

DISCLAIMER

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Ethics and the Standards of Professional Conduct for LSRPs

**New Jersey Site Remediation
Professional Licensing Board**

April 17, 2019

Welcome from Mark Pedersen, Board Chairperson



The NJ Site Remediation Professional Licensing Board

Overview of Training

Janine MacGregor

SPEAKERS AND AGENDA

- **Janine MacGregor, Executive Director**
 - The Board, and Roles and Responsibilities
- **Ira Whitman and Joann Held, Board Members**
 - Ethics and the Standards of Professional Conduct:
Fitting Them Together
- **Dana Haymes, Regulatory Officer**
 - Complaint Process
- **Lawra Dodge, Board Member**
 - Common Violations of the Standards of Professional Conduct
- **Janine MacGregor, Moderator and All Presenters**
 - Case Scenarios, Questions and Wrap Up


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GOALS OF ETHICS TRAINING

- Understand the roles and responsibilities of the Board, the Department, PRCRs and LSRPs in site remediation
- Learn how ethics and the Standards of Professional Conduct in the SRRA and the Board Rules fit together
- Understand how to incorporate/apply these standards when performing remediation
- Learn how the Standards of Professional Conduct are used in the evaluation of LSRPs' conduct in complaint investigations
- Understand the importance of the Board Rules



The NJ Site Remediation Professional Licensing Board

- The Board
- Roles and Responsibilities:
 - the Board
 - the Department
 - PRCR
 - LSRP

THE BOARD'S AUTHORITY

The Site Remediation Reform Act (SRRA) N.J.S.A. 58:10C-1, et seq.

Established the Board and Authorized it to:

- oversee licensing of LSRPs, establish and administer licensing requirements - N.J.S.A. 58:10C-5 through 13
- adopt and administer Standards of Professional Conduct - in N.J.S.A. 58:10C-5
- oversee performance of LSRPs through auditing in N.J.S.A. 58:10C-24 and complaint investigations N.J.S.A. 58:10C-5 and 23
- develop Rules - N.J.S.A. 58:10C-6

BOARD MEMBERS REPRESENT DIVERSE PERSPECTIVES



- DEP Commissioner or designee - Mark Pedersen
- State Geologist - Jeff Hoffman
- 6 LSRPs - Jorge Berkowitz, Lawra Dodge, Chris Motta, Kathi Stetser, Ira Whitman - (1 vacancy)
- 3 environmental representatives –
Joann Held, Phil Brilliant - LSRP - (1 vacancy)
- 1 academic representative - Peter Strom
- 1 person from business community - (1 vacancy)

