applicants of receipt of their application. This will be an automatic email process in the future. Within a few days all who submitted applications will be notified of their receipt, although this may be after the deadline. Subsequently, all applicants who have cleared screening will be notified of approval and receive new license cards. Any applications denied through the screening process will be

reviewed by the Board for final decision. Some concern over timing of Board review (need to complete in June timeframe and is this adequate time to address potential deficiencies with LSRPs)?

CONTINUING EDUCATION COMMITTEE

- D.Toder reported that are five applications for Continuing Education Credits reviewed or approved. RedVector, LLC: data quality assessment (6.0 technical CECs) and data validation (1.0 CEC) both approved. BCONE/SWEP (NJ DEP Regulatory Update) 4.75 regulatory CECs requested, 3.0 approved. Langan 2011 Environmental Workshop - 1.5 technical CECs approved. Peter Jaran: Contaminated Sites/Planning presentation: 1 regulatory CEC approved

- LSRP courses
Environmental Forensics – scheduled for June 23, 2015 at Enterprise Center
Surveying and GIS – application submitted by Dave Hoffman
Due Diligence in NJ – Presented by B. Alter
Practical Applications of Petroleum Hydrocarbon Chemistry – hold in February
All day GIS course with American Institute of Professional Geologists, NE Section – May 12, 2015 at Enterprise Center
Half-Day Thermal Remediation Course with Terra Them – May 14, 2015 at the Holiday Inn in East Windsor
Field Course – Joe Galley working on it

L. Voyce suggested credits for multiple licenses. S. Boyle agrees but too time consuming.

College Outreach Committee

- Update on the College Scholarship Initiative

B. Alter presented update on outreach to five colleges: William Paterson, NJIT, Rutgers (New Brunswick), Montclair and Stockton. Received response from Montclair and Stockton. Students will get an award, some will be a check or next tuition bill. Already cut two checks. SWEP has same problem of not receiving many responses. All five colleges are enthusiastic about connecting with LSRPA. Students find out at the end of the month scholarship status with ceremony in the fall. Think about whether the LSRPA want to do its own program in presenting an award.

Communications Committee

L. Voyce recommended that an intern be used for the newsletter and a writer, rather than an editor is suggested. Content in email blasts was suggested.

S. Posten reported that Assistant Commissioner Pedersen accessed our webpage to get information on the Licensing Board. He suggested that information on the BOT be available to public, not just Association members. Bios and marketing material should be placed on the site to get people interested in the Association. L. Voyce will contact S. Danyew.

Stakeholder Comments

- Initiative to have DEP evaluate the EPH MTG screening level of 8,000 and 15,000 ppm – J. Donohue
J. Donohue explained that EPH guidance document is one of those that are dated. W.r.t. standard – wants a standard published, will only be determined for residential, not industrial property. How is disconnect addressed? Eight thousand PPM is not a standard or a regulation, but from guidance with very little basis. They understand the disconnect, applying guidance as a standard. What is the smallest concentration that could present sufficient quantity to have naphthalene in the future under certain conditions. Didn't say it will develop naphthalene in the future. Most studies are 2000. Initiative to work with groups, LSRPA designed as a screening number, consensus with industry. Make a two-pronged approach..if screening number what would you do if it does or doesn't manifest as free product. In absence of guidance, FAQ page? Then build into guidance, but can't say you're off base and it is a screening number, which are the measures to make that determination? Professional judgment backed up with science...what is science? When is it not a health-based problem? When not representative of free product, dependent on soil texture, etc. Looking for suggestions from LSRPA. Funnel suggestions to J. Donohue.

New Business

- LSRPA Arbitration – K. Goldstein

Attorneys often mention the need for resolving disputes. At last ethics course, when asked how many would be willing to act as a third party arbitrator, one-fourth said they would. Suggest posting names of individuals want to be arbitrator on the website and get their resume. The name is put on a list and, you will be contacted if someone is interested. Board members are generally in favor.

Motion to adjourn was made at 5:12 pm

2015 Steering Committee Meetings

June 18 – GZA, Hammonton, NJ

August 20 – French & Parrello – Wall, NJ

October 15 – HDR, Mahwah, NJ

December 17 – Riker, Morristown, NJ