

NEW JERSEY SITE REMEDIATION PROFESSIONAL LICENSING BOARD

DRAFTDRAFT***DRAFT

December 3, 2018 Meeting Minutes

4:00 p.m., Public Hearing Room, DEP, Trenton

Board Members:

Present

Jorge Berkowitz
Phil Brilliant
Lawra Dodge
Joann Held
Jeffrey Hoffman
Mark Pedersen
Kathi Stetser
Peter Strom
Ira Whitman

Absent

Christopher Motta
Connie Tsentas

Others Present:

Board Executive Director Janine MacGregor
Board Staff Dana Haymes
DAG Nielsen Lewis

Proceedings:

- Meeting called to Order at 4:03 PM by Chairperson Mark Pedersen
- Mark Pedersen read the Statement of Adequate Public Notice of the meeting required by the Open Public Meetings Act.
- Roll Call:
 - Jorge Berkowitz - present
 - Phil Brilliant - present
 - Lawra Dodge - present

- Joann Held - present
- Jeffrey Hoffman - present
- Christopher Motta - absent
- Mark Pedersen - present
- Kathi Stetser - present (departed the meeting at 6:00 PM)
- Peter Strom - present
- Connie Tsentas - absent
- Ira Whitman - present

A quorum of the Board was in attendance.

- Motion by Mark Pedersen to approve the November 5, 2018 Board Meeting Minutes.

Motion seconded by Joann Held.

Roll Call Vote:

- Jorge Berkowitz - yes
- Phil Brilliant - yes
- Lawra Dodge - abstain
- Joann Held - yes
- Jeffrey Hoffman - yes
- Christopher Motta - absent
- Mark Pedersen - yes
- Kathi Stetser - yes
- Peter Strom - yes
- Connie Tsentas - absent
- Ira Whitman - yes

The motion was carried.

• **Chairperson’s Report**

Mark Pedersen reported that he and other members of the Department, along with Janine MacGregor, attended a SRRA 2.0 meeting last week with Senator Smith. Members of various stakeholder groups were also in attendance. The meeting was an opportunity for the stakeholders and Department to discuss their SRRA 2.0 recommendations. Senator Smith requested a report on consensus items by December 30, 2018 and a report on non-consensus items by January 15, 2019. Early next year he will invite relevant Committee members in the Senate and Assembly to a meeting where stakeholders will be in attendance to provide their positions.

Board Members Jorge Berkowitz and Kathi Stetser stated that they aren’t comfortable with all of the SRRA 2.0 recommendations as they are currently written. Janine

MacGregor noted that the Board approved the SRRA 2.0 recommendations in May 2018. It was revised based on input from DOL, Senator Smith, and stakeholders. Those changes have been highlighted and are being presented to the Board tonight.

Jorge Berkowitz would like to know if any ethical issues are raised if Board Members, in an unofficial capacity and not representing the Board, express an opinion contrary to the Board's approved SRRA 2.0 document. Phil Brilliant suggested that any Board Member with a concern personally contact the Department's Ethics Liaison Officer with their question and request a response.

- **Executive Director's Report**

Janine MacGregor reported that this is officially Connie Tsentas's last meeting as a Board Member, although he could not attend. She will send him a commemorative plaque, and the Board had a round of applause and officially thanked him for his service.

Phil Brilliant asked if there is any chance that new Board Members will be added in the near future. Janine MacGregor responded that the Board's letter to the Governor regarding nominees is being reviewed by the Commissioner's Office, and will be sent shortly.

Committee Reports:

- **Licensure – Kathi Stetser**

Kathi Stetser briefly discussed the October 2018 examination results and the measures that were used to determine its validity and reliability. There were 73 candidates that took the exam, 52 were first time takers and 21 had taken the exam before. A total of 41 passed. A list of those who passed has been distributed to the Board.

Motion by Kathi Stetser to accept the determination of the exam contractor declaring 41 people as having passed the October 17, 2018 examination and therefore deeming those individuals as LSRPs, license effective upon confirmation of payment of the annual license fee.

Ira Whitman seconded the motion.

Ira Whitman asked if the annual license fee invoice will be for the full calendar year of 2019. Janine MacGregor responded yes.

Roll Call Vote:

Jorge Berkowitz	- yes
Phil Brilliant	- yes
Lawra Dodge	- yes

Joann Held - yes
Jeffrey Hoffman - yes
Christopher Motta - absent
Mark Pedersen - yes
Kathi Stetser - yes
Peter Strom - yes
Connie Tsentas - absent
Ira Whitman - yes

The motion was carried.