BOARD STAFF

Janine MacGregor, Executive Director

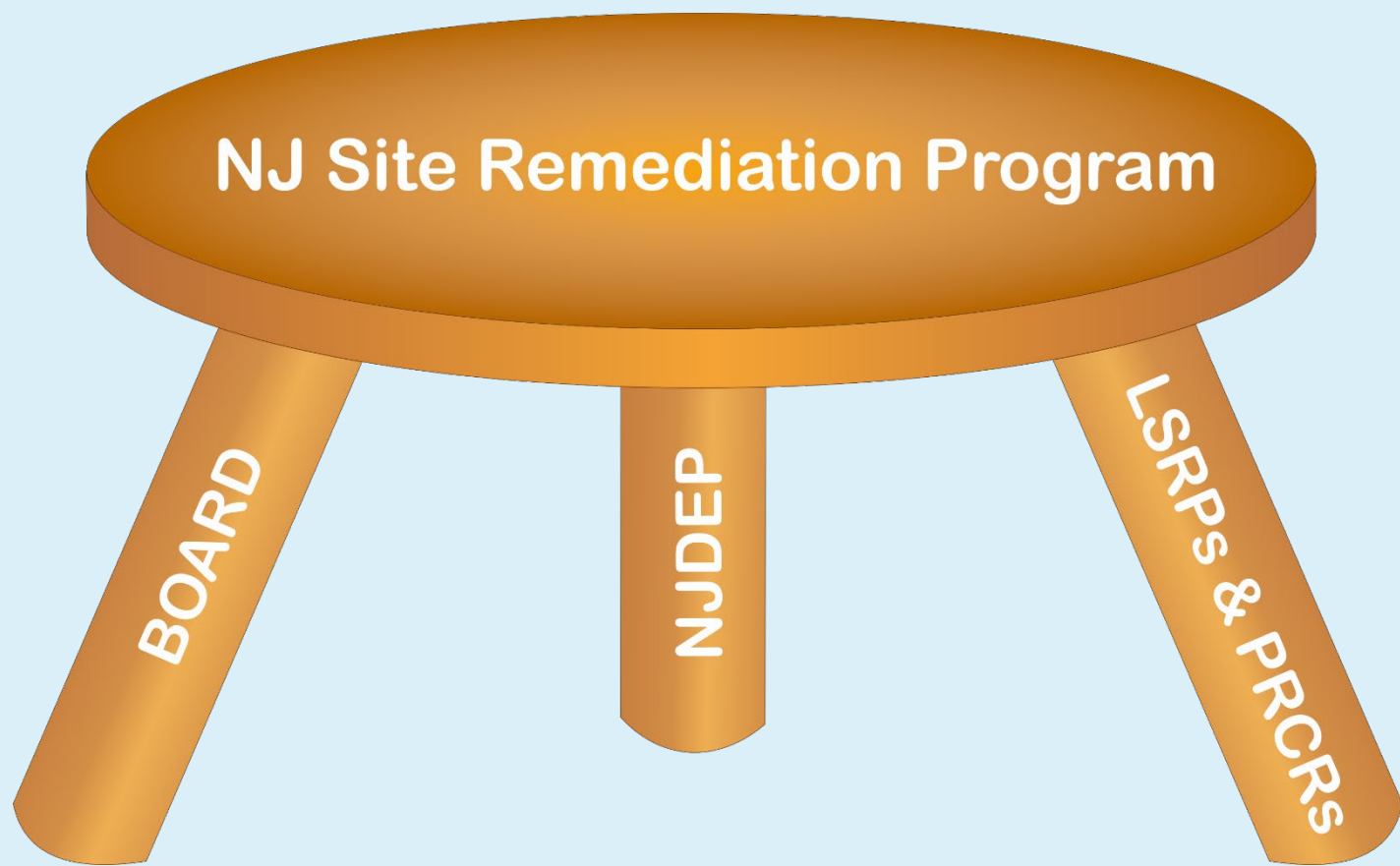
Dana Haymes, Regulatory Officer

Victoria Venable, Administrative Assistant

Judi Morrow, Technical Assistant

Wayne Howitz and SRP staff as-needed

Site Remediation in New Jersey is supported by three groups working together



ALL HAVE IMPORTANT ROLES TO PLAY

Licensed Site Remediation
Professionals (LSRP)

Persons Responsible for
Conducting Remediation (PRCR)

The Department

The Board

ROLE OF THE BOARD

Administer

Administer the licensing program (N.J.S.A. 58:10C-3.a), and carry out other duties defined in SRRA

Adopt and Administer

Adopt and Administer the Standards of Professional Conduct (N.J.S.A. 58:10C-5.h, 14 and 16)

Oversee

Oversee the performance of LSRPs
Complaints/disciplinary action (N.J.S.A. 58:10C-5.i, 17.a)
Conduct audits (N.J.S.A. 58:10C-24)

ROLE OF THE DEPARTMENT

Administer

Administer the Site Remediation Program

Adopt and Administer

Develop technical and administrative regulations, standards and guidance for conducting remediation

Oversee

Inspect and review documents submitted for PRCRs by LSRPs (N.J.S.A. 58:10C-21.a.)

ROLE OF THE DEPARTMENT INSPECT AND REVIEW

Purpose is to ensure the remediation is in compliance with technical and administrative regulations, standards and guidance, and:

- Nature and extent of all contamination is characterized
- Contamination in all media is removed or controlled
- All potential receptors are identified and evaluated
- Submitted documents conform to report requirements (i.e., N.J.A.C. 7:26E-3.2; 4.9; 5.7)
- RAO is protective



Department

- Inspects all documents and reviews certain documents when triggered
N.J.S.A. 58:10C-21
- May recommend Board investigate an LSRP based on review of submitted documents or RAO
N.J.S.A. 58:10C-23



Board

- Oversees conduct of LSRPs through audits and complaint investigations
N.J.A.C. 58:10C-24 & 5.i
- As part of audit or investigation, reviews technical and administrative facts to assess performance of LSRPs

WHO IS THE PRCR? N.J.S.A. 58:10C-2

- Owner or operator of ISRA site
- Owner or operator of UST
- Person who discharges or is in any way responsible
- Person subject to an oversight document to remediate a contaminated site (e.g. ACO)
- Any other person who is remediating a site



ROLE OF THE PRCR

N.J.S.A. 58:10B-1.3.b

Hire	LSRP to perform the remediation
Notify	Department of the LSRP
Conduct	Remediation without prior approval of the Department
Establish	Remediation funding source if required
Pay	All applicable fees and oversight costs
Provide	Site access to the Department
Provide	Access to applicable remediation documents
Meet	Mandatory timeframes and expedited timeframes
Obtain	Necessary permits

ROLE OF THE LSRP

On behalf of PRCR,
perform remediation
in accordance with
all requirements

N.J.A.C. 7:26I-6.3

Ensure all fees and
oversight costs are
paid before issuing
RAO

N.J.A.C. 7:26I-6.25

Notify PRCR of the
regulatory and
mandatory
timeframes

N.J.A.C. 7:26I-6.8b & c and
N.J.A.C. 7:26I-6.18

QUESTIONS?





