

LSRPA Steering Committee Meeting
April 4, 2013
Riker Danzig Offices
Morristown, NJ

In Person: K. Goldstein, N. DeRose, S. Boyle, J. Oberer, S. Posten, M. Fisher, D. Toder, J. Hochreiter, J. Scagnelli, D. Morris, L. Voyce, J. Davies, S. Senior, R. Ferguson, T. Toskos, M. Fisher, D. Warner, M. Pietrucha, C. Barnes, M. van der Heijden, R. Katz, Bill Call, C. McGowan

Phone: J. Posterino, K. Stetser, A. Robins, J. Donahue, L. Watson

President's Remarks

- Waiver Rule Court Decision

Originally brought to our attention by J. Scagnelli, who also provided a copy of the summary and decision. Upon discussion with Assistant Commissioner Sweeney, K. Goldstein was advised that DEP is working on the issue and it may not be a problem for LSRPs. Have not heard further from DEP; therefore, possible decision impacts needs consideration and getting message to membership. Discussion occurred on the LSRP's reliance on professional judgment vs. using guidance on projects. The validity of guidance document may be a legal question. LSRPs should be aware that if a decision is made not to use applicable guidance on a project, it must be documented. A broader issue is how the professional environmental community working with environmental counsel on projects may address the legal interpretation.

K. Goldstein requested comments to him and S. Boyle within the next day. Court Decision will be posted on website. LSRP's should not rely on guidance as a safe harbor since decision did not rely on A-2644.

Guidance is not enforceable, but guidance documents should be used where appropriate. N. DeRose reminded the Committee that the Association was involved in developing many recent NJDEP guidance documents and support the current stakeholder process and the guidance documents were designed with standard of care in mind.

Discussed whether the LSRP Board will weigh in on the subject. LSRPs may hear on specific cases from Counsel and client to challenge guidance. Concerns noted with RI guidance and problems with the forms. DEP may issue a policy statement on the RI completion issue in the near future.

Association may post a paragraph that until such time DEP has an opportunity to review course of action, we have been told to conduct business as usual regarding the Waiver Rule Decision.

- IPSC Meeting

Stakeholders (CCNJ, BIA, LSRPA, Commerce and Industry) met on April 17th and concluded that the Interested Party Steering Committee (IPSC) has lost its focus, which was expressed to Assistant Commissioner Sweeney and urged more focus and he attend the meetings. Stakeholders agreed that

the May 2014 RI deadline is the most important issue for discussion at upcoming meeting. CCNJ is planning to introduce legislation to extend deadline for certain eligible parties and intends to apprise Assistant Commissioner Sweeney to get DEP's acknowledgement they are in the right direction before submitting to OLS. S. Boyle drafted letter to Assistant Commissioner Sweeney, which was circulated during meeting, focusing on the above suggestions.

DEP is reactivating Near-Term Priority Committee. IPSC is 4/17 and Near-Term Priority Meeting is the 22nd. Suggest submitting letter now to get our meeting focus considered.

Discussion held on what constitutes completion of an RI, how to document an RI regardless of definition, and concerns that there is no way to accurately track the RI status in DEP system. J. Davies illustrated a case where tracking documentation was an issue. He worked with Bill Hose from DEP on a format to use when submitting an RI form with documentation confirming a 2014 site without submitting another RI report and asked L. Romino to discuss concept with Enforcement.

Association previously submitted comments on RI definition which N. DeRose will recirculate. J. Davies suggested that Association schedule a call before meeting to define talking points and urged the importance of staying on top of topics.

Steering Committee agreed to send letter to Assistant Commissioner Sweeney before the upcoming meeting. Get comments on letter to S. Boyle. Agenda items should be sent early next week and a call will be before the scheduled meeting.

N. DeRose suggested that the Association remain focused on the urgency of filling vacant Board positions. S. Boyle received only one environmental person interested and name was submitted to Dave Sweeney. There is also a concern of necessary quorums in order to hold a vote during Board meetings.

The letter to Assistant Commissioner Sweeney will be modified to include the above-mentioned items.