Janine MacGregor reported that she will request that the exam contractor Caviart notify the new LSRPs that they have passed the examination. The new LSRPs will be issued an invoice, and may begin practicing as soon as the invoice is paid.

Phil Brilliant asked when the next exam will be. Kathi Stetser responded that it will most likely be in Spring 2020.

- **Professional Conduct Committee – Phil Brilliant**

Motion by Phil Brilliant to approve a resolution to go into closed session to discuss Complaints 001-2016, 003-2016 and 004-2016, noting that Phil Brilliant is recused from Complaint 001-2016, Jorge Berkowitz is recused from Complaints 003-2016 and 004-2016, and Kathi Stetser is recused from Complaint 004-2016.

Motion seconded by Jeff Hoffman.

All present voted yes.

The motion was carried.

Open Session resumed at 5:40 PM.

Phil Brilliant reported to the Board that in the matter of Complaint 005-2016, the Board reached a settlement in the amount of \$23,000.00 which has been paid by the LSRP.

Motion by Phil Brilliant, in the matter of Complaint 003-2016, to authorize the Professional Conduct Committee to offer settlement under the Chairperson's signature based on the Board's preliminary findings.

Motion seconded by Joann Held.

Roll Call Vote:

Jorge Berkowitz - recused
Phil Brilliant - yes

- Lawra Dodge - yes
- Joann Held - yes
- Jeffrey Hoffman - yes
- Christopher Motta - absent
- Mark Pedersen - yes
- Kathi Stetser - yes
- Peter Strom - yes
- Connie Tsentas - absent
- Ira Whitman - yes

The motion was carried.

Motion by Phil Brilliant, in the matter of Complaint 004-2016, to authorize the Professional Conduct Committee to offer settlement under the Chairperson’s signature based on the Board’s preliminary findings.

Motion seconded by Joann Held.

Roll Call Vote:

- Jorge Berkowitz - recused
- Phil Brilliant - yes
- Lawra Dodge - yes
- Joann Held - yes
- Jeffrey Hoffman - yes
- Christopher Motta - absent
- Mark Pedersen - yes
- Kathi Stetser - recused
- Peter Strom - yes
- Connie Tsentas - absent
- Ira Whitman - yes

The motion was carried.

Motion by Joann Held in the matter of Complaint 001-2016 to find the subject of Complaint 001-2016 in violation of N.J.S.A. 58:10C-16.b. for not exercising reasonable care and diligence and to assess a penalty in the amount of \$7,000.00 and to authorize the Professional Conduct Committee to offer settlement under the Chairperson’s signature based on the Board’s preliminary findings by way of an “offer of settlement in lieu of filing a formal disciplinary complaint.”

Motion seconded by Kathi Stetser.

Roll Call Vote:

- Jorge Berkowitz - yes

- Phil Brilliant - recused
- Lawra Dodge - yes
- Joann Held - yes
- Jeffrey Hoffman - yes
- Christopher Motta - absent
- Mark Pedersen - yes
- Kathi Stetser - yes
- Peter Strom - yes
- Connie Tsentas - absent
- Ira Whitman - yes

The motion was carried.

Ira Whitman requested that Phil Brilliant prepare a status report of complaints for the January meeting. Phil Brilliant agreed.

- **Audit Committee – Jorge Berkowitz**

Jorge Berkowitz reported that five LSRPs have been selected for audit this month and the LSRPs and Audit Review Teams will be notified.

Audit Review Teams have reported the following audits as complete:

LSRP NAME	LSRP LICENSE	Date of Audit Selection
Girish Mehta	591664	April 3, 2017
Rebecca Hollender	585022	May 7, 2018

- **Continuing Education Committee – Lawra Dodge**

Lawra Dodge reported that there are no applications for approval of CECs to report. The Continuing Education Committee will be holding a meeting soon to discuss various issues, including preparing an ethics course that the Board will present.

- **Finance Committee – Christopher Motta**

Janine MacGregor reported that the Annual Fee Report for Calendar Year 2019 was published in the New Jersey Register today.

- **Outreach Committee – Peter Strom**

Peter Strom reported that the Annual Fee Report for Calendar Year 2019 will also be published on the Board Website.

- **Rules Committee – Joann Held**

No report.

- **Ongoing Business:**

Mark Pedersen requested that Janine MacGregor present the SRRA 2.0 document. This document includes revisions from the Board's original document approved in May 2018.

Motion by Mark Pedersen to accept the SRRA 2.0 document as revised and authorize Janine MacGregor to modify the document into the format requested by Senator Smith, without changing the substantive content.

