

NEW JERSEY SITE REMEDIATION PROFESSIONAL LICENSING BOARD

FINAL

January 4, 2021 Meeting Minutes

4:00 PM

Meeting held via Microsoft Teams

Until further notice, the open public meetings of the Board will be held via Microsoft Teams.

To participate by phone, use the following:

Toll free number: 1-(856) 338-7074 and Conference ID: 906475949

Or connect via the link on the Board Website www.nj.gov/l srpboard

Board Members:

Present

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

Absent

Lawra Dodge

Others Present

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

Members of the Public that were present:

Ken Haduch, Bill Hose, Rodger Ferguson, Marlene Lindhardt, Caryn Barnes, Mark Pietrucha,
Richard Katz, Rebecca Hollender, Sonya Ward, V. Veera

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 - absent
 Joann Held - present
 Jeffrey Hoffman - present
 Mark Pedersen - present
 Kathi Stetser - present
 Peter Strom - present
 Ira Whitman - present

A quorum of the Board was in attendance.

- **Approval of the Board Meeting Minutes**
 - Motion by Mark Pedersen to approve the December 7, 2020 Board Meeting Minutes.

Motion seconded by Joann Held.

Roll Call Vote:

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

The motion to approve the minutes was carried.

- Motion by Mark Pedersen to approve the December 7, 2020 Board Meeting Minutes of the Closed Session.

Motion seconded by Phil Brilliant.

Roll Call Vote:

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

The motion to approve the minutes was carried.

- **Chairperson's Report**

Mark Pedersen noted that Commissioner McCabe will serve as Commissioner until January 20, 2021. He is not aware of who her replacement will be.

- **Executive Director's Report**

Janine MacGregor reported that the LSRP exam was administered and Buck Chaffee of Caviart will provide a detailed report.

Committee Reports

- **Licensure Committee – Kathi Stetser**

The LSRP exam was administered online on December 16, 2020.

Buck Chaffee of Caviart, the exam administrator, joined the meeting to provide details. Also joining the meeting was Christie Edens of Caviart.

Buck Chaffee reported that a total of 70 applicants were approved to take the exam in March 2020. Of those 70, 68 took the exam in December 2020. 50 of those were first time exam takers, and 18 of those were people who had previously taken the exam but failed. Of the 68 persons taking the exam 41 passed, at a rate of 60 percent. Of the 18 repeat exam takers, 68 percent passed. This is consistent with previous administrations. The exam was administered to the candidates at their homes or secure location of their choosing using their personal or work computers. A live proctor viewed the candidates through their computer cameras and cell phones. Views of the exam takers are recorded and become a part of the

record of the exam administration. The exam was administered in two parts of one hour 45 minutes each, with a 15 minute break in between part one and part two. Candidates could not go back to part one after they had started part two. All candidates completed a system test prior to the administration of the exam. During the administration of the exam there were technical glitches that stopped the exam for 7 people, which is attributed to firewalls detecting unusually high activity and blocking the connections. Those candidates that were prevented from completing the exam due to the technical glitch were allowed to complete the exam two days later. All those candidates were able to complete the exam during the second administration. During the second day they could not go back to the questions they completed on the first day. Of those 7 that had to return to the exam a total of 4 passed the exam and 3 failed the exam. The exam performed well as a testing tool in terms of reliability. The administration of the exam was successful, and the exam may be administered in a similar manner in the future. Caviart recommends that the results be approved.

Board members asked questions about the exam and its administration.

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

Motion seconded by Mark Pedersen.

Roll Call Vote:

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

The motion was carried.

Kathi Stetser noted that the invoices for the annual license fee have been sent out and are nearing their due date. Anyone who has not paid their annual license fee for 2021 should be on the lookout for the paper or electronic invoice, or should request an invoice from the Board. If an LSRP has not paid his or her annual license fee he or she will not get a reminder or invoice for license renewal.

- Continuing Education – Joann Held for Lawra Dodge

- o Motion by Joann Held to approve the following CEC applications to be offered both in-person and in AVLf:

TITLE	PROVIDER	DATE	CECs	PROPOSED COURSE NUMBER
Tools for a Greener, Fairer New Jersey	LSRPA	February 9 or 10, 2021	0.5 Regulatory	2021-001
Removal of a Trichlorofluoromethane Ground Water Plume	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-002
Remedial Design Verification – Lessons Learned from Field Assessments Before Remediation	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-003
Regenerable Ion Exchange Ground Water Treatment System Addresses PFAS Contamination at an Australian Air Base	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-004
RAO Updates for LSRPs	LSRPA	TBD	2 Regulatory	2021-005
Perimeter Air Monitoring for Sites Undergoing Remediation	LSRPA	TBD	2.5 Technical and 0.5 Regulatory	2021-006
Performance Overview and Best Practices When Using a Micron Scale Activated Carbon Remedial Fluid for the Rapid Remediation of Hydrocarbon Plumes	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-007
NJ's Role in Pioneering Bioremediation	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-008
Regulatory Roundtable – Focus on Air Quality	LSRPA	January 19, 2021	0.5 Technical and 1 Regulatory	2021-009
Lessons Learned and the Evolution of High Density Quantitative Site Characterization	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-010
Innovative Waste Minimization During PFAS Contaminated Water Remediation	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-011
In Situ Thermal Remediation of Fractured Rock	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-012
Hot Topics Including Environmental Justice	Riker, Danzig	December 3, 2020	1.5 Regulatory	2021-013

