



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals

MINUTES
of
BOARD MEETING
Held on January 21, 2016
[Approved: February 18, 2016]

Meeting Location: Massachusetts Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Prepared by: L. Williamson

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on November 19, 2015
3. Renewal Dockets #1, #2 and #3
4. List of Action Items for LSP Board
5. Open Meeting Law Guide, March 18, 2015
6. Manual For Conducting Administrative Adjudicatory Proceedings, 2012 Edition
7. Minutes of Board Meeting, held on June 23, 2011
8. Professional Conduct Committee, Minutes of Meeting September 15, 2011

1. **Call to Order:** Maria Pinaud called the meeting to order at approximately 1:30 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, Kirk Franklin, Debra Listernick, Robert Rein, and James Smith. John Guswa entered the room at 2:35 p.m. Board member Farooq Siddique was absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Deborah Marshall, Gerard Martin, John Handrahan, and Dan Crafton of MassDEP SERO; Wendy Rundle, Executive Director of the LSP Association (LSPA); and Linda Segal.
2. **Announcements:** No announcements were made.
3. **Agenda:** The Board members agreed to follow the draft agenda.
4. **Minutes of Meeting Held on November 19, 2015:** The members present reviewed the draft minutes of the meeting of the Board held on November 19, 2015. Dr. Batchelder made a correction to the discussion on House Bill 695. **A motion was made and seconded to approve the November 19, 2015 minutes as amended. The motion passed unanimously.**

5. License Renewal Applications:

A. Renewal Dockets: The staff presented the following License Renewal Dockets:

Renewal Docket #1

Renewal Date: January 30, 2016

New Renewal Date: January 30, 2019

Have completed all requirements for renewal:

	LSP #	First	Middle	Last
1	1708	Derek	C	Volkin
2	1092	Jason	C	Naiden
3	1955	Christopher	R	McDermott
4	4689	Brian	J	Cote
5	4120	Albert	J	Ricciardelli
6	4994	James	M	O'Loughlin
7	8450	Michael	J	Cronan
8	7051	Dennis	P	Giustra

Renewal Docket #2

Renewal Date: October 30, 2015

New Renewal Date: October 30, 2018

License expired on October 30, 2015 for not submitting renewal documents.

Individual has completed renewal requirements within

1-year deadline and is now eligible for active status:

	LSP #	First	Middle	Last
1	4161	Benjamin	P	Gregson

A motion was made and seconded to renew the licenses of the LSPs on Renewal Dockets #1 and #2 for the three-year periods ending on the dates indicated. The motion was approved unanimously.

Renewal Docket #3

Renewal Date: January 30, 2016

New Renewal Date: April 29, 2016

Have requested a 90-day extension:

	LSP #	First	Middle	Last
1	5166	Michael	C	Penney
2	4208	Michael	S	Lotti

	LSP #	First	Middle	Last
3	4614	Elizabeth	M	Greene
4	1278	Jeffrey	A	Hamel
5	5521	Neal	J	Carey

A motion was made and seconded to grant the LSPs on Renewal Docket #3 a 90-day extension. The motion was approved unanimously.

B. Other Renewal-related Matters: The staff reported that there were no other renewal-related matters.

6. Other Licensing-Related Matters:

A. New Panel Assignments and Scheduling: The following Board members were assigned to Application Review Panel #276: Mr. Franklin, Mr. Austin, and Mr. Smith. The following Board members were assigned to Application Review Panel #277: Ms. Listernick, Mr. Rein, and Ms. Campbell.

B. Appeals Status Report: There were no pending appeals of any denials by the Board of license applications.

C. Annual Fee Invoices: Ms. Coles-Roby reported that all annual fee invoices were mailed on December 23, 28, and 29, 2015, and payment is due by March 1, 2016. She stated that the staff is tracking receipt of payments as well as incorrect addresses. Ms. Coles-Roby reported that many LSPs are not notifying the Board of changes of address and letters are being returned due to outdated information.