Ethics and the Standards of Professional Conduct – Fitting them Together

- Ira Whitman and
Joann Held

BOARD RULES

IN EFFECT JANUARY 4, 2016

- Legislature authorized and directed the Board to write rules to implement the LSRP program
- Section 16 of SRRA formed the basis of Subchapter 6 –
Rules of Professional Conduct
- In addition to Section 16, Subchapter 6 of the rules encompasses:
 1. Other provisions of SRRA that govern professional conduct
 2. Clarification of statutory requirements
 3. Logical arrangement
 4. A few important additional responsibilities

DISTRIBUTED AS HANDOUT:

The full text of Subchapter 6 of the Board Rules,

which includes a “Crosswalk” between

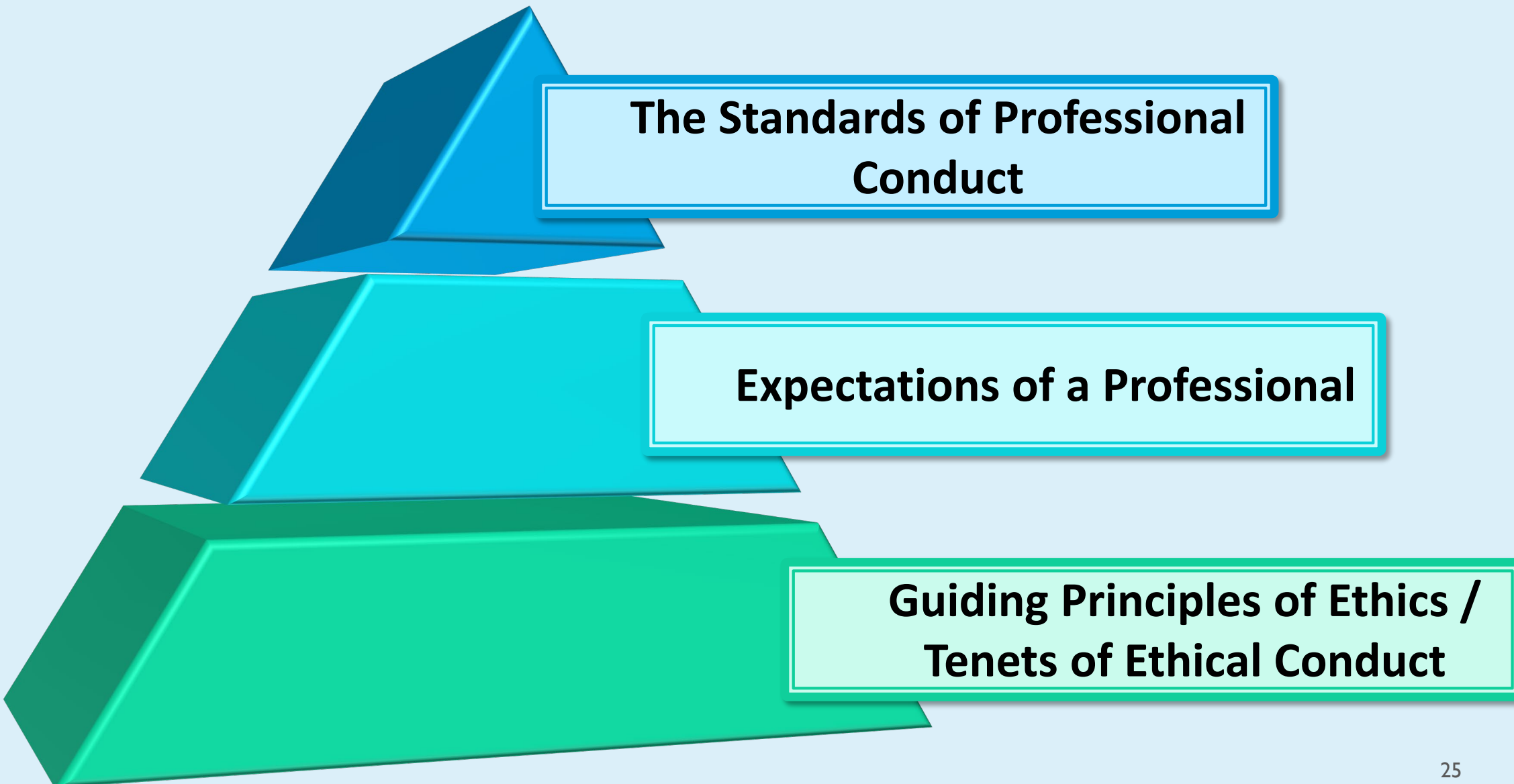
Subchapters 14 and 16 of SRRA and Subchapter 6 of the Board Rules

