



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

**MINUTES**  
of  
**BOARD MEETING**  
**Held on March 17, 2016**  
[Approved: April 21, 2016]

Meeting Location: Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

Prepared by: L. Williamson

**List of Documents Used at the Meeting:**

1. Agenda
2. Draft Minutes of Meeting held on February 18, 2016
3. Renewal Docket #1
4. List of Action Items for LSP Board
5. Draft Response Letter re: Conflict of Interest Regulations 309 CMR 4.04, March 14, 2016
6. 309 Code of Massachusetts Regulations 1.00-9.00
7. Draft Continuing Education Regulation revisions, March 11, 2016
8. Massachusetts General Laws Chapter 30A
9. 801 Code of Massachusetts Regulations 1.00
10. 310 Code of Massachusetts Regulations 2.00
11. Draft Regulatory Impact Assessment
12. Draft Executive Order 562 Regulation Review Checklist
13. "For Discussion Purposes: Considering Changes to LSP Board Statute", prepared by LSPA for February 29, 2016 meeting with Commissioner Suuberg
14. LSPA Letter "Suggestions for Amendments to 309 CMR 1.00-9.00" with attachments, January 31, 2014

1. **Call to Order:** Maria Pinaud called the meeting to order at approximately 1:32 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, Debra Listernick, Robert Rein, Farooq Siddique, and James Smith. Board members absent were John Guswa and Kirk Franklin. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA); and Wesley Stimpson of WES Associates.
2. **Announcements:** Ms. Coles-Roby announced that she had received an email from New Jersey's LSRP Board Executive Director Karen Hershey that she would be retiring at the end of February 2016 and the new Executive Director will be Janine MacGregor, who is

a long-term employee of NJ DEP.

3. **Agenda:** The Board members agreed to follow the draft agenda.
4. **Minutes of Meeting Held on February 18, 2016:** The members present reviewed the draft minutes of the meeting of the Board held on February 18, 2016. Mr. Austin made a correction to Section 13C-Regulation Committees. **A motion was made and seconded to approve the February 18, 2016 minutes as amended. The motion passed unanimously.**
5. **A-B. Decisions Regarding Licensing of Applicants:** Ms. Coles-Roby reported that ARP No. 278 did not meet today because the application submitted by Andrew Robinson was incomplete and has been tabled until the missing documents are received.

6. **License Renewal Applications:**

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

**Renewal Docket #1  
Renewal Date: July 30, 2015  
New Renewal Date: April 30, 2019**

LSP requested to be placed on Inactive status effective July 30, 2015. LSP is now requesting to be returned to Active status, and has completed renewal requirements within the two year deadline, and is now eligible for active status:

	<b>LSP #</b>	<b>First</b>	<b>Middle</b>	<b>Last</b>
1	9282	Mark	A	Welsh

**A motion was made and seconded to renew the license of the LSP on Renewal Docket #1 for the three-year period ending on the date indicated. The motion was approved unanimously.**

**B. Other Renewal-related Matters:** None.

7. **Other Licensing-Related Matters:**

- A. New Panel Assignments and Scheduling:** The following Board members were assigned to Application Review Panel #279: Mr. Siddique, Mr. Austin, and Ms. Listernick.
- B. Appeals Status Report:** There were no pending appeals of any denials by the Board of license applications.
- C. Expired LSP Licenses-Failure to Pay Annual Fees:** Ms. Coles-Roby reported that, as

of March 15, 2016, forty-nine LSPs have not paid their annual fees. She stated that letters were sent out on March 10, 2016 to all those who have not paid, indicating that if payment is not received within thirty days, their license will be suspended, in accordance with the Board’s regulations. Ms. Coles-Roby stated that under the current regulations, the Board cannot impose any penalty for submitting payment up to thirty days after it is due; however she would like the Board to have a discussion about possible changes to the regulations including imposing some sort of late fee. Ms. Campbell stated that until electronic payments are accepted, she did not think that implementing a late fee was feasible. The Board members agreed that the current regulations, which state that an LSP’s license shall be suspended for failing to pay the annual fee within thirty days of its due day, should be enough of an incentive. Ms. Coles-Roby stated, in the past, she has personally called each LSP who had not paid the fee on time. Ms. Rundle asked how an LSP would go about informing the Board if he or she were retiring. Ms. Coles-Roby stated that the LSP should submit a letter or an email to the Board stating their intention to retire their license. Ms. Rundle asked if those forty-nine LSPs who had not paid might be retiring. Ms. Coles-Roby stated that she would be surprised if that were the case.