Green and Sustainable Practices	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-014
Overcoming the Challenges of Difficult PFAS Hot Spot Source Identification and Removal	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-015
DCE Stall Causes and Cures	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-016
Challenges and Complexities for the Former BICC Cable Site – Design and Construction of the Hudson River Sediment Cap	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-017
Case Study on Amendment Delivery Methodology for Permeable Reactive Barrier Installation in a Challenging Lithology	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-018
Accessing Difficult and Challenging Geologies with Direct Push Technology Using the Pre-Drill Injection Method	LSRPA	February 9 or 10, 2021	0.5 Technical	2021-19
A Fish Out of Water or a Fish in a Barrell: Site Remediation Hydrogeology Basics and the Implications of the SCOTUS Functional Equivalent Test	LSRPA	TBD	3 Technical	2021-020

Motion seconded by Joann Held.

Roll Call Vote:

Jorge Berkowitz - Abstain from all
 Phil Brilliant - Yes to all
 Lawra Dodge - Absent
 Joann Held - Yes to all
 Jeffrey Hoffman - Yes to all
 Kathi Stetser - Yes to all
 Peter Strom - Yes to all
 Ira Whitman - Yes to all
 Mark Pedersen - Yes to all

The motion was carried with respect to all applications.

- Motion by Joann Held to approve the following previously approved continuing education programs to be offered in Alternative Verified Learning Format:

Rutgers NJAES – Office of Continuing Professional Education:

029-2012 – Ecological Risk Assessment

007-2014 – Environmental Law for LSRPs

021-2016 – Glacial Deposits of New Jersey

010-2019 – Digital Signature and Seals for Site Plans

026-2020 – Role of LSRPs and Environmental Consultants in Litigation

Motion seconded by Mark Pedersen

Roll Call Vote:

Jorge Berkowitz	- Yes to all
Phil Brilliant	- Yes to all
Lawra Dodge	- Absent
Joann Held	- Yes to all
Jeffrey Hoffman	- Yes to all
Kathi Stetser	- Yes to all
Peter Strom	- Recused for all
Ira Whitman	- Yes to all
Mark Pedersen	- Yes to all

The motion was carried with respect to all applications.

Joann Held reported that the Continuing Education Committee is working on some draft language to the By-Laws that would allow the Committee to review and approve applications and report the decision of the Committee to the Board without requiring Board vote on the applications.

- **Audit Committee – Jorge Berkowitz**

Jorge Berkowitz reported that there are currently 683 licensed LSRPs. In order to audit 10%, the Board will audit 69 LSRPs in 2021.

6 LSRPs were selected for January 2021 audits

The Audit Committee completed audits of the following LSRPs, with no additional action required:

February 2020:

Ronald Harwood, 575016

August 2020:

Edmund Knyfd, 668790
Omar Minnicks, 783603

September 2020:

Joseph Chiappetta, 576769
Michael Heumiller, 668786
Christopher Hoen, 583912

October 2020:

Jason Schindler, 575432
John Robinson, 748586

Jorge Berkowitz reported on the status of the audits.

Report of 2020 Audits: 73 selected. Of those 73, 51 are concluded, 1 was deferred, 5 were referred to PCC and 16 are pending.

The Audit Committee has met its goal of eliminating its backlog and achieving a 3-month processing time.

Report of audits referred to PCC to date:

The Audit Committee has referred 16 Auditees to the PCC in the following years:

1 in 2017 – to investigate alleged failure to ensure all fees paid prior to issuing RAO

2 in 2018 – to investigate alleged administrative and technical deficiencies

5 in 2019 – to investigate alleged failure to make notifications for missed timeframes

8 in 2020 – to investigate alleged failure to make notifications for missed timeframes (Note all but two of these are audits selected in 2019)

- **Finance Committee**

No Report.

- **Outreach Committee – Peter Strom**

No report.

- **Rules Committee – Joann Held**

Joann Held presented the revisions that the Rules Committee is proposing to make to Subchapter 6, and requests that Board Members provide their comments to her. Proposed revisions are summarized as follows. Note that deletions are shown in [brackets] and additions are shown in **bold and underline**.