HIGHLIGHTS

Subchapter 6 of the Rules, the Standards of Professional Conduct, also cover

- SRRA Subchapter 16, but also Subchapters 14, 20, and 21 d
- Related provisions of SRRA Subchapters 14 and 16 were assembled into distinct rule sections
- Clarifications added to Rule where SRRA was not specific
 - e.g., Rule section 6.27, minimal period of time to maintain information
 - e.g., Rule sections 6.8(b) & 6.8(c) notifying PRCR and Department if deadlines are likely to be missed

OVERVIEW



**The Standards of Professional
Conduct**

Expectations of a Professional

**Guiding Principles of Ethics /
Tenets of Ethical Conduct**

ETHICS

What are the
guiding
principles?

Respect

Honesty

Beneficence (“Do Good”)

Responsibility

Justice

Other company or personal ethics

PROFESSIONS AND PROFESSIONALS

What is a Professional?

- A person qualified to provide a complex service based on their training, expertise and experience
- When a Professional performs a service he or she is not simply doing a job – he or she is making an important contribution to society
- Think of professionals we rely on everyday:
Doctor, Lawyer, Engineer, Architect, Accountant, and LSRP!
- Society has high expectations for professionals –
we rely on them to adhere to rigorous ethical standards

PROFESSIONALS ARE EXPECTED TO...

Respect,
Honesty,
Beneficence,
Justice

Be honest, upfront and fair
with clients and others

Respect,
Responsibility,
Justice

Obey the Law:
All laws, but especially
SRRA, Board Rules, ARRCs,
Tech Regs, Guidance

Respect,
Honesty,
Beneficence

Communicate effectively so
clients and others can make
informed decisions

PROFESSIONALS ARE EXPECTED TO...

Beneficence,
Responsibility

Do work thoroughly, with care, and to the best of their ability

Respect,
Honesty,
Beneficence,
Responsibility

Take responsibility for actions. Do not hide mistakes or shortcomings but honestly admit them and correct them

**The standards of professional
conduct are built on the
guiding principles of ethics
and the expectations of
professionals**

HONESTY IN THE BOARD RULES N.J.A.C. 7:26I-6

Be honest, upfront and fair with your clients and others.

This requires that LSRPs:

- Are realistic about abilities (6.3e and 6.4)
- Exercise Independent Professional Judgment (6.8a)
- Protect confidentiality (6.12)
- Avoid dishonest associates (6.14)
- Do not misrepresent (6.21)
- Avoid conflicts of interest (6.23)

OBEYING THE LAW IN THE BOARD RULES N.J.A.C. 7:26I-6

**Obey the Law: SRRA, Board Rules, ARRCS,
Tech Regs, Guidance.**

This requires that LSRPs:

- Know and apply applicable statutes, rules, regulations and guidance (6.3)
- Issue RAOs only if in compliance with all applicable statutes and regulations (6.25)

COMMUNICATING EFFECTIVELY IN THE BOARD RULES N.J.A.C. 7:26I-6

Communicate Effectively so that your clients and others can make informed decisions.

This requires that LSRPs:

- Apprise Department of retentions and dismissals (6.5)
- Obtain information and notify and disclose it to Dept. and clients (6.7)
- Apprise Dept. and clients of timelines and progress of remediation (6.8)
- Notify Department of deviations (6.11)
- Notify Department and clients of new information (6.13)

COMMUNICATING EFFECTIVELY IN THE BOARD RULES

N.J.A.C. 7:26I-6

(CONTINUED)

Communicate Effectively so that your clients and others can make informed decisions.

This requires that LSRPs:

- Cooperate in Board or Department investigations and reviews (6.15, 6.26, 6.28)
- Inform clients of timeframes (6.18)
- Inform public of information when appointed to do so (6.19)
- Continue to inform when required, even when no longer retained (6.22)
- Maintain data, documents, records and information (6.27)

**DO WORK
THOROUGHLY
AND WITH CARE
IN THE BOARD
RULES
N.J.A.C. 7:26I-6**

Do work thoroughly, with care, and to the best of your ability.

This requires that LSRPs:

- Exercise reasonable care and diligence (6.3)
- Correct deficiencies (6.6)
- When succeeding others, thoroughly review their work and correct deficiencies when necessary (6.7)

TAKE RESPONSIBILITY IN THE BOARD RULES N.J.A.C. 7:26I-6

Take responsibility for your actions, and do not hide mistakes or shortcomings, but honestly admit and correct them.