**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
7613	July 22, 2015	Inactive	Warren	Robert
9921	September 1, 2014	Inactive	DelMarco	David
9451	February 12, 2016	Inactive	Zirbel	Martha
8501	January 22, 2016	Inactive	Taliadouros	Kleo
2173	January 25, 2016	Inactive	MacDonald	David

**E. Total Number of Active LSPs:** As reported in the Agenda, the total number of Active LSPs was 540 as of March 8, 2016.

**8. Examinations:**

**A. Dates of Next Exam:** Ms. Coles-Roby reported that the exam will be offered on April 6, 2016 to first time takers only. She stated that there are five individuals who are eligible to take this exam, and four have signed up. The second version of the exam will be offered in July 2016 to everyone.

**B. Exam Committee:** Ms. Coles-Roby reported that she had spoken to the psychometrician, and he had recommended that the Committee take the exam again. Ms. Coles-Roby stated that she indicated to him that the members were unable to make the time commitment involved with re-taking the exam. She reported that the psychometrician offered two options in completing the second exam. The first option is to conduct the Angoff method without answering each of the questions. The committee members would have to go through the exam and rate each question. Ms. Coles-Roby indicated that one meeting would be required, and the process would likely

take each Committee member approximately 3-4½ hours. The second option is to do statistical equating. Ms. Coles-Roby stated that the psychometrician would do a cut score based on the rates of difficulty, and compare the exam scores from 2015-2016 and make adjustments. She stated the down side of this option is that it would be done without the subject matter experts. Mr. Austin stated that the Committee had already scored all 300+ questions with degree of difficulty, and the simple solution was to ask John Fitzgerald (MassDEP) to compile the questions from those not used. The exam Committee members agreed that options proposed by the psychometrician were unnecessary because the process had already been completed for all of the questions. Dr. Batchelder stated that she and Mr. Stimpson just need to go through the questions to check content. Ms. Coles-Roby stated that Mr. Fitzgerald had compiled the questions; however there is a glitch in the software and Chris Borges' (MassDEP) and the psychometrician's numbers do not match. Dr. Batchelder indicated that the next step in the process is to match the question numbers and create the exam. She stated that the psychometrician produces the exam using his software, and then it is checked for content. Ms. Coles-Roby stated that she will arrange a conference call with those Committee members involved.

**9. Continuing Education Committee Report:**

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

- a. NEWMOA/ITRC: *Petroleum Vapor Intrusion: Fundamentals of Screening, Investigation, and Management* (16 Technical credits, May 9-10, 2016, Denver, CO, September 26-27, 2016, Somerset, NJ, and November 9-10, Framingham, MA).  
Committee Recommendation: **Approve**
- b. NWETC: *Principles of Quality Assurance and Quality Control in Environmental Field Programs* (13 Technical credits, March 1-2, 2016, Warren, NJ).  
Committee Recommendation: **Approve**
- c. MassDEP: *Historic Fill* (1.5 DEP Regulatory credits, April 12, 2016, Westborough, MA).  
Committee Recommendation: **Approve**

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

**C. Other Business- Petition for Waiver:** Mr. Siddique reported that the Committee recommended approving a Petition for Waiver from an LSP who missed the first day of a two day course, and therefore was denied credits. The LSP is requesting to attend the

first day of the course when it is re-offered again in 2016, to complete the entire 16 hours and obtain the full 16 Technical credits. The committee recommended that the approval letter be worded in such a way to reflect the fact that the waiver is being approved only because of the special circumstances surrounding this particular course, including the length of the course, the fact that it may have qualified as two separate courses if it had proposed as such, and that it is being re-offered shortly after the original offering.