- Committee Priorities

K. Goldstein will circulate follow up to recent message on Committee priorities. Final document will be posted, possibly next week. Thanked people who submitted their priorities. S. Boyle will recirculate to those on the phone. Committee priorities is for membership to see what we are doing and hopefully get committee volunteers

- Post-RAO Document

Document was prepared by D. Morris, edited by A. Robins and intended for practicing LSRPs. Document addresses DEP's concern about lack of follow up by LSRPs who were issued questions by NJDEP on their RAOs but did not respond. DEP requested that we send message to members encouraging them to respond to DEP questions and the benefits of responding. Haven't received any comments. K. Goldstein encouraged Steering Committee to review and submit comments. Letter from DEP which was sent to a member due to lack of LSRP follow-up will be emailed to Steering Committee members and any comments emailed to K. Goldstein. The letter states that DEP will take action on any responses within

30 days. If a response is not received, all documents will be archived. If no response is received within 30 days, the RAO will reportedly be invalidated.

L. Voyce will prepare a paragraph on DEP's letter and circulate to Steering Committee for review and comment. A. Robins raised the issue that the threat of invalidation for not responding to DEP's letter is inappropriate. We should not be acquiescing to the concept that invalidation is the appropriate approach to an unresponsive LSRP. Include as topic for next IPSC meeting. We need to focus on action and decide whether action is appropriate.

- Case Study

K. Goldstein is working with L. Voyce and S. Boyle in developing an initiative for the website. A one-page summary describing a particular case that would be of interest to LSRPs. This will be a monthly feature and the first step in developing a library of case studies for reference by members. Asked Steering Committee to do the same and submit to L. Voyce as Committee Chair. An area of the website would house a library of professional judgment examples to share with the membership. LSRPA members should also be asked to submit information. B. Alter and J. Davies volunteered to submit cases for April and May.

Secretary's Report

M. Fisher reported that the February Steering Committee minutes were approved. All documents posted on website.

Treasurer's Report

J. Oberer advised that he is working on the first quarter summary. Balance on January 1, 2013 was just over \$180,000 with approximately \$55,000 for expenses through the first quarter. A balance of \$250,000 was forecasted in the approved budget. We are growing slower than budgeted. Income for the first quarter was \$98,000, which is above what was forecasted. Our net is \$223,000. Income from membership is reflected at the beginning and end of the year and the treasury balance is the highest when seminars are held. As long as money is coming in and going out we are operating within the expectations for a non-profit.

Executive Director's Report

- May SRAG/CVP Meeting

D. Haymes sent invites to the May 14th SRAG/CVP meeting, which will be hosted by the LSRPA. Topics needed by April 19th, although none have been received. K. Goldstein discussed suggested format change to identify no more than four topics and hold panel discussions with the stakeholders as well as DEP representatives on the targeted topics. We should convey to audience the multiple viewpoints. Panel volunteers as well as volunteers to prepare talking points are needed. Suggested topics include reliance on final remediation documents, reporting obligations, document retention, role of professional

judgment in RI. S. Boyle will contact D. Haymes to discuss revamping the format and suggested agenda items and suggested panelists. Contact Joann Held to participate.

- Status of contacting D. Haymes to offer review of RI Advisory

We want opportunity to review DEP documents before they are circulated by ListServe.

Next BOT call rescheduled from 8:30 on May 2 to later in the day.

- Scholarship for *Mercer County*

Scholarship suggestion will be sent to Mentoring Committee.

Discussed possible formation of committee to address the electronic records management issue based on a request to S. Boyle from Fred Brody, a vendor for document retention. Decided this was premature and to wait until rules are in place. Many issues to address before this can be put in place.

The October 3 Steering Committee will be moved from Roux to another location. The June 6 Steering Committee will be held at ELM in Princeton area.

S. Boyle is tracking conferences and speaking engagements Steering Committee members are attending. Membership brochures can be provided before the engagements. Next issue of *Commerce* is first anniversary of LSRP program and includes articles by several LSRPA members.

COMMITTEE REPORTS

- External Stakeholder Committee – N. DeRose

N. DeRose met with Barry Frasco regarding impact to groundwater quality standards. DEP realizes that no uniformity exists at this time. Discussed how PA, CT, MA consider groundwater use in setting remediation standards for various aquifers. Discussed with Michele Sikierka, Assistant Commissioner for Water Resources, the need for dialogue on groundwater use in setting groundwater standards. Suggested individuals familiar with groundwater quality in the Northeast states as well as N. DeRose, L. Voyce, T. Toskos, J. Hochreiter and S. Senior attend. N. DeRose will follow up with Assistant Commissioner Sikierka.

