

Draft Notes
LSRPA Board of Trustees Conference Call
September 17, 2015
8:30 – 10 am

ROLL CALL

S. Posten, S. Boyle, C. Barnes, M. Fisher, B. Call, D. Toder, J. Oberer, R. Ferguson, S. Drew, D. Morris, S. Senior, L. Watson. L. Voyce absent.

PRESIDENT’S REPORT – S. Posten

S. Posten will finish the draft of the letter on the V-CEA for the Builders Association. He will decide on language, complete and distribute today.

SRAG Update – Meeting on September 16.

There were three panels on Remedial Action permits; soil, groundwater and permit by rule/DGW. Good discussion. DEP realizes permits are a bottleneck. Both LSRPs and lawyers feel that it takes authority away from LSRPs and undermines the program. I. Kropp pointed out that the statute reads that the NJDEP “may” implement a permit program, not “shall”. As a result, there is flexibility in how the program needs to be administered. An important point is that the permit program represents the end of active remediation; as a result, sites going into the permit phase represent sites for which the majority of contamination has either been removed or has been isolated through engineering controls.

DGW permits- it is believed that there is some authority under NJPDES that does not allow SRP to fully give up responsibility regarding issuance. Discussion on future. Still lots of delays and potential issues. R. Ferguson spoke with Rene Bancroft and discussed that, if guidance needs to be rewritten, stakeholder input is needed. Rene indicated that SRP-BRAP plans to start rejecting applications for permits when they clearly do not meet submittal requirements. It was noted that fine points of the technical basis for the permit should not be resulting in delays (i.e., NJDEP should be deferring to the professional judgment of the LSRP), because the permit should not be construed to represent the last stage of the remedial process, but rather the first stage of long-term monitoring. LSRPs need to demonstrate that institutional and/or engineering controls remain protective over the long term (through the biennial certification process). If that is not the case, additional remedial measures need to be identified and implemented. Receipt of a permit is not the end of the story.

Suggestion is that the LSRPA should establish quarterly meetings with BRAP (M. Infanger, R. Bancroft; M. Kuserk) similar to what the Association currently does with BIR. J. Oberer agrees that the objective of these meetings should be to focus on common deficiencies in the permit applications (to be broadcast to membership for correction), rather than thrashing over technical details. S. Boyle suggested that if we have these meetings, M. Fisher’s committee will arrange. An email blast to members is needed. Rich Lake and Carrie McGowan expressed interest in volunteering.

Suggestion made to eblast groundwater checklist (identifying common permit submission deficiencies) to membership and have it placed on DEP’s website. In response to S. Boyle’s question on a reason for added discussion beyond quarterly meetings, it was agreed that SRRA 2.0 regarding authority is needed. M. Fisher will work out details of meetings and get back to S. Boyle. Training was also discussed.

Update on LSRPA consultation with Senator Smith and Assemblywoman Spencer

S. Boyle will contact Assemblywoman Spencer after internal discussions regarding SRRA 2.0 issues to identify specific topics for discussion. S. Senior and I. Kropp will initiate meeting with Senator Smith as well.

SRRA 2.0

I. Kropp arranged the kickoff meeting at USGS' Princeton Pike Office with R. Ferguson, I. Kropp and S. Posten attending the 30-minute presentation on how to grapple with difficult issues like Technical Impracticability, natural background contamination, etc. Liability concerns were discussed regarding these topics; for example, when NJDEP would make decisions regarding these technical issues, they didn't have to worry about litigation; this is not the case with LSRPs. Another issue concerns the recent NJDEP guidance regarding off-site contamination; if contamination not associated with the LSRP's site is identified off-site, the guidance specifies that the LSRP should notify the Hotline, even though such notification is not specified in SRRA. This is fraught with liability risk.

--Safe Harbor - S. Senior commented that we don't have a body of evidence that LSRPs are being sued, therefore it is hard to make the determination that this situation actually applies in practice. Hard to make the case that LSRPs need this manner of protection (i.e., "safe harbor" when following DEP rules and guidance). Will discuss with Senator Smith to see if it is possible to get some traction on the matter.

--Affidavit of Merit - there is a minimum level of competence required by a plaintiff to file a negligence action against a licensed professional. LSRPs are not included on the defined regulatory list of licensed professions, and need to be.

--Permits: should NJDEP be issuing permits, or reviewing them in an audit capacity (as they do for all other components of the remediation process [note: in MA, LSPs issue permits]).