10. **Professional Conduct Committee:** The Board agreed to forego a Professional Conduct Committee report, because all the Board members present at this meeting were also present at the meeting of the Professional Conduct Committee held earlier in the day and there were no actions to be voted on.

11. **Personnel, Budget, and Fees:** Ms. Coles-Roby reported that she will be interviewing for the General Counsel position in the month of April. Ms. Listernick asked how many applicants would likely be interviewed. Ms. Coles-Roby stated that she can interview all those who submitted their application before the closing date, and if a qualified candidate is not found, she can look at those applications that were submitted after the closing date. Ms. Coles-Roby stated that the Board will need a General Counsel in place before August 2016 for disciplinary case 08C-03. She stated that she is looking for someone who has similar experience to the Board's work and can grow into the position. She stated that a minimum of five years experience is required and that experience working with a Board would be a plus, but not necessary.

12. **Status of Board Member Replacements by Governor:** Ms. Pinaud stated that the meeting with the Commissioner had not been rescheduled and she did not have an update for the Board at this time.

13. **Other Business:**

A. **Action Items List:** Ms. Pinaud stated that she revised the Legislative Matter letter and asked the Board members if they had any comments on the draft. The Board members agreed that no changes were needed and the letter should be issued.

Ms. Campbell stated that the redline strikeout version of the draft continuing education regulations had been distributed to the Board for review. She stated that she had a conversation with Susan Fessenden (MassDEP) early on in the process and they had agreed that it was important to maintain the 12 DEP credits requirement for license renewal. Ms. Campbell stated that when she spoke to Ms. Fessenden earlier today, she had express some concern over the proposed reduction of total credits to 36, and DEP being responsible for approximately a third of those. Ms. Fessenden indicated that she would need to have further discussion with the Bureau of Waste Site Cleanup to determine if that would be feasible. Ms. Listernick stated that a lot of the burden may be in the need to offer the courses around the state. She indicated that offering webinars may relieve some of that burden. Dr. Batchelder stated that DEP courses are an important part of the program because they allow LSPs to hear what DEP's

expectations are and that is critical for a semi-privatized program to work.

Ms. Coles-Roby stated that the Board members will need to go through the proposed revisions line by line and consider the legal aspects of all connotations. Ms. Listernick recommended that it be done through discussion rather than written comments. The Board members agreed to set aside a certain amount of time at the next Board Meeting to begin discussions on the suggested revisions. Dr. Batchelder stated that it would be helpful to project the revisions on a screen and make changes as we go along. Ms. Coles-Roby stated that the staff will contact WERO and ask if they have a projector available for the next Board meeting. Dr. Batchelder also recommended that the discussions be recorded in order to make them easier to go back to.

- B. Regulations Promulgation Overview:** Ms. Coles-Roby stated this discussion will be tabled until the next meeting and requested that the Board members bring their handouts with them next month.
- C. Manual for Conducting Administrative Adjudicatory Proceedings:** Ms. Coles-Roby stated this discussion will be tabled until the next meeting and requested that the Board members bring their handouts with them next month.
- D. LSP Board Bulletin:** Ms. Coles-Roby reported that the staff will be sending out the next edition of the Bulletin the last day of March. She reported that there were some issues with the email list for the first edition, but they will be corrected in time for the second edition.
- E. LSPA Meetings with MassDEP Commissioner:** Ms. Pinaud stated that she had invited LSPA to give a status update on the meeting they had with the Commissioner and the Bureau of Waste Site Cleanup. Ms. Rundle reported that when the Commissioner was first appointed, LSPA's leadership met with him to introduce themselves and discuss thoughts on DEP and the LSP Board. She stated that, in the prior year, Matt Hackman (then LSPA President) had been writing about looking at the statutes and the LSPA had been brainstorming on how the LSP Board could be modernized. She stated that the Commissioner invited the LSPA back to discuss the topics further. She stated that Ben Ericson (MassDEP/former LSP Board chairperson) was also present at the initial meetings. Ms. Rundle stated that they met again in December 2015 and discussed the Board's process of issuing an Order to Show Cause, the case going to OADR, and then the case going back to the Board, and the fact that OADR's decision is non-binding. She stated that the Commissioner had wanted to look into the process further and they agreed to meet again in February 2016. She stated the Ms. Pinaud and Ms. Coles-Roby were present at the February meeting. She stated that the LSPA wanted to gauge the receptivity of the Commissioner to possible statutory changes that had been discussed among the LSPA membership for many years. She stated that most of the recommendations are regulatory changes, but some are statutory changes. Ms. Rundle stated that the first meeting was intended as a meet and greet but ended up evolving into more discussion and meetings than initially expected. She stated that she recognized the irony of the situation in that the LSPA is usually the one insisting on the distinction between the LSP Board and DEP, but were now engaging in