D. Inactive Status Report: The staff reported that the following LSPs are currently on Inactive Status:

LSP Number	License Status Date	License Status	Last Name	First Name
9099	January 30, 2016	Inactive	Egan	David
2349	January 20, 2016	Inactive	Howell	Deborah
7613	November 21, 2016	Inactive	Warren	Robert

E. Total Number of Active LSPs: As reported in the Agenda, the total number of Active LSPs was 543 as of January 12, 2016.

7. Examinations:

A. Dates of Next Exam: See discussion below.

B. Exam Committee: Ms. Coles-Roby reported that the committee conducted a conference call in December 2015. She stated that there were approximately thirteen

individuals waiting to take the exam; however, the eligibility of two of the thirteen has lapsed. Ms. Coles-Roby stated that she has secured funding for the psychometrician and has forwarded a contract to him. She stated that she was able to secure \$13,142.00, but will not likely need the entire amount. She reported that she was able to move money around by taking some from the Board's expert witness fund. This was possible because the Board is using a MassDEP employee as an expert witness in Case No. 08C-03 instead of hiring an outside individual. She reported she spoke to the psychometrician on January 8, 2016, and he stated that the best way to proceed with the second exam is to conduct the Angoff Method. She stated that the committee will need to decide whether 4-6 members will take the exam again. Mr. Austin indicated that the committee had already completed the Angoff Method and all that is remaining is for the committee to go through the second exam that John Fitzgerald (MassDEP) put together. Ms. Coles-Roby stated that she informed Chris Borges (MassDEP) that the exam should be composed of those questions that were not used for the first exam; however his software is unable to read what Mr. Fitzgerald sent. She reported that the psychometrician is going to work something out with the software so that it can be read by Mr. Borges' software. Dr. Batchelder stated that the committee has to go through the exam to ensure there are no duplicates or questions that could give away the answer to another question. Ms. Coles-Roby stated the exam will not be ready for January, but now that funding is available, the committee will be able to move forward with the second exam. Dr. Batchelder stated that she and Wes Stimpson could go through the questions, as they did for the first exam, using the psychometrician's online version to check for any duplication. Ms. Coles-Roby stated that she will set up a conference call with Dr. Batchelder, Mr. Stimpson, and Mr. Fitzgerald. Ms. Pinaud questioned how much time would be needed to finalize the second exam. Ms. Coles-Roby stated that the exam will not be ready for January 2016 because no work could be done until the funding for the psychometrician had been secured. Mr. Austin asked whether the exam could be offered in February since Mr. Fitzgerald had already created the second version and the committee just needs to check for duplication. Dr. Batchelder suggested that the third exam be created while the psychometrician is under contract. She also stated that while the third version is being created, it may be easy to make other randomized versions. Ms. Rundle asked whether the Board was expecting to offer the exam in February or March. Ms. Coles-Roby indicated the exam would likely be offered in March, as she will be busy in February with the Board's workshop, the trial for 08C-03, and finalizing the exam. Ms. Rundle asked if the exam would be also be offered in May/June as it typically is. Ms. Coles-Roby stated that if the exam is offered in March, the Board would likely offer it in July as opposed to May/June.

- C. Exam Challenge:** Ms. Coles-Roby reported that the exam challenges had been sent to the MassDEP expert for review. The MassDEP expert recommended approving one of the questions that was challenged. Dr. Guswa and Mr. Siddique reviewed the recommendations and offered their own recommendations which are not in agreement with each other. Ms. Coles-Roby stated that the Board was going to review the challenge in a quasi-judicial session today; however, it will have to be postponed because Mr. Siddique is not present to discuss his recommendations with the Board. Ms. Rundle asked if the individual whose challenge is in question would pass the exam

if it is ultimately approved. Ms. Coles-Roby stated that even if it is approved, the person would not have sufficient points to pass the exam. She stated that review of this challenged question may result in it being removed from the exam.