--Low level groundwater contamination issues (legacy contamination in cities/distressed areas) – blanket CEA provisions; would act to facilitate redevelopment in these areas?

--Soil permits. Get out of piecemeal approach; i.e. Historic fill. This should be a municipal/Best Management Practice function, applicable to all areas of development/redevelopment, not just SRP sites. Should be a public health issue not an SRP issue. Wide disparity in protection observed between SRP sites and other redevelopment not subject to any controls.

--Notification requirements – adding the definition of professional services and LSRP of record.

Clarifying statute. (R. Ferguson)

-- Automatic permit extension for remediation timeframes; especially related to difficulties in achieving off-site access. (M. Fisher)

S. Senior led the discussion on the path forward. He spoke with I. Kropp, who will put together a list of the items discussed, which will be circulated to the Committee for review/revision. A specific schedule for follow up was not set, but there will be a conference call in the near term to discuss list. Thereafter, need to decide how to advance it. I. Kropp plans to coordinate discussions with Sen. Smith, discuss fast-tracking some items in near term. Interest in fast tracking some issues in connection with bringing together some land use permits, and extending them, consistent with SRRA timeframes.

R. Ferguson - Good for training efforts, we could sponsor next ones. They want to get the information out to the general public. Huge amount of knowledge, local to NJ, good to get out.

S. Posten – USGS performs much basic research/data collection that could be useful to support Technical Impracticability (TI) determinations. For example, academic research projects that document

the inability to achieve significant remediation of chlorinated solvents in fractured bedrock geology. Would be helpful if such data could be memorialized to provide a detailed technical basis to support TI in similar environments, without having to spend \$MM to reinvent the wheel at every location that has similar contaminants and geology.

EXECUTIVE DIRECTOR'S REPORT – S. Boyle

- Dispute Resolution – Received an extremely positive response from eblast. Twenty-four people signed up so far. Working with Steve Danyew to get names up on the website. There was a request on whether attorneys could be considered. Thought is to pilot the process with LSRPs first, then consider. Overall good reaction.
- Would like to change the time of the October 15 meeting to the morning; perhaps change start time a little later than 8:30 to allow for travel. 9- 12:30 floated.

SECRETARY'S REPORT – C. Barnes

Need to recirculate July's meeting minutes.
Working with L. Watson on August's notes.

TREASURER'S REPORT – R. Ferguson

Necessary to maintain and add to LSRPA created/sponsored continuing education courses, as these provide much of the revenue for the Association.

Spoke with Attorney with regard to 501 c 3 (Scholarship Foundation) – a few thousand dollars to execute to align with IRS. Don't need a vote to move forward. R. Ferguson will come up with the actual quote.

CONTINUING EDUCATION COMMITTEE (D. Toder)

- Would like to see a Universal Continuing Education calendar for listing provider courses. Request to set up a universal calendar to see what is being done month by month. Rutgers and Montclair are on board with this. Dana Haymes also has a calendar. NJDEP has a spreadsheet of courses. Still need to have the colleges and other organizations, somehow get together and put a calendar together.

S. Boyle commented that the Licensing Board has this information in the applications. Would rather go through NJDEP. We can get the spreadsheet; it can be sorted, but it's not in chronological order. A calendar would make everyone's life easier. S. Boyle, has communicated with the Licensing Board and DEP on these issues; has not heard back.
- D. Toder reported that the Due Diligence course, scheduled for October 27th, still has a few spots open. Course has been advertised several times.
- S. Posten led discussion on ideas for new courses. S. Posten noted that the NJDEP has expressed a feeling that there are a couple of approaches that are not being implemented properly regarding the "Attainment" guidance, so may not be the right time to provide guidance training on that document. C. Barnes suggested this may be a way to get the NJDEP's concerns out, and volunteered to present on this topic when the time was appropriate. MNA was also suggested, but advised to delay since some new guidance out of USEPA; could reconvene and add to existing guidance. Could include newer techniques. Don't need NJDEP's approval for collaboration on this, could do a training, possibly collaboratively.
- Dave Hoffman wants to retool Business Practices/Risk Management.

- D. Morris suggested Child Care as a topic during a Member Breakfast. For a more robust presentation, ask another LSRP to assist as well as NJDEP.