This requires that LSRPs:

- Cooperate with the Board during investigations, with the Department when identifying deficiencies (6.15 and 6.28)
- Take responsibility for actions of subordinates (6.16)
- Only certify documents that you can stand behind 100% (6.24)

**HIGHEST PRIORITY
IS PUBLIC HEALTH
AND SAFETY AND
THE ENVIRONMENT
IN THE BOARD
RULES
N.J.A.C. 7:26I-6**

In everything, an LSRP's highest priority is the protection of public health and safety and the environment.

This requires that LSRPs:

- Protect public health and safety and the environment (6.2)
- Report Immediate Environmental Concerns (6.9)
- Report discharges on contaminated sites for which you are responsible (6.10)

INDEPENDENT PROFESSIONAL JUDGMENT

What it is

When you
use it

How you
document it

INDEPENDENT PROFESSIONAL JUDGMENT

"Independent Professional Judgment," means the practice of applying the specialized knowledge, skill, education, training and experience of an LSRP to the facts, data, reports, site history, and other information regarding contamination or environmental conditions at a site to make informed remediation decisions that comply with all applicable statutes, regulations, and requirements of the Department and the Board.

(Guidance document on Board Website posted 5/8/17)

WHEN DO LSRPS APPLY INDEPENDENT PROFESSIONAL JUDGMENT?

All the time!

Not just when varying from rules and guidance

INDEPENDENT implies...

- LSRP decision making must be free from outside interests or influences that do not have the protection of public health and safety and the environment as the highest priority.
- Can consider client goals, future use of property and costs, as long as remediation is protective.

Independent Professional Judgment does not mean that an LSRP is required to make decisions in a vacuum.

An LSRP can and should consider the opinions and advice of others, but must assess that advice in light of current information, regulations and guidance.

An LSRP should always document the decision making process:

Information identified and evaluated

Factors considered

How those factors influenced decisions and actions

Include in work product

When varying from rules or guidance:
LSRPs must justify, document and
adequately support decisions to
demonstrate that the remediation is
protective of public health and safety and
the environment

N.J.A.C. 7:26E-1.7
Varying from the
Tech Regs

N.J.A.C. 7:26D-7
Selecting
Alternative
Remediation
Standards

N.J.A.C. 7:26E-1.5
& 1.6, N.J.A.C.
7:26C-1.2 Deviating
from Technical
Guidance

QUESTIONS?





Complaint Process

- Dana Haymes

The Board's authority to investigate complaints comes from SRRA which gives the Board authority over specific matters

(N.J.S.A. 58:10C-17.a.(1))

Board will review:

- Conduct of LSRP with respect to compliance with the SRRA and all Rules, Regulations and Orders adopted or issued pursuant thereto.
- Conduct of LSRP with respect to false statements, representations or certifications.

Board will not review:

- Fee disputes
- Contract disputes
- Other matters that fall outside of Section 17.a.(1)

WHO CAN FILE A COMPLAINT?

- PRCRs, LSRPs, General Public
- Department staff through chain of command
- Complaint form is available on the Board Website under the Professional Conduct Tab
- 63 Complaints to date:
 - 18 dismissed
 - 12 decided with no violations
 - 21 decided with violations
 - 12 currently pending



Board (SRPLB)

A vertical flowchart with three rectangular boxes. The top box is blue with the text 'Board (SRPLB)'. A light blue arrow points down from the bottom of this box to the top of the middle box. The middle box is cyan with the text 'Professional Conduct Committee (PCC)'. A light cyan arrow points down from the bottom of this box to the top of the bottom box. The bottom box is green with the text 'Complaint Review Team (CRT)'. The boxes have a slight 3D effect with a drop shadow.

Professional Conduct Committee (PCC)

Complaint Review Team (CRT)

COMPLAINT INVESTIGATION

STEP ONE: CRT Investigation – Fact Finding

STEP TWO: Analysis - Do the Facts amount to a violation of the Standards of Professional Conduct

STEP THREE: Recommendation -
CRT makes recommendation to PCC

STEP FOUR: Board Vote - PCC makes recommendation to the full Board for discussion in closed session and vote in open session

THE BOARD'S POSITION

- The Board sits as a fair and impartial body.
- It is not on the side of either the Complainant, or the LSRP.
- Impartiality is ensured by anonymity and recusal.



WHAT ARE THE POSSIBLE OUTCOMES?

