



NASLR

NATIONAL ASSOCIATION OF STATE LAND RECLAMATIONISTS

<http://www.naslr.org>

Summer 2013

President's Message

Thomas Gragg

New York State Dept. of Environmental Conservation

Hello. Hola. Bonjour. Etc. Etc.

This message may sound somber, but I want to put it out there. One of the aspects of the NASLR meeting is to find out what's going on in other states. We need to have a discussion on the future of NASLR as we transition to the next generation of reclamation professionals. Any ideas about how to enhance NASLR's value to state governments and reclamations and how we can make NASLR a stronger organization would be appreciated. I would like to discuss these ideas at the upcoming conference in Hot Springs, Arkansas, in September. Please bring these ideas to the conference, or you may e-mail me: tagragg@gw.dec.state.ny.us. They may be brought up anonymously if you prefer.

This may sound like a broken record, but as stated many times before, a common goal of many of NASLR's presidents has been to increase membership. I would like to thank

the following members who have volunteered to be on our Public Relations Committee, of which one of its main functions is to increase membership: Derek Giebell, Paul Emerson, David Dean, and Vice President Cindy Cross of West Virginia, along with Dean Spindler of Illinois. New members are critical to any organization striving for new ideas and energy. The economic downturn has made this difficult especially for an organization such as NASLR, whose active membership consists mostly of employees of budget-stressed and/or politically motivated state governments. Our organization offers the opportunity to discuss successes along with failures of projects undertaken. There is always something that you can learn and put to use if you want to. New members are vital to the continued success of the organization. If you know of anyone that might be interested, have them check out our website, www.NASLR.org, or have them give me a call or drop me an email.

Lastly, within this newsletter you will find information about the conference in Hot Springs, Arkansas.. Part of this year's field trip will consist of attending the country's only diamond mine with an opportunity to dig for

diamonds (which you may keep). Continuing education credits are still awarded to attendees. Please register early. We look forward to seeing you at the conference!

41st Annual NASLR Conference

When: September 30th – October 2nd, 2013

Registration: \$200.00 per delegate and \$125.00 per spouse or significant other. The fee includes the reception and banquet on Tuesday evening.

Sponsorships: Corporate sponsorships and exhibit sites are available for \$750.00 per exhibit and includes one individual conference registration fee.

The registration/sponsorship form can be found at www.naslr.org/conference.

Where: Hot Springs, Arkansas, at the Embassy Suites Hot Springs Hotel & Spa

Reservations: 1-501-624-9200 or www.embassysuites.com

Conference topics include: Mining Reclamation Plans from K J Environmental, Crater of Diamonds, e-permitting and bonding, Paris Arkansas History (coal country Arkansas), and Arkansas mine shaft reclamation.

Banquet: The banquet (with entertainment) will be a buffet, and you will have a choice of fried catfish with hushpuppies or grilled garlic-herb chicken.

For more information, visit www.naslr.org/conference or contact Cindy Cross at 304-457-3219 or email cindy.m.cross@wv.gov.

Notes from the Field

"Permit Defense"
Dean Spindler
Illinois Office of Mines & Minerals

One of the worst headaches in a reclamation technical staff's career is defending a permit decision in a permit challenge. It does make you a better decision maker but it is a painful way to learn. It also consumes an inordinate amount of time.

It seems in many states that permit decisions are being challenged on an increasing frequency. Part of this may be due to the increasing financial backing to oppose coal mining, but it appears all minerals are being challenged locally. Another factor may be that there is a new generation of challengers who are questioning decisions and raising issues that may have been dealt with 25 and 30 years ago and some of the institutional knowledge has been lost.

Some of the article is about the OSM sponsored class called Permit Findings. The class was created a number of years ago to assist states to make permit decisions which will both meet the requirements of the rules and also have a better chance to stand up to challenges. Although the format of the permit finding is state specific, SMCRA has very specific wording which is required when issuing a permit. Some of the key regulatory words are "find" and "determine". Some of these are universal to all permits, while others are situation specific, some of the tests are, "Did you say it in writing and is it a reasonable decision under the regulations?" Challenges to a permit must argue either no decision was made or it was made improperly due to flawed information or misinterpretation of the regulations. Another recent tactic is to

challenge to see if state regulations comply with state statutes. This can be significant if there are any differences between the two regarding the application process regarding public input and challenges.

There will always be experts for hire out there that will testify that the state decision is flawed scientifically or the regulation has been misinterpreted. When defending a decision or interpreting a regulation, a response of "that's the way we have been doing it for all these years" doesn't work very well in the legal system. It seems there is always a rule out there that reads poorly but an interpretation was made to come to some decision how to implement it. Some states may have well documented internal records on these, including their original program submittals.

There are national reference resources out there to help. The COALEX site is available on the OSM site, although I have recently learned it is no longer funded for additional work. Benny Wampler, now retired head of the Virginia regulatory program, had a great response on this same question. "What does the federal preamble say?" At one time OSM also maintained a full set of all the preambles to all the rulemakings. The older ones were deleted when they reorganized their website. They can be obtained on request but this is inconvenient when time is critical. In addition, OSM used to distribute IBLA decisions which were good references as well. These are not available conveniently either.