EXTERNAL STAKEHOLDERS COMMITTEE – C. Barnes

- Aspiring Professional Event. Next Aspiring Professionals Event is scheduled for October 29th at Chimney Rock Inn in Bridgewater. AEG, AHMP and SWEP partnering and CCNJ willing to broadcast to its members. Sponsors – may not be needed with \$500 from the four organizations, this may be enough to cover (plus the cost of registrations). ERFS wants to sponsor and S. Boyle will follow up. This may defray costs to organizations.
- Meeting with NJBIA. Schedule with Sara Blum and Michele Siekerka to see if there are any synergies. S. Boyle reached out to NJBIA, CIANJ, inviting them to winery event and outreach on changes to SRRA.
- Reconciliation of Somerset Patriots Event. Just about a break-even; LSRPA footed a few hours of staff time. Well received; will do it again next year, with Trenton Thunder as a consideration.

MEMBERSHIP COMMITTEE C. Barnes

- Member Breakfast. C. Barnes reported that a Member Breakfast will be held on September 29 at Eppe's Essen in Livingston. The discussion topic is A 901. Also, Communications Committee invited to open opportunities to members to contribute to NJBIZ articles.
- The November Breakfast will be held at the Americana Diner in East Windsor with Child Care as the discussion topic.
- Winery Networking Event. New LSRPs to be invited. Registration is currently very low. Steve Danyew to re-blast and continue each Monday. Representatives from SRP invited to attend.
- Membership Brochure. Ted Toskos is leading the effort to revise. Information in brochure to be used as content on web page.
- Update Web page for each committee. K. Goldstein to champion this. Currently it is difficult to find content location.
- There are currently 604 members, with 400+ LSRPs, There are 600+ license holders. Need to do some concerted outreach to non-member LSRPs. C. Barnes and S. Boyle will discuss.

RISK MANAGEMENT/LOSS PREVENTION COMMITTEE B. Call/ R. Ferguson

B.Call reported that a full committee meeting is scheduled for September 23rd.

- Sounding Board update. Two or three more test cases will be conducted internally. Process is working well. Interesting technical and administrative issues. Generally arriving at a consensus. Need to stress the confidentiality aspect of the sounding board. Pilot is confidential. Want to roll out in October; need to make the current pilot "hidden link" active. Will help to bring in the 200+ nonmembers. When nonmembers use the Sounding Board, they are directed to the Membership page.

- NJDEP BIR & RM&LP September 9 meeting. Lynn Mitchel and Steve Mayberry did attend. Lynn Mitchel's group reviewed inspections. Get a PA, go over the CID. Make sure the CID matches with AOCs in the field. The field Inspector, basically reports back to BIR. BIR will get back to LSRP on anything they saw. Did mention the training. Discussed RAOs and mentioned there are too many amendments. Will not review RAOs, but encouraged to ask questions. Professional judgment needs backup. Well laid out plan, results – conclusions. Craig Wilkinson stated if you have all backup documentation, I'm not going to question.
- SRPLB Updates (R. Ferguson). Monday's meeting is the only September meeting. Meetings will probably revert to once per month. Next licensing exam is anticipated for March. Draft rule – Getting close to their deadline on the draft rule; revisions done and signed off and want posted in Register by January. Nothing on agenda for PCC regarding any closed sessions. Big push by Continuing Education Committee to review CECs in timely fashion. R. Ferguson will distribute schedule.

COMMUNICATIONS COMMITTEE

- Committee Update. Recruited new members and focusing on encouraging members not just join but to think about the topics that will go to the NJBIZ supplement and to get others interested in writing.
- Publicist. Contacted four individuals to put together scope of work. Contacted a PR person in Pittsburgh, at C. Barnes' recommendation. He's not interested in bidding, but is offering assistance on the proposal. Agreement to pay him for this service.
- Outreach for an article for an upcoming NJBIZ issue.

HOT TOPICS

- VI tech guidance. S. Drew– technical committee – major reason to update VITG is the anticipated move to IA standards. Standards won't be final until Dec 2016/Jan 2017, so not final for another year. S. Posten commented that issue (standard vs. screening level for VI) wasn't discussed for SRRA 2.0, but should be considered. Responding to a question on whether VITG Committee will be realigning with new USEPA information, S. Drew answered yes in many cases, but advised that EPA treats daycares and schools as nonresidential. No information on Department of Health numbers. Still required to submit information to the Department of Health. Wants to post on website to solicit input from members. Advised that averaging IA data for compliance is not allowed but alternative sampling techniques may allow for long-term sampling. J. J. Boyer at DEP has reviewed cases where LSRPs have incorrectly averaged IA data. Noted that Linda Cullen (DEP) is retiring next spring.