1. Board may find no violation of the Standards of Professional Conduct

- Subject of Complaint is notified
- Summary is posted on Board Website (with **no** identifying information)

2. Board may find violation(s) of the Standards of Professional Conduct

- Board decides on appropriate disciplinary action
- Subject of Complaint is notified
- Disciplinary document or settlement is posted on Board Website (with identifying information)

STANDARDS OF PROFESSIONAL CONDUCT IN THE SRRA AND THE BOARD RULES

The Board rules took effect on January 4, 2016

- Complaints of conduct that took place prior to January 4, 2016 will only be found to be a violation of the SRRA
- Complaints of conduct that take place on or after January 4, 2016 may be found to be a violation of the SRRA and/or the Board Rules

DISCIPLINARY ACTIONS

- Administrative Order
- Civil Administrative Penalty (\$)
- Suspension or Revocation of a License
- Other legal action:
 - Civil action in Superior Court
 - Petition Attorney General to bring a criminal action



IN SUMMARY, TO AVOID COMPLAINTS

- Communicate!
- Document!
- Exercise care and diligence expected of LSRPs
- Know and follow statutes, regulations and guidance
- Always put highest priority on public health and safety and the environment



QUESTIONS?





Common Violations of the Standards of Professional Conduct

- Lawra Dodge

HIGHEST PRIORITY OF LSRPS

N.J.S.A. 58:10C-16.a and N.J.A.C. 7:26I-6.2

Protection of Public Health and Safety and the Environment

Common Issues:

- Not following required procedures when dealing with Vapor Issues and IECs

Appropriate Professional Conduct:

- Make proper notifications, conduct step out sampling, control site access

EXERCISE REASONABLE CARE AND DILIGENCE

N.J.S.A. 58:10C-16.b and N.J.A.C. 7:26I-6.3(d)

Common Issues:

- Missing required notifications resulting in PRCR not meeting mandatory timeframes
- Errors in documents - information on form and reports conflicts, incorrect identification information, incorrectly transcribed data, etc.
- Not sufficiently overseeing subordinates and project

Appropriate Professional Conduct:

- Check and double check documents and forms
- Track cases in Data Miner – know the remediation due dates etc.
- Document everything!
- Promptly correct all deficiencies, mistakes, errors, etc.



APPLY KNOWLEDGE AND SKILL

N.J.S.A. 58:10C-16.b and N.J.A.C. 7:26I-6.3(d)

Common Issues:

- Not knowing or following sampling and investigation guidance
- Not obtaining required permits (RAP, Permit by Rule, DGW, Wetlands)
- Not establishing Classification Exception Area as part of RI
- Not conducting Receptor Evaluation

Appropriate Professional Conduct:

- Refer to and use on a daily basis - statutes, regs and guidance and updates
- Double check that all technical requirements are met before submitting key documents:
 - Preliminary Assessment and Site Investigation (N.J.A.C. 7:26E-3)
 - Remedial Investigations (N.J.A.C. 7:26E-4) – make certain it is complete!
 - Remedial Actions (N.J.A.C. 7:26E-5)

EXERCISE

INDEPENDENT PROFESSIONAL JUDGMENT

N.J.S.A. 58:10C-16.i and N.J.A.C. 7:26I-6.8(a)

Common Issues:

- Making decisions without technical backup or supporting data
- Not delineating contaminated soil to appropriate remediation standard
- Not ascertaining ground water flow direction
- Claim of off-site ground water contamination without PA or SI

Appropriate Professional Conduct:

- Ensure all decisions are documented and substantiated

KNOW AND APPLY APPLICABLE STATUTES, REGULATIONS AND GUIDANCE

N.J.S.A. 58:10C-16.i and 14.c and N.J.A.C. 7:26I-6.3

Common Issues:

- Submitting documents that are incomplete or work not conducted in accordance with regs (ground water not fully delineated in RI)

Appropriate Professional Conduct:

- If the work cannot be completed within timeframe, do not submit the document as is (apply for extensions in a timely manner)

Meet Standards – Follow Regulations – Apply Guidance

VARIANCES AND DEVIATIONS

N.J.A.C. 7:26e-1.7 and N.J.A.C. 7:26E-1.5(b)

Variations are allowed, but LSRP must submit required information (N.J.A.C. 7:26E-1.7)

Make sure to fully describe and document:

- The regulatory citation for the Technical Requirement
- How the proposed action varies from regulation
- The rationale for the variance plus supporting information
- Written rationale and justification for deviating from guidance

OBTAIN ALL DATA, DOCUMENTS, INFORMATION AND REPORTS

N.J.S.A. 58:10C-16.i and N.J.A.C. 7:26I-6.8(d)

Common Issues:

- Relying solely on information provided by the client
- Relying on incomplete reports or missing raw data

Appropriate Professional Conduct:

- Obtain all data, documents, information and reports deemed necessary
- Consider an OPRA request as a necessary first step with every site
- A site visit with photo documentation is vital
- Fill in data gaps with further investigation as needed

ADMINISTRATIVE DEFICIENCIES

N.J.S.A. 58:10C-16.i and N.J.A.C. 7:26I-6.8, 6.18 and 6.25

Common Issues:

- Issuing RAO before PRCR has paid all fees
- Failing to notify client and Department of missed timeframes
- Incorrect or absent Case Inventory Document