8. Continuing Education Committee Report:

A-B. Report on Course and Conference Approval Requests: Ms. Listernick reported that the Committee met earlier in the day and made the following course recommendations to the Board:

- a. EPOC: Understanding Indoor Vapor Intrusion Pathway (8 Technical credits, February 2 and February 4, 2016, Rocky Hill, CT).
Committee Recommendation: **Approve and assign course number 1500a**
- b. RAM Group: Understanding the Basis and Application of USEPA's RSLs (8 Technical credits, date and location to be determined).
Committee Recommendation: **Approve**
- c. Cascade Technical Services: Return on Remediation Investments (RORI) For TCE Mass Flux Reduction (6 Technical credits, February 4, 2016, Cambridge, MA).
Committee Recommendation: **Approve**
- d. Rutgers University: Glacial Deposits of New Jersey (3 Technical credits, March 22, 2016, Oxford, NJ).
Committee Recommendation: **Deny because course content is not relevant to Massachusetts**
- e. ITRC: Light Nonaqueous- Phase Liquids: Science, Management, and Technology (16 Technical credits, April 5-6, 2016, Marietta, GA).
Committee Recommendation: **Re-Approve and maintain the same course number**

A motion was made and seconded to accept the Continuing Education Committee's recommendations. The motion passed unanimously.

Ms. Listernick also reported that the Committee discussed the Board's disciplinary proceedings workshop that is being presented on February 9, 2016. Presentations will be made by Dr. Batchelder, Dr. Guswa, and Ms. Coles-Roby. She stated that all Board members are encouraged to attend.

C. Other Business: None.

9. **Professional Conduct Committee:** Mr. Franklin reported that the Professional Conduct Committee met earlier in the day and discussed the status of each of the active cases. He stated that there were no actions to be voted on by the Board.

10. **Personnel, Budget, and Fees:** Ms. Coles-Roby reported that the vacancy announcement for the General Counsel position had been posted and resumes are being submitted. Ms. Listernick remarked that she had not seen the posting and asked where it was located. Ms. Pinaud stated that she would forward the link for the posting to the Board members. Ms. Coles-Roby reported that the Board had received a bill from the Attorney General's office for the litigation costs associated with the Allen Wyman lawsuit. She stated that in accordance with the Interdepartmental Service Agreement, the Attorney General's office can pass the cost of litigation onto the individual state agencies. She stated that she was unaware of this situation, and attempted to move money around once she found out. She stated that the Attorney General's office has requested \$10,000 out of the Board's budget. To date they have received \$5,000 because there wasn't enough money in the budget to transfer the entire amount. Ms. Coles-Roby reported that the Attorney General's office is passing along the costs incurred for depositions, copying documents, etc. She stated that the discovery phase closes in June 2016, and there is a lot of work to be done. She stated that if it goes to trial it could be very expensive. Dr. Batchelder stated that there has never been a line item in the Board's budget for this before and the Board will have to take this into consideration for 2017. Ms. Pinaud stated that she would look into the matter further.

11. **Status of Board Member Replacements by Governor:** Ms. Coles-Roby reported that she and Ms. Pinaud will be meeting with the Commissioner of MassDEP on February 12, 2016 in order to discuss recruiting options for the open Board member position. She stated that two of the candidates who had previously expressed interest have taken other jobs and requested their names be removed from consideration. Ms. Rundle stated that she wasn't aware the Board was recruiting and offered to advertise in the LSPA newsletter. Ms. Pinaud stated that she and Ms. Coles-Roby will be able to provide an update on their meeting with the Commissioner at next month's Board meeting. Ms. Rundle voiced concern that it sounded as if the Commissioner would be deciding how to fill the vacant position as opposed to following the typical process. Ms. Coles-Roby stated that the meeting is just to discuss recruiting ideas. Ms. Pinaud stated that the upcoming meeting does not prevent the LSPA from advertising the open position.