C. Barnes reported that the top priorities for the Committee are to connect with the most visible and active professional organization with similar constituencies with the goals of reciprocal membership, shared learning/continuous education opportunities and shared body of knowledge; ie., risk management, lessons learned, etc. (Tier 1). Tier 2 includes organizations that may be less visible but has significant interest in the LSRP Program. Tier 3 includes organizations that have tangential interest in the LSRPA program. Primary focus in 2013 is to connect with Tier 1 organizations.

- Continuing Education Committee – D. Toder

D. Toder reported on the May 1 Rutgers University Practical Application Course, which will be a case study. Eligible for CEUs as well as pre-requisite course when applying to become an LSRP.

A half-day breakfast seminar on GIS is scheduled for May 8th at the Burlington County Enterprise Center.

A breakfast roundtable seminar is scheduled for May 22nd at a diner in northern New Jersey. Venue not yet finalized.

Risk Management and Loss Prevention Committee will hold a Business Practices Seminar on October 16.

Analytical Guidance Course may be held after release of new guidance document, possibly in the fall. May have enough interest by labs to have both a northern and southern session. R. Ferguson reported that Rutgers University may also hold a course.

S. Boyle reported that the next Ethics Course will be a half-day course, possibly in October.

Future courses include a GPR/MIP course to possibly be held in the field (Dave Umbach); low-cost remediation, NGWA, Environmental Forensics (L. Voyce); TSCA/PCBs and a full-day training broken down into four modules.

- **Legal and Legislative Committee**

S. Senior discussed the need for the Association attorneys to make better use of Committee and getting attorneys involved in the various committees, ensuring that the Committee interfaces with any committee with legal or legislative issues. Suggested developing a list of member attorneys who should be Committee members. Suggested other Committee inform Legal and Legislative Committee of any legal or legislative issues.

Agreement with Committee priorities identified by K. Goldstein with possible additions.

K. Goldstein suggested that an immediate need is to review the CCNJ proposed bill on RI and the Safe Harbor amendments whenever available.

- **Regulatory Outreach Committee**

J. Davies reported that, as a result of the recent meeting with the NJDEP Reviewers, L. Romino is scheduling an initial meeting to discuss the ongoing issues with forms and requested LSRPA representation. The next electronic submittal via the on-line portal will be the RI form and J. Davies suggested that the Association develop comments. Meetings on forms will be scheduled on a regular basis. J. Davies, M. Fisher and K. Stetser will represent the Association at these meetings.

R. Ferguson advised that he needs to receive comments on Draft NJDEP QA/QC Guidance Document by April 19th; comments are due to NJDEP by April 26th. Discussed issuance of the NJDEP PCB guidance document outside the stakeholder process. Brings to forefront issues with TSCA and the EPA reporting level requirements. Members can review this information through ListServe and the NJDEP website.

R. Ferguson summarized the recent Fill Guidance meeting and discussed DEP's possible reversal on the "no testing" decision. Virgin material can be used without testing, but there is no safe harbor if the

material is tested later and unacceptable levels are found. Ken Kloo (NJDEP) was sent a copy of our May 2012 letter to DEP addressing fill sampling requirements. NJ Builders Association submitted their position on DEP's policy to the Guidance Committee. While we will continue to advocate testing, or a specific exemption from quarry materials that gives the LSRP and the PRCR sufficient protection. We will defer a full response until after NJDEP meets with the Builders, and the matter is settled. If/when DEP revises its clean fill policy, we can issue a practice pointer to LSRPs indicating our consideration factors. If DEP's policy is that quarry material is clean fill, we should be able to use it as clean fill with no concern and that DEP will not enforce against the PRCR or the LSRP. This is primarily a liability, not legal issue. After much debate, the Risk Management Committee has been tasked to develop a practice pointer document to establish the standard of care on this issue. The question of whether this is the Association's responsibility and practice will be discussed as a future agenda item.

M. Fisher reported that the other DEP guidance documents are moving through the process and the May 14th RI deadline is the only policy issue potentially impacting the co-mingled plume and off-site source guidance documents. No additional guidance documents are expected to be issued in the near term.