The Rules Committee notes that these are the most extensive changes recommended to the Board thus far and expects that discussion of some changes may need to be continued at the next Board meeting.

Language was changed for clarity or for internal consistency in ten places.

7:26I-6.3 Professional competency

(a) An LSRP shall know and apply the applicable statutes, rules, regulations, and appropriate [technical] guidance concerning the remediation of contaminated sites including, but not limited to, the remediation requirements set forth at N.J.S.A. 58:10C-14.c:

6. **The regulations adopted by the Board pursuant to section 6 of P.L. 2009, c. 60 (C.58:10C-6);**

(b) An LSRP shall apply any available and appropriate [technical] guidance concerning site remediation as issued by the Department.

(c) When there is no specific [technical] guidance issued by the Department, or in the **independent professional** judgment of the LSRP the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, the LSRP may use the following additional guidance provided that the LSRP includes in the appropriate report a written scientific, technical or other rationale concerning why the [technical] guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, and justifies the use of the guidance or methods that were utilized.

7:26I-6.5 Notification of retention and release

(b) When an LSRP decides to terminate his or her position as the **retained** LSRP [responsible for the remediation of a contaminated site] prior to issuing an RAO, the LSRP shall, within 15 days after terminating his or her position:

7:26I-6.8 Exercise of independent professional judgment

(d) An LSRP shall make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports, and other information evidencing conditions at a contaminated site for which he or she is retained that are in the possession of the owner of the property, the Department, or that are otherwise available, and identify and obtain [whatever] additional data and other information [as] **that** the LSRP deems necessary.

7:26I-6.18 Duty regarding client communications

(b) An LSRP shall inform a client of:

1. Each regulatory, mandatory, and expedited site-specific timeframe that the LSRP can reasonably ascertain for each contaminated site for which [the client has hired the LSRP] **he or she has been retained;**

7:26I-6.27 Maintenance of data, documents, records, and information

(a) An LSRP shall, **for each contaminated site for which he or she has been retained,** maintain and preserve all data, documents, records, and information concerning **the** remediation [activities at each contaminated site the LSRP has worked on]

Two provisions were changed to reflect current practice.

7:26I-6.5 Notification of retention and release

(a) An LSRP retained by a person responsible for conducting the remediation shall submit an LSRP Notification of Retention or Dismissal **through the Department portal** [as found on the Department website at www.nj.gov/dep/srp/srra/forms] no later than 15 days after:

(b) When an LSRP decides to terminate his or her position ...

2. Submit a Notification of Dismissal **through the Department portal** [as found on the Department website at www.nj.gov/dep/srp/srra/forms].

One provision is added to clarify that having an SRP license does not automatically allow an LSRP to conduct all the activities associated with underground storage tanks.

7:26I-6.3 Professional competency

(f) An LSRP shall not install, close, test the tank of, or analyze the corrosion protection system of an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq., or install, close, test the tank of, or analyze the corrosion protection system of an unregulated heating oil tank system, or otherwise provide underground storage tank services, unless he or she is authorized to do so in accordance with Subchapters 13 and 16 of N.J.A.C. 7:14B.

One set of provisions was added to clarify how an LSRP is to exercise independent professional judgment. These points are based on the Board Statement of Interpretation on this topic.

7:26I-6.8 Exercise of independent professional judgment

(a) An LSRP shall exercise independent professional judgment and comply with the requirements and procedures set forth in the SRRA and any rule, regulation, order and guidance adopted or issued pursuant thereto.

- i. **An LSRP shall apply independent professional judgment to all actions during the entire course of the remediation.**
- ii. **An LSRP shall describe and document all decision making.**

- iii. **An LSRP shall provide documentation of the scientific, technical, or other factors supporting his or her decision to vary from regulations or deviate from guidance when performing remediation.**
- iv. **An LSRP shall exercise independent professional judgment free from outside influence that does not have protection of public health and safety and the environment as the highest priority.**
- v. **An LSRP is ultimately responsible for the decisions he or she makes in the exercise of independent professional judgment even when the LSRP considers information, advice and opinions of others.**

Five changes are recommended to close loopholes that have been discovered in the course of the Board's investigations of complaints.