In these days of tight budgets, few states have the luxury of extra staff to double and triple check all decision documents. Here are a few suggestions: Go to the OSM Permit Finding class or have one set up in your state

to teach the permit staff the significance of this document. Revisit your application to see if it asks all the questions that have to be asked to allow you to make an affirmative finding. Revisit your permit decision document to ensure all the required findings. Revisit your state statute to see if it has any conflicts with your regulations.

"The Trompe: More Than a Reclamation Tool"

Derek Giebell

West Virginia Dept. of Environmental Protection

I recently toured a system set up to treat iron laden mine water. While the whole system incorporates a passive treatment series of ponds that play a major role in iron removal, much of the process would not be possible without the integrated trompe mechanism. A trompe is a water-powered air compressor with no moving parts. Flowing water is used to compress air and aerate the mine water to promote iron oxidation. The trompe I viewed was designed and developed by a hydrogeologist named Bruce Leavitt. It is located in Findlay Township, Pennsylvania, (just south of the Greater Pittsburgh Airport) and discharges into North Fork Montour Run. Project partners include: OSM, PA DEP, Allegheny County Airport Authority, PA Turnpike Commission Western Regional Office, Montour Run Watershed Association, BioMost, Inc., Quality Aggregates Inc., and Stream Restoration Inc.



Several of the ponds used in the passive treatment system are shown. The trompe is located at the far end. Photo courtesy Greg Mergenthaler, Carter-Roag Coal Company

The trompe works by allowing falling water to capture and mix with air, which is forced downward before being released along a horizontal section of pipe. The compressed air moves upward while the flowing water continues up another vertical section of pipe before discharging.

TROMPE-powered passive aeration of mine water

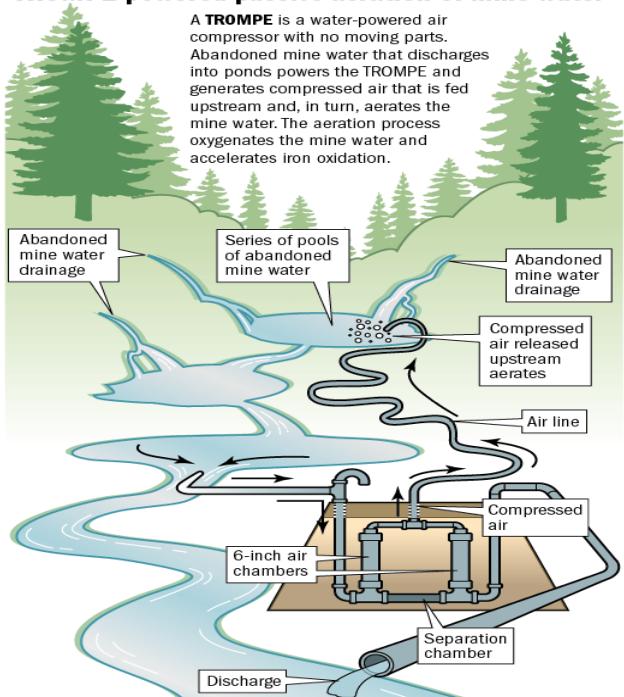


Diagram courtesy U.S. Office of Surface Mining

The trompe is composed of basic PVC pipe and fittings that can be found in local hardware stores. The trompe materials are minimal in cost, but the installation and other parts of the passive treatment system will run up the tab. In the iron treatment scenario, the trompe can be installed prior to the passive treatment or after it; however, installing after will reduce the amount of maintenance needed. A small drawback to installing at the outlet is that the air must be piped back to the beginning of the system to flow through the air diffuser heads. Surprisingly, maintenance is minimal. The aeration heads at this particular site only need cleaned approximately once a month, and the main piping rarely needs cleaned.



Bruce Leavitt explains the trompe system. Photo courtesy Greg Mergenthaler, Carter-Roag Coal Company

Aside from treating mine water, the trompe design has been used for centuries to generate compressed air and electricity. With a constant source of flowing water and any legalities overcome, the trompe can be built to scale and used in many situations where electricity isn't available or would be too expensive over time. I look for this valuable tool to take hold not only in mining

reclamation, but also in other venues as the world continues to work toward greener forms of energy.

Awards Reminder

The deadline for NASLR award submissions is August 1, 2013. NASLR award categories include the National Reclamation Award for both coal and non-coal, the NASLR Outreach Award for an individual or group, the Dean Spindler Reclamationist of the Year Award for both regulatory and non-regulatory personnel, and the NASLR Educational Grant Award. Please email questions or nominations to cindy.m.cross@wv.gov. The links to all the awards are at www.naslr.org/awards.

Scholarship Increases!

