

Spokane River Regional Toxics Task Force Business Entity Functions and Structure Concept

~ April 9, 2012 Discussion Draft ~

Introduction

The Spokane River Regional Toxics Task Force (Task Force) Memorandum of Agreement (MOA) structure and operating guidelines indicate that a more robust organizational structure may be required to address the administrative, funding and contractual needs of the Task Force. This business entity structure is needed to hire technical advisor(s), implement elements of the Task Force work plan, and retain the Task Force facilitator/coordinator beyond the first year.

The Spokane River Stewardship Partners (SRSP) have discussed the business entity needs and structure options, and developed this initial concept to help jump start Task Force discussions. The following sections describe:

- Relationship of Business Entity to Task Force.
- Functions of Task Force Business Entity.
- Schedule for Forming Business Entity.
- Business Entity Structure Options Considered.
- Proposed Business Entity Structure.
- Business Entity Membership
- Business Entity Board of Directors.
- Suggested Name for Business Entity.

Relationship of Business Entity to Task Force

The Task Force structure and operating guidelines are provided through the MOA signed by the Task Force members. The Task Force reviews and considers information and makes recommendations and/or decisions. On behalf of the Task Force, the business entity handles the administrative and contractual functions needed to implement Task Force recommendations and/or decisions.

Functions of Task Force Business Entity

The business entity will have a narrow purpose. Primary functions of the Task Force business entity include:

- Setting budgets.
- Tracking and managing money.
- Hiring consultants and managing consultant contracts.

Additional desired functions considered when evaluating business entity structure options include:

- Acquiring grants.

Schedule for Forming Business Entity

The business entity should be formed quickly to accommodate the following needs:

- Identify funding for and hire technical advisor(s) as soon as possible. Involve technical advisor(s) in developing Task Force work plan.
- Ensure that measurable progress is being made as soon as possible.

It is assumed that the sequence and desired schedule of initial Task Force activities that relate to the business entity include:

1. Develop business entity budget –April to May 2012.
2. Develop technical advisor(s) budget –April to May 2012.
3. Hold Toxics Workshop – June 2012.
4. Form business entity – June 2012.
5. Hire technical advisor(s) (requires business entity to be formed) – June to July 2012.
6. Develop Task Force work plan – July to December 2012.
7. Develop Task Force work plan implementation budget for 2012 and 2013 – timeline TBD.
8. Begin work plan implementation – timeline TBD.

Business Entity Structure Options Considered

The following potential structures for the business entity have been considered by the SRSP:

- MOA or Working Agreement with lead entity.
 - Lead entity could be designated or rotate between members.
- Washington State non-profit.
- Federal tax-exempt non-profit (either 501(c)(3) or 501(c)(6)).

Since the Federal tax-exempt non-profit formation requires a longer time to set up and get approved (more than two months for processing alone), it was decided to eliminate it as an option for the initial business entity set up. The following pros and cons were identified for each of the other structure options.

Memorandum of Agreement / Working Agreement

Pros	Cons
Fairly quick and simple to set up.	Requires lead entity with adequate resources.
Can include Idaho and Washington entities as parties to the agreement.	Lead entity organizational requirements could set cumbersome admin /contracting process.
Minimum transaction costs.	Rotating lead entity annually would be cumbersome and require one year contract limitation.
No annual reporting requirements.	May be limited by policies and practices of the lead entity.
Familiar to most potential members.	

Notes:

1. It is assumed that setting up the MOA/working agreement language would be a similar level of effort to creating a non-profit's articles of incorporation and by-laws.

Washington State Non-profit

Pros	Cons
Can pursue and receive grant money on behalf of the Task Force.	Idaho municipal entities (dischargers) cannot participate in a non-profit corporation, per Idaho Constitution. So, Idaho dischargers would not be able to be members of a non-profit business entity operation and provide funding as a member. However, Idaho dischargers could collaborate and coordinate with a WA non-profit through a MOA/contract between the non-profit and Idaho dischargers.
Quick to establish. State approval typically within a few days.	Articles of incorporation, by-laws and identification of directors required.
Does not require lead entity. No contract limitations.	Transaction costs associated with annual reporting and meeting requirements.
Allows development of independent admin / contracting process.	Not as familiar to most potential members.
May reduce contract liability.	
Can file for Federal tax-exempt status as a 501(c)(3) or (6) after Washington non-profit organization set up.	
Can include Idaho and Washington members.	

Notes:

1. It is assumed that creating a non-profit's articles of incorporation and by-laws would involve a similar level of effort to setting up the MOA/working agreement conditions.
2. It is assumed that the annual reporting, annual meetings and auditing requirements are not overly cumbersome and can be kept fairly simple.

Proposed Business Entity Structure

Based on the pros, cons and considerations presented above, SRSP members propose that the business entity be set up as a Washington State non-profit organization. A MOA/contract between the non-profit and the Idaho municipal dischargers would be set up to accommodate bi-state collaboration and coordination, as appropriate in the future. In addition, if it is determined in the future that a non-profit is not the best mechanism, it could be dissolved and a different structure could be formed.

Business Entity Membership

Washington State non-profit organizations typically include members, in addition to a board of directors. It is assumed that entities signing the Task Force MOA would be members of the business entity (except for the Idaho municipal dischargers, who would collaborate with the non-profit through a MOA/contract).

Considerations associated with the membership structure of the Washington non-profit include:

- The role of the business entity is narrow (setting budgets, tracking and managing money, hiring and managing consultants, and acquiring grants).
- The business entity will have limited decision-making responsibilities since decisions that influence the operations of the business entity are made by members of the Task Force (including deciding which consultants to hire).
- The business entity articles of incorporation and by-laws will clarify 1) the relationship of the business entity to the Task Force, and 2) its narrow role and associated decision-making.
- The business entity operations should run efficiently, with fewer meetings, accelerated schedules, lower administrative costs, and streamlined reporting responsibilities.

Based on these considerations, two classes of membership are proposed:

- **Class A membership** would be open to all entities signing the Task Force MOA. Class A members would attend the non-profit member meetings and each Class A member could appoint a person to serve as an advisor to the non-profit Board or Directors. Class A members and appointed advisors would not vote on non-profit business entity matters.
- **Class B members** would be Washington dischargers with 1) Task Force related permit conditions, and 2) the Task Force role described in the MOA of providing administrative oversight, coordination and funding for the operations of the Task Force. Class B members would include the City of Spokane, Spokane County, Liberty Lake Water and Sewer District, Inland Empire Paper, and Kaiser Aluminum. Class B members would elect directors and vote on non-profit business entity matters.

Business Entity Board of Directors

A board of directors would be needed to manage the affairs of a Washington State non-profit, and it is recognized that this requires time and resources from its directors. In recognition of their permit compliance responsibilities, and to support the Task Force goals and recommendations, the following Washington dischargers have offered to be the directors of the non-profit and take on the administrative burden:

- City of Spokane
- Spokane County
- Liberty Lake Sewer and Water District
- Inland Empire Paper
- Kaiser

Suggested Name for Business Entity

During the discussion of Task Force business entity structure options, the SRSP developed a suggestion for the Task Force business entity name – SRRTTF Administrative and Contracting Entity (ACE).