Appropriate Professional Conduct:

- Check Financial Obligations Summary Report
- Check Data Miner – know the remediation timeframes – keep your client in the loop and make all required notifications

https://www.nj.gov/lsrpboard/board/l srp_notifications_guidance.pdf

A NOTE ABOUT RETENTION AND DISMISSAL

N.J.S.A. 58:10C-16.d and N.J.A.C. 7:26I-6.5

**The Board's position is that within 15 days
of retention, release or termination:**

Notify the Department

A NOTE ABOUT REPORTING IECS

N.J.S.A. 58:10C-16.j and N.J.A.C. 7:26I-6.9

LSRPs (retained or not) are required to immediately notify PRCR and the Department of an IEC condition:

- Verbally advise PRCR (follow up with written documentation)
- Call Department Hotline

“Immediate” means within 15 minutes of identifying the IEC

A NOTE ABOUT REPORTING DISCHARGES

N.J.S.A. 58:10C-16.k and N.J.A.C. 7:26I-6.10

LSRPs are required to notify the PRCR and Department when specific knowledge is obtained that a discharge has occurred on a contaminated site for which they are responsible

- How to advise PRCR not specified (always best to have written documentation)
- Call the Department Hotline
 - Including when ground water is determined to be impacted by an off-site source
- “Specific knowledge” is not defined – could be witnessing the discharge yourself, reports from reliable witnesses, data evidence...

A NOTE ABOUT NOTIFICATION OF MATERIAL FACTS AND DIFFERENCES

N.J.S.A. 58:10C-16.n and N.J.A.C. 7:26I-6.13

LSRP must promptly notify the PRCR and Department of any material facts, data or other information that the LSRP learns of subsequent to the completion of a report which would result in a report with material differences from the report submitted

A NOTE ABOUT CERTIFICATION

N.J.S.A. 58:10C-16.h and N.J.A.C. 7:26I-6.24

LSRP must not certify a document unless:

- The LSRP has managed, supervised or performed the work that is the basis of the submission; or
- The LSRP has periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission
- Review means read in detail, don't just "skim"

A NOTE ABOUT CONFLICTS OF INTEREST

N.J.S.A. 58:10C-16.y and N.J.A.C. 7:26I-6.23

LSRPs cannot be salaried employees of the PRCR, or any related entities, for which the LSRP is providing remediation services

Related Entities includes companies (in whatever corporate form) that are related by common ownership, common control, common space, common employees, common interests, or any combination of these

QUESTIONS?



Case Scenarios

STEPS TO FOLLOW IN MAKING ETHICAL DECISIONS

1. What are the facts?
2. What guiding principles and provisions of the Standards of Professional Conduct are relevant?
3. Look at the problem from various perspectives and through the eyes of the various people involved.
4. Try to identify the consequences of different courses of action. What harm, and what good, will come?
5. How do you feel about one course of action over another? Making no decision is a decision, taking no action is taking action.
6. Can you explain and justify your decision to others?

CASE SCENARIO 1

ADMINISTRATIVE DEFICIENCIES

CASE FACTS

- An LSRP is retained for a site and is in the process of conducting the remediation and making submissions
- The LSRP receives notifications of numerous administrative deficiencies from the Department
- The Department requires explanation, correction, withdrawal of documents, etc.

CASE SCENARIO 1

ADMINISTRATIVE DEFICIENCIES

QUESTIONS

- What ethical or professional conduct issues are raised?
- What should the LSRP do?
- Why are administrative deficiencies a concern?
- Isn't the Department supposed to review and approve documents?

Professional Competency - N.J.A.C. 7:26I-6.3(d)

An LSRP shall exercise reasonable care and diligence...

Correcting Deficiencies - N.J.A.C. 7:26I-6.6

Correct deficiency within timeframes set by the Department

CASE SCENARIO 2

CONFLICT WITH YOUR BOSS

CASE FACTS

- An LSRP is employed by a company headed by a non-LSRP
- The boss makes promises to a client and their attorney about how quickly and efficiently the remediation can be completed
- The LSRP disagrees, and believes that the remediation will take more time and money to complete than the boss represented to the client

CASE SCENARIO 2

CONFLICT WITH YOUR BOSS

QUESTIONS

- What ethical or professional conduct issues are raised?
- What should the LSRP do?

Highest Priority - N.J.A.C. 7:26I-6.2

An LSRP's highest priority is to protect public health and safety and the environment

Professional competency - N.J.A.C. 7:26I-6.3

Know and apply applicable statutes, rules, regulations and appropriate technical guidance

CASE SCENARIO 3

REMEDIAL INVESTIGATION REPORT

CASE FACTS

- An LSRP is retained to remediate a ground water area of concern at a site in an urban area.
- There are known contaminated sites nearby, and the site is paved, developed and in use.
- The LSRP submitted a Remedial Investigation Report indicating the investigation is complete based on data from one monitoring well on the site. No Preliminary Assessment was conducted.
- In the RIR, the LSRP concluded that all contamination on the site is coming from off-site by relying on the ground water data from an adjacent site.