Ira Whitman seconded the motion

Kathi Stetser questioned whether the Department wants to require an LSRP to be retained to investigate a Site when it is not a known contaminated site, as expressed in revision "bb" to N.J.S.A. 58:10C-16.

Mark Pedersen requested that any proposed revisions to "bb" be sent to Janine MacGregor. The challenge to the Board is to craft language that excludes persons who do not suspect contamination from being compelled to retain an LSRP, while at the same time requiring those that do suspect contamination to retain an LSRP.

DAG Nielsen Lewis also provided comments:

Page 5 of 16 – Section 16aa – consider adding comma after “arranging for the retention of”

Page 8 of 16 – last line – remove “suggests”

Page 10 of 16 – Section 14c2a – Add Underground Storage Tank Act, cite to Water Pollution Control Act. Modify language to “all other applicable regulations.”

Page 12 of 16 – Modify definition of Independent Professional Judgment – modify “other interested parties” to “persons responsible for conducting remediation.”

With respect to the proposed revision of “other interested parties” to “persons responsible for conducting remediation,” Board Members expressed the opinion that “other interested parties” is more inclusive and should not be changed.

Motion by Mark Pedersen to modify the motion to accept the SRRA 2.0 document as revised based on the comments of DAG Nielsen Lewis, but excluding change from “other interested parties” to “persons responsible for conducting remediation,” and excluding Section 16 “bb” until appropriate language can be agreed upon, and authorizing the

Executive Director to modify the document into the format and layout requested by Senator Smith, without changing the substantive content.

All present voted yes.

The motion was carried.

Mark Pedersen asked Lawra Dodge and Jorge Berkowitz, and any other Board Member with comments, to work with Janine MacGregor and develop language for the revision of “bb” to N.J.S.A. 58:10C-16. This would be provided to Board Members prior to the January meeting, and will be on the agenda for approval at that meeting.

- **Old Business:**

Mark Pedersen noted that at the last Board Meeting the Board discussed holding separate meetings with the LSRPA. The decision was made that if individuals or groups have concerns, they should present them to the Board at Board meetings. The Board will entertain those comments and provide responses as necessary. That way all groups will have equal contact with the Board.

Janine MacGregor clarified the LSRPA discussion from the last meeting. She reminded the Board that as she relayed in emails on this topic, she and the LSRPA Executive Director had recently met and discussed possibly holding joint Board and LSRPA meetings. The LSRPA had requested joint meetings with the Board in the past, but those were not held. Janine MacGregor clarified that when this issue came up at the last meeting, there was no new request by the LSRPA to have joint meetings, but it was an idea that both she and LSRPA had, for consideration by the Board.

- **New Business:**

None.

- **Next Board Meeting**

Motion by Mark Pedersen to cancel the Board Meeting previously scheduled for December 17, 2018.

Motion seconded by Phil Brilliant.

All present voted yes.

The motion was carried.

The next Board Meeting is January 7, 2019.

- **Public Comments:**

Rodger Ferguson, LSRPA. 1) LSRPA has asked the Board to bifurcate the roles of the Board and the Department. The Board should not enforce the Administrative Requirements for the Remediation of Contaminated Sites or the Technical Requirements for Site Remediation, as was done in recent NOCAPAs, just the Board's rules and the SRRA. The Responsible Party violates the Tech Requirements, not the LSRP. 2) The LSRPA will frame some issues and send them to the Board in writing. 3) The LSRPA does not think Independent Professional Judgment should be defined. 4) SRRA changes based on a single or limited instance of a problem make for bad public policy and create unintended consequences.

George Tyler, Tyler and Carmeli, Robbinsville, NJ, representing the LSRP that is the subject of Complaint 001-2016. He respectfully submits that the Board made a mistake in finding the violation, and requests that the Board reconsider its decision. The RAO dealt with issues concerning ground water flow direction and the presence or absence of an onsite source. In the file there were 43 soil samples that verified his client's findings. The prior consultant gave the Department a statement, but when they requested copies of the document that the prior consultant prepared, they were told that the document could not be located. In addition, the subject lot was part of a DOT construction project, which could have substantially changed ground water flow direction. There was an upgradient source and his client included the appropriate upgradient source notice in the RAO. This was in 2009. His client vetted this course of action with the DEP case manager and DEP technical advisor, which at that time carried a great deal of weight. In this case, the penalty assessed by the Board is off base and George Tyler requests that the Board reconsider it.

- Motion by Ira Whitman to adjourn the meeting.

Motion seconded by Jorge Berkowitz.

All present voted yes.

The motion was carried.

Meeting adjourned at 6:59 PM.