12. **Other Business:**
 - A. **Legislative Matter:** Ms. Pinaud stated that Ms. Coles-Roby had provided her with a copy of the 2014 letter to the Board that requested an explanation of the conflict of interest regulations. She reported that the Board had approved a draft response letter a while back, but the letter was never issued. Ms. Pinaud stated that because of the time that has passed since the letter was drafted, as well as the MassDEP soil policy that has since been put in place, the draft letter is no longer relevant. She suggested that the Board not issue the draft letter. Dr. Batchelder stated that the letter was received prior to the new soil policy; however, in her opinion a response should still be provided. Ms. Listernick stated that the letter posed a question to the Board about the Board's conflict

of interest regulations which is a separate issue from MassDEP's soil policy. Ms. Pinaud stated that she would draft a new response to the letter for the Board to review.

- B. Action Items List:** Ms. Coles-Roby stated that a notice had been posted on the Board's website advising LSPs to submit their License Renewal Applications at least two weeks before their expiration date. Mr. Austin suggested adding the preparation of a list of previously denied continuing education courses to the Action Items List, as discussed during the Continuing Education Committee meeting. Ms. Coles-Roby stated that she will go through the particulars of the 2012 Attorney General's Manual for Conducting Administrative Adjudicatory Proceedings at next month's meeting.
- C. House Bill No. 695:** Ms. Coles-Roby stated that the LSP Board staff is continuing to track the progress of House Bill No. 695. She stated that a committee report has not yet been issued. She reported that she has recently become aware that transcripts of the hearings are available and will try to obtain a copy. She stated that the genesis of this issue is detailed in the June 23, 2011 Board Meeting Minutes and the September 15, 2011 Professional Conduct Minutes. She stated that the case was dismissed on the grounds that the Board did not have jurisdiction over the LSP's presentation to town boards and the allegations did not constitute misconduct.
- D. Regulations Committee Meetings:** Ms. Coles-Roby stated that she has a list of the various subcommittees and their members and will be preparing a schedule for meetings. Mr. Austin questioned whether one large committee might be better than small individual ones. Ms. Campbell stated that the continuing education subcommittee is so much further along than the rest that it didn't make sense to combine it with the others. Ms. Coles-Roby stated that she will provide a summary of the process and have handouts for the next meeting. Ms. Campbell stated that the continuing education committee has a working redline strikeout version that she would like the Board to review. Ms. Coles-Roby stated that Ms. Campbell should circulate the document and it will be placed on the Agenda for next month's Board meeting.
- E. Open Meeting Law:** Ms. Coles-Roby reported that Attorney General Maura Healy had issued a revised Open Meeting Law Guide. She stated that the last page should be signed by each member of the Board after they have read the Guide and be returned to her at the next meeting. Ms. Coles-Roby stated that she wanted to highlight a few sections of the Guide. Page 8 specifies when a public body can meet in executive session. Page 12 discusses remote participation and the circumstances under which it is allowed; one of which is geographic distance. Page 14 details the requirements for remote participation, including having a quorum, identifying oneself so everyone knows who is speaking, and conducting a roll call vote. The end of the Guide contains definitions for reference. Ms. Coles-Roby stated that she would be happy to answer any questions the Board members may have and will add it to the Agenda for next month's meeting.
- F. Website Update:** Ms. Coles-Roby reported that reminders have been placed on the Board's website for annual fee payments and license renewal applications. She stated

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she is still working on trying to institute online payments.

G. LSP Board Bulletin: Ms. Coles-Roby stated that the staff has completed compiling its email list of all LSPs. She stated that beginning at the end of February a monthly LSP Board Bulletin will be emailed to each LSP and will contain reminders, announcements, and the most recently approved continuing education courses. She stated that this will also be a way to easily contact all LSPs if ever needed. Mr. Smith suggested making an announcement at the upcoming LSPA meeting to inform LSPs that they will be receiving these emails from the Board.

13. Future Meetings: The Board's next meeting will be on February 18, 2016, in the Northeast Regional Office of MassDEP in Wilmington.

14. Adjournment: A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 2:40 p.m.