CASE SCENARIO 3

REMEDIAL INVESTIGATION REPORT

QUESTIONS

- What ethical or professional conduct issues are raised?
- What should the LSRP do?
- How do technical deficiencies lead to violations of the standards of professional conduct?

Professional competency - N.J.A.C. 7:26I-6.3(a)4

The LSRP shall know and apply...The Technical Requirements for Site Remediation rules at 7:26E...

Highest priority - N.J.A.C. 7:26I-6.2

An LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.

CASE SCENARIO 4

CERTIFYING THE WORK OF OTHERS

CASE FACTS

An LSRP is brought on to “certify” a document that was prepared by another LSRP, or site remediation professional who was not an LSRP.

CASE SCENARIO 4

CERTIFYING THE WORK OF OTHERS

QUESTIONS?

- What ethical or professional conduct issues are raised?
- What should the LSRP do?
- What does “certify” mean?

Certification - N.J.A.C. 7:26I-6.24

(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP has:

1. Managed, supervised or performed the work...;
2. Periodically reviewed and evaluated the work performed by other persons...; or
3. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable, pursuant to N.J.A.C. 7:26I-6.7.

CASE SCENARIO 5

SUCCEEDING A PREVIOUS LSRP

CASE FACTS

- An LSRP is hired to complete the remediation of a large industrial site with a long history of remediation
- The LSRP is provided with a PA/SI conducted by a former LSRP
- The LSRP finds the PA/SI does not meet his or her standard of quality
- The client feels the remediation is:
 - taking too long
 - wants the remediation to move forward, and
 - does not want to pay to redo the PA/SI

CASE SCENARIO 5

SUCCEEDING A PREVIOUS LSRP

QUESTIONS

- What ethical or professional conduct issues are raised?
- What should the LSRP do?

Responsibility of successor - LSRP N.J.A.C. 7:26I-6.7

- (a) An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another site remediation professional, licensed or not, provided that the LSRP:
1. Reviews all available documentation...
 2. Conducts a site visit to observe current conditions and to verify the status of as much of the work previously performed as is reasonably observable; and
 3. Concludes, in the exercise of his or her independent professional judgment, that there is sufficient information...

Exercise of Independent Professional Judgment - N.J.A.C. 7:26I-6.8

- (a) An LSRP shall exercise 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...

CASE SCENARIO 6

MOM AND POP OPERATION

CASE FACTS

- An LSRP is retained by a client that has no experience with site remediation issues.
- PRCR has emotional reactions to having to comply with environmental regulations and pay for costly remediation (e.g., this is affecting my health, my family will not talk to me, I can't retire because now I have no money).

CASE SCENARIO 6

MOM AND POP OPERATION

QUESTIONS

- What ethical or professional conduct issues are raised?
- What should the LSRP do?

Duty regarding client communications - N.J.A.C.7:26I-6.18

An LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication by promptly providing the client or prospective client with written documentation of these assumptions, limitations, or qualifications.

CASE SCENARIO 7

PAST REMEDIATION CONDUCTED

CASE FACTS

- LSRP is retained to issue an entire site RAO so the property can be sold
- Site has a long history of industrial/commercial use
- The PRCR claims that all contamination has been cleaned up and the Department has issued NFAs or approvals but has not provided any documentation of that to the LSRP
- The client does not want the LSRP to “redo” work that has already been done

CASE SCENARIO 7

PAST REMEDIATION CONDUCTED

QUESTIONS

- What ethical or professional conduct issues are raised?
- What should the LSRP do?
- What issues are raised if the LSRP finds loose ends, such as areas of concern or contamination without documentation that the remediation has been completed?

CASE SCENARIO 7

PAST REMEDIATION CONDUCTED

QUESTIONS - CONTINUED

Professional competency - N.J.A.C. 7:26I-6.3(a)

Responsibility of successor LSRP - N.J.A.C. 7:26I-6.7

(a) An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another site remediation professional, **licensed or not**, provided that the LSRP:

1. Reviews all available documentation...
2. Conducts a site visit to observe current conditions and to verify the status of as much of the work previously performed as is reasonably observable; and
3. Concludes, in the exercise of his or her independent professional judgment, that there is sufficient information...

Exercise of Independent Professional Judgment - N.J.A.C. 7:26I-6.8(d)

(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...

IN CONCLUSION...

LSRPs have a responsibility and unique opportunity to contribute to public health and safety and the environment



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