discussions with the Commissioner about the Board.

Ms. Rundle stated that one of the recommendations the LSPA made concerned the composition of the Board. She stated that the LSPA proposed some possible solutions to the difficulties in finding qualified individuals for certain seats like manufacturing or labor. She stated that the LSPA also recommended clarifying whether the hydrogeology slot should be an LSP or a non-LSP, and why the statute requires a hydrogeologist and not a risk assessor, for example. Ms. Rundle reported that uncoupling the seats from the LSP requirement was also recommended. She stated that the leadership of the LSPA thinks it would be valuable to have a PRP representative on the Board, but that it may be better to not require the individual to be an LSP, as is currently the case for the manufacturing seat. Uncoupling the manufacturing seat from the LSP requirement might make it easier to fill the seat as opposed to having the seat vacant for years while trying to find an individual who meets the current criteria. Dr. Batchelder stated that the labor seat was specifically put into the statute in response to lobbying. Ms. Rundle stated that the LSPA also feels there is value in having the majority of the Board comprised of practicing LSPs.

Ms. Pinaud stated that the Commissioner takes no position on these recommendations and was just listening to the suggestions. She stated that the Commissioner is very supportive of the Board. Dr. Batchelder remarked that neither the Board nor the Commissioner have the ability to make changes to the statute. Mr. Smith stated that he felt uncoupling the LSP and non-LSP would be an improvement. Ms. Coles-Roby stated that the LSPA also recommended changes to the adjudicatory procedures. Ms. Rundle stated that the LSPA has no proposal at this time for this issue, and that different LSPs have different opinions on the issue. She stated that LSPA does not have a position on the issue one way or the other. Dr. Batchelder asked what the adjudicatory process was for DEP. Ms. Coles-Roby stated that the presiding officer writes a Recommended Final Decision and then the MassDEP Commissioner issues the Final Decision. She also stated that 801 CMR 1.00 applies to state agencies and licensing boards and specifies the standard adjudicatory procedures.

Ms. Rundle stated that in addition to the uncoupling of the seat constituencies from the LSP designation, there are three issues on LSPA's radar. First, LSPA members have different opinions about the non-binding issue of the OADR decision and have been exploring what the alternative could be if the statute were able to be changed. The second issue is the timeframe for resolving complaints. Ms. Rundle stated LSPA had recommended adding language that the Board shall have no more than three years to issue a Final Decision; however, now feel that three years is too short of a timeframe for a final decision and that the timeframe should instead be on the amount of time the LSP Board has from the time it receives a complaint until it issues an Order to Show Cause. The third is that the terminology in the statute does not contain "LSP" at all. Ms. Rundle stated that after the meetings with the Commissioner, they have gone back to LSPA and started the internal process of gauging support for the proposed changes and identifying what they would be trying to achieve. She stated that final recommendations from the LSPA are not expected until fall 2016.

14. **Future Meetings:** The Board's next meeting will be on April 21, 2016, in the Western Regional Office of MassDEP in Springfield.
15. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 3:06 p.m.