S. Posten provided an update in the interim NJDEP Soil-IGW guidance document updates. The SPLP Guidance document will be the first document to be issued (which should be issued within a week or so). Other revisions should follow in the coming weeks.

Discussion on the RI definition in SRRA vs Tech Regs/ARRCS, in particular impacts regarding the May 2014 RI mandatory timeframe; it was determined that this should be attacked on several fronts. The initial push will be from LSRPA at the IPSC meeting in April. Subsequent avenues may also include the LSRPA meeting with Asst Commissioner Sweeney and working with CCNJ and other industry groups on legislative initiatives.

The RBCA-light initiative that was previously discussed in the prior SC meeting will be deferred for now as much of the initiative would be covered in the IGW Guidance document revisions, the RI definition issue, and then the SRS rule revisions/Committee to be developed in the fall.

Child Care Committee just formed.

SPLP VOC guidance to be issued shortly

- **Risk Management and Loss Prevention Committee (RM/LP)**

Reporting on the Primary Employer/Secondary Insurance Coverage, B. Call advised that J. Scagnelli is working with insurance representatives on this issue.

B. Call also reported that the RM/LP Committee is also working on Standard of Care/guidance document development (LSRP reporting obligations, reliance of NFAs/RAOs, OPRA-ability of LSRPs, document retention, Clean Fill, LSRP Contracts and Third Party Reliance.

Future RP/LP seminars include Loss Prevention-Loss Control in June or July and Best Practices 2.0 Seminar in October.

R. Ferguson and J. Oberer are coordinating rule comments for SRPLB; therefore, please respond when comment requests are received. Reported on the DEP Inspector/Reviewer meeting. Advised of a 15% administrative deficiencies with submittals.

Outreach meeting scheduled for June.

R. Ferguson reported that the Licensing Board issued two actions...one a letter of reprimand and the other a dismissal. Check Licensing Board website for details.

- **Membership Committee**

T. Toskos reported there are 378 members with approximately 38 new members. Although he is waiting for feedback on survey, he was requested to submit his survey response. K. Goldstein suggested that B. Call and T. Toskos possibly coordinate on a joint breakfast seminar.

- **Communications Committee**

L. Voyce reported on the possibility of submitting opinion articles and outreach to trade magazines and newspapers. K. Goldstein approved the idea and requested that a concrete proposal identifying recipients and topics.

- **Nominating Committee**

D. Warner reported contacting unsuccessful Steering Committee applicants to encourage their involvement in committees. Bill Stefano and Ken Tyson will consider what committees to join; Dave Beckman is a member of RM/LP and the remaining applicants may not continue as LSRPs.

- **Bylaws Committee**

J. Hochreiter reported that the Roberts Rule issue will be discussed and other topics to be determined.

- **Mentoring Committee**

B. Alter advised of emails that will be sent to Membership looking for involvement in the Committee and assisting in identifying future LSRPs. Providing a 40-hour OSHA course should be a fundamental goal of the Association. A vendor for this course has been identified.

He also discussed providing scholarships to the Mercer County Special Services School as compensation for their assistance in reproducing the documents for our seminars.

Suggested providing staff education programs to individuals in the industry.

The Committee is reaching out to universities to establish a relationship and Committee is developing a PowerPoint presentation for individuals interested in becoming LSRPs.

STAKEHOLDER COMMENTS

J. Postorino commented on the waning support on the development of young professionals as well as the students. Proposal to develop educational program, including topics such as documenting hours, etc., for people who may apply for their LSRP license.

J. Donahue reported concern with: UHOT as part of the clean fill issue; status of UST rule proposal by DEP; and, wants to gather data on impact of the addition of Naphthalene on vapor intrusion.

L. Voyce reported that EPA and the Department of Defense have come to agreement, after several years of negotiation, that 26 sites at Picatinny Arsenal will not require further remedial action, that the previous removals and institutional controls are sufficient for protection of public health and the environment. NJDEP does not agree with the decision, as it does not require compliance with the State soil cleanup standards. This is considered to be precedent-setting, not just for the Arsenal, but for military installations nationwide. Picatinny officials also announced that beyond these 26 sites, they have approximately 100 sites in total (including the initial 26) for which they will pursue similar agreement. Further information is available at http://picac2w4.pica.army.mil/ead/docs/Site_26_Proposed_Plan.pdf.