7:26I-6.7 Responsibility of successor LSRP **or LSRP relying upon work performed by others**

7:26I-6.16 Circumstances under which an LSRP is held responsible for subordinates [LSRP]

(a) An LSRP shall be jointly responsible for a violation of any provision of this subchapter committed by another **site remediation professional, licensed or not**, [LSRP] whose work he or she supervises or reviews if:

1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another **site remediation professional, licensed or not**, [LSRP] under his or her supervision;
2. The LSRP knows **or should know** that the professional services constitute a violation of the SRRA or any rule, regulation, order adopted or issued pursuant thereto; and

7:26I-6.21 Prohibition against misrepresentation

(a) In any description of qualifications, experience, [or] ability, **or proposal** to provide services, an LSRP shall not knowingly:

Eleven changes were made to be consistent with SRRA 2.0

7:26I-6.3 Professional competency

(c) When there is no specific [technical] guidance issued by the Department, or in the independent professional judgment of the LSRP the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, the LSRP may use the following additional guidance provided that the LSRP includes in the appropriate report a written **scientific, technical or other** rationale concerning why the [technical] guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, and justifies the use of the guidance or methods that were utilized.

7:26I-6.8 Exercise of independent professional judgment

(d) An LSRP shall make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports, and other information evidencing conditions at a contaminated site for which he or she is [responsible] **retained...**

7:26I-6.9 Responsibility to report an immediate environmental concern

(a) If an LSRP **obtains specific knowledge of** [identifies] a previously unreported condition at a contaminated site that in his or her independent professional judgment is an immediate environmental concern, the LSRP shall:

1. Immediately verbally advise **and confirm in writing to** the person responsible for conducting the remediation of the condition and of that person's duty to notify the Department of the condition **provided that the person is known to the LSRP**; and
2. Immediately notify the Department of the condition by calling the Department's telephone hotline at 1-877-WARNDEP.

(b) If an LSRP obtains specific knowledge of a previously unreported condition in an unoccupied structure, that in the LSRP's independent professional judgment, constitutes an immediate environmental concern, and the person responsible for conducting the remediation provides to the Department a written certification from the property owner that the building (i) is not occupied, (ii) will not be occupied, and (iii) will be demolished, than no further remediation relative to the immediate environmental concern in the unoccupied structure will be required, provided the conditions of the certification are maintained. Nothing in this section shall be construed to limit the responsibility of an LSRP to comply with the notification requirements of subsection (a) of this section, or the responsibility to report a discharge pursuant to Section 6.10.

7:26I-6.10 Responsibility to report a discharge

(a) If an LSRP **retained to perform remediation at a site or any portion of a site** obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred [on a contaminated site for which he or she is responsible] **at any location on the site**, the LSRP shall:

7:26I-6.24 Certification

(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP **believes that the information in the submission is true, accurate and complete and...**

(d) An LSRP shall not knowingly make any false statement, representation, or certification in any document or information required to be submitted to the Board or the Department

7:26I-6.27 Maintenance of data, documents, records, and information

(a) An LSRP shall, **for each contaminated site** for which he or she has been retained, maintain and preserve all data, documents, records, and information concerning the remediation [activities at each contaminated site the LSRP has worked on] including, but not limited to,

(c) An electronic copy of the records shall be submitted to the Department at the time the response action outcome is filed with the Department.

- DAG Nielsen Lewis reported that DOL would be submitting comments on some of the Subchapter 6 amendments presented at this meeting.

- **Professional Conduct Committee – Phil Brilliant**

- Motion by Phil Brilliant to approve a resolution to enter closed session to discuss Complaints 003-2020 and 009-2020.

Motion seconded by Mark Pedersen.

All present voted yes.

The motion was carried.

Open session resumed at 6:57 PM.

- Motion by Phil Brilliant, in the matter of Complaint 009-2020, to find the subject of the complaint in violation of N.J.A.C. 7:26I-6.8(c) and to assess a penalty of \$750.00 and to authorize transmission of an offer of settlement in the amount of 80% of the assessed penalty under signature of the Board Chairperson, and if no settlement is reached to proceed with formal disciplinary action.

Motion seconded by Mark Pedersen.

Roll Call Vote:

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

The motion was carried.

Phil Brilliant noted that the Subject of the Complaint is Michael Dempsey, 584458.

- **Ongoing Business**

None

- **New Business**

None

- **Next Board Meeting**

Motion by Mark Pedersen to cancel the Board meeting previously scheduled for January 19, 2021.

Motion seconded by Phil Brilliant.

All present voted yes.

The motion was carried.

The next scheduled Board Meeting will be February 1, 2021 at 4:00 pm via Microsoft Teams unless otherwise noted on the Board website.

- **Public Comments**

Marlene Lindhardt, LSRPA. Asked if candidates that had issues with firewall during exam were using work computers or home computers? The answer was work computers.

Rodger Ferguson, PennJersey Environmental Consulting. Commented on proposed revisions to Subchapter 6. Sections 6.8(b) and 6.8(c) are not supported by the SRRA and should be deleted from the Board Rules. Section 6.27(b) is a personal requirement, the rule requires the LSRP to retain the records in the manner of their choosing, not the choosing of their employer.

Richard Katz, PennJersey Environmental Consulting. Happy New Year to all.

The Meeting adjourned at 7:10 PM.