*Cindy Cross, NASLR Vice President
West Virginia Dept. of Environmental Protection*

On June 14, 2013, the NASLR Executive Committee sent out an email to the voting membership requesting a vote either for or against an increase in the amount of the educational scholarship that is awarded during the Annual Conference. I am pleased to announce that, of the votes that were received by the deadline of June 28, 2013, 100% were in favor of increasing the amount of the educational scholarship from \$1,000 to \$1,500. This increase will take effect immediately and a scholarship of \$1,500 will be awarded to the selected candidate at the 41st Annual Conference to be held in Hot Springs, Arkansas September 30th – October 2nd. Information on qualifications and

applying for the scholarship in addition to the Annual Conference is available on the NASLR website at www.naslr.org/grants.

IRS Approves Change in Tax-Exempt Status

*Ashley Rodgers, NASLR Secretary/Treasurer
North Carolina Dept. of Environmental and Natural Resources*

On May 3, 2013 the Internal Revenue Service (IRS) approved our request and granted NASLR tax-exempt status under section 501(c)(3) of the Internal Revenue Code. This concludes a long process, which began in June of 2011, to change our designation from a 501(c)(6) to a 501(c)(3) organization.

Without getting into too much detail, our previous designation of a 501(c)(6) organization is one used for groups such as business leagues, chambers of commerce, real estate boards , and professional football leagues (yes, the NFL is a tax-exempt nonprofit). To be a 501(c)(6) exempt group, its members must have a common business interest and the purpose of the organization is essentially to promote the common business interest or provide services to its members. NASLR had existed as a 501(c)(6) organization since October 3, 1973.

501(c)(3) designation is for an organization whose purpose is limited to charitable, educational, religious, literary, scientific, or a few others. This is why NASLR voted to amend our constitution earlier this year to ensure that our objectives were clearly in line with the IRS requirements for a 501(c)(3). The IRS has determined that we are a public charity under the 501(c)(3) requirements.

While the change in designation does not affect our day to day operations, there are a few items of which our membership should be aware:

- NASLR is prohibited from directly or indirectly participating in any political campaigns, including providing any contributions to a candidate or campaign.
- NASLR may not engage in substantial legislative activity (lobbying). This is one major difference between the two designations – 501(c)(3)s are very restricted in the amount of lobbying they can do (very, very little, unless you want to risk your tax-exempt status), whereas 501(c)(6)s may engage in legislative activities that are related to their common business interest. 501(c)6s are not limited on the amount of lobbying they can do and they may be involved in political campaign activities so long as those activities are not the primary focus of the organization.
- Contributions to NASLR (in the form of gifts, cash, or other donations) qualify as tax-deductible for federal tax returns. Under our previous designation, contributions to NASLR were not deductible on federal income taxes except as business expenses (so an individual could not claim a tax deduction but a business could).

Obviously I am not a tax attorney (not even close!) and I did come in near the end of this whole process, so I am still learning about the two designations and all of the ways our new status will affect NASLR and its members. If anyone has specific questions or concerns, please feel free to contact me (ashley.rodgers@ncdenr.gov), and I will do my best to find the answers.

We Need Your Help!

We want to improve the newsletter by incorporating more articles from across the country. Many ideas have been flying around in the new PR Committee, and we plan on building a group of contacts that would represent each state. These contacts would be our main link to articles, happenings, and other information about their respective states. While the contact person(s) can certainly submit information on their own, we would also like to see them reach out to others in their state. The network they form will help get the flow of information from state to PR Committee to the newsletter. Consider other regulators, industry, and academia (professors and students). If you or someone you know can become a state contact for the newsletter, please let us know. Every state must have at least one primary contact! Send an email to Paul Emerson at paul.c.emerson@wv.gov if you would like to volunteer or have questions about the newsletter.

In an attempt to make things run more smoothly, we are asking that all submissions be in by the first of the month prior to a new quarter (i.e., for the upcoming “Fall” quarter, the deadline is September 1st). This will ensure that the committee has time to construct and edit a more robust newsletter. Attached to the end of this newsletter, you will find a newsletter submission form complete with instructions. We will also be including a link on the website to download the form at www.naslr.org/newsletters.

We look forward to hearing from you!

NASLR Newsletter Submission Form

The deadline for submission is the 1st of the month prior to a new quarter.
(Example: First quarter “Winter” newsletter deadline is December 1st)

Author Name(s) and Title(s):

Author Agency/University/Affiliation:

Author Location:

Author contact information:

Are pictures, graphics, etc. attached? If so, how many?:

Article Title:

Article Body:

Note to Authors:

- 1) Please save this form as a doc file. If you submit another way (i.e., email body or a file other than this form), please save as plain text or doc.
- 2) Make sure you include all the information requested on the form.
- 3) The preferred form of pictures, graphs, charts, etc. is JPEG or PNG. Please attach separately if possible. You can note where you'd like them placed in your article.
- 4) Please keep the diversity of your audience in mind when writing about specific issues. Please define all acronyms upon first use in the article and think about other terms that may need to be defined.
- 5) Please proofread your article before submitting.
- 6) Your article may be edited for clarity and length.
- 7) Questions? Contact Paul Emerson at paul.c.emerson@wv.gov (304-457-4588 ext.43238) or Derek Giebell at derek.w.giebell@wv.gov.

Send your submissions to:

Paul Emerson
paul.c.emerson@wv.gov