



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

MINUTES
of
BOARD MEETING
Held on May 19, 2016
[Approved: June 16, 2016]

Meeting Location: Massachusetts Department of Environmental Protection
Central Regional Office
8 New Bond Street
Worcester, MA 01606

Prepared by: L. Williamson

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on April 21, 2016
3. Renewal Dockets #1, #2, #3, and #4
4. List of Action Items for LSP Board
5. Petition for Waiver, dated May 17, 2016
6. House Bill 4188, "An Act Relative to State Oversight of Professional Licensing Boards"
7. House Bill 695 written testimony and hearing sign in sheets

1. **Call to Order:** Maria Pinaud called the meeting to order at approximately 1:35 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, Kirk Franklin, John Guswa, Debra Listernick, Robert Rein, Farooq Siddique, and James Smith. No Board members were absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA), Linda Segal, and Rebecca Woolley (MassDEP).
2. **Announcements:** Ms. Pinaud informed the Board members that the Baker-Polito administration has filed legislation to assume authority for the NPDES program. She stated that the process will likely take a number of years.
3. **Agenda:** Ms. Coles-Roby requested that a Petition for Waiver be added to the Agenda. Mr. Smith requested that a discussion on House Bill 4188 also be added to the Agenda.
4. **Minutes of Meeting Held on April 21, 2016:** The members reviewed the draft minutes of the meeting of the Board held on April 21, 2016. **A motion was made and seconded to approve the April 21, 2016 minutes as written. The motion passed unanimously, with Mr. Smith and Mr. Franklin abstaining.**

5. License Renewal Applications:

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

Renewal Docket #1

Renewal Date: April 30, 2016

New Renewal Date: April 30, 2019

Has completed all requirements for renewal:

	LSP #	First	Middle	Last
1	5877	Kenneth	E	Lento
2	6643	Rosanne	M	Joyce
3	6818	Alan	A	Benevides
4	6272	Valerie	D	Tillinghast
5	2207	Anthony	W	Makovitch
6	4562	Jonathan	R	O'Brien
7	1736	Daniel	W	Folan
8	9969	Scott	K	Parker

Renewal Docket #2

Renewal Date: January 30, 2016

New Renewal Date: January 30, 2019

Completed requirements within 90-day extension:

	LSP #	First	Middle	Last
1	5217	William	J	Gibbons
2	2591	Leonard	V	Rappoli

Renewal Docket #3

Old Renewal Date: April 30, 2015

New Renewal Date: April 30, 2019

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	3484	Mark	C	Ensign

Motions were made and seconded to renew the licenses of the LSPs on Renewal Dockets #1, #2, and #3 for the three-year periods ending on the dates indicated. The motions were approved unanimously.

Renewal Docket #4
Old Renewal Date: April 30, 2016
New Renewal Date: July 28, 2016
 Have requested a 90-day extension:

	LSP #	First	Middle	Last
1	1488	David	M	Sullivan
2	1259	James	Keith	Sullivan
3	3560	Michael	P	Flynn
4	5738	Scott	E	Kraihanzel
5	4354	Christopher	E	Gill

A motion was made and seconded to grant the LSPs on Renewal Docket #4 a 90-day extension. The motion was approved unanimously.

B. Other Renewal-related Matters: Ms. Coles-Roby stated that, on May 9, 2016, the Board received a letter from an LSP requesting to go on inactive status. She reported that the LSP had received a 90-day extension that expired April 29, 2016. Ms. Listerneck stated that if an LSP cannot complete renewal requirements within the 90 days, he/she has up to one year to obtain the remaining credits and become active again. Ms. Coles-Roby stated that the request to go on inactive status was received after the LSP's license had expired. Dr. Batchelder suggested informing the individual that she would first have to meet the requirement to reactivate her license, and then go on inactive status. Ms. Listerneck questioned how many credits the LSP needed to renew. Ms. Coles-Roby stated the LSP needs 5.5 credits, of which at least 5 must be DEP credits. Ms. Coles-Roby stated that she will inform the LSP that she has until January 30, 2017 to meet the renewal requirements and reactivate her license, and in the interim does not qualify for inactive status and cannot practice as or hold herself out to be an LSP.

6. Other Licensing-Related Matters:

A. New Panel Assignments and Scheduling: The following Board members were assigned to Application Review Panel #280: Ms. Listerneck, Mr. Austin, and Mr. Smith.

B. Appeals Status Report: None.

C. 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

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9451	February 12, 2016	Inactive	Zirbel	Martha
8501	January 22, 2015	Inactive	Taliadouros	Kleo

D. Total Number of Active LSPs: As reported in the Agenda, the total number of Active LSPs was 531 as of May 10, 2016.

7. Examinations:

A. Exam Committee Report: Ms. Coles-Roby stated that the psychometrician is currently working on a large contract which seems to be taking up a lot of his time. She stated that she last spoke to him on April 29, 2016, and he was supposed to get back to her, but did not. Ms. Coles-Roby reported that the only outstanding issue is whether or not the psychometrician is able to send the questions in a format that can be read by the IT person. Mr. Smith commented that we are running out of time. Mr. Austin asked how many individuals had signed up. Ms. Coles-Roby responded that dates have not been established yet because the exam is not complete. She stated that the staff will contact applicants in the order of eligibility expiration. Mr. Austin asked if there was any notice of a July offering posted on the Board's website. Ms. Coles-Roby confirmed that an announcement is on the website. Ms. Pinaud asked what the next steps are. Ms. Coles-Roby stated that the psychometrician is aware of the approaching deadline and she will continue her attempts at trying to contact him.

B. Exam Challenges: Ms. Coles-Roby reported that two individuals who took the exam in April 2016 have submitted challenges. She stated that the staff will be forwarding the challenges to the Exam Challenge Committee for review.

C. Next Exam: The next exam offering is planned for July 2016.

8. Continuing Education Committee Report:

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

a. Massachusetts Geological Society: *Massachusetts Geological Society Second Annual Field Trip* (5 Technical credits, May 14, 2016, Quabbin Reservoir Reservation area, MA).

Committee Recommendation: **Approve**

b. LSPA: *X-Ray Fluorescence Analysis: A Short Course for LSPs and Other Environmental Professionals* (6 Technical credits, June 15, 2016, Medford, MA).

Committee Recommendation: **Approve**

- c. Nielsen Environmental Field School: *The Low-Flow Purging and Sampling and No-Purge Sampling E-Course* (15 Technical credits, online course).
Committee Recommendation: **Approve**

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

- C. **Other Business:** Ms. Coles-Roby reported that the Board received a Petition for Waiver, dated May 17, 2016, from an LSP who arrived late to a two-hour course due to traffic issues. Ms. Listernick stated that the Board has denied similar petitions in the past. Mr. Austin remarked that the LSP states in his petition that the class went long. Ms. Pinaud stated that she attended the course and important information was presented at the beginning, and the extra time at the end was simply for Q & A. **A motion was made and seconded to deny the Petition for Waiver. The motion passed unanimously.**
- 9. **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.
 - 10. **Personnel, Budget, and Fees:** Ms. Coles-Roby reported that interviews for the General Counsel position will be conducted the third and fourth week of June 2016. Dr. Batchelder questioned how many candidates would be interviewed. Ms. Coles-Roby responded that she hadn't decided on a number yet.

Ms. Coles-Roby stated that \$1000 of the current budget will be used to purchase a new printer. She stated that the Attorney General's office has also taken \$5000 from the budget for the ongoing litigation.

Dr. Batchelder asked if the money in the budget for the psychometrician's services would go away at the end of the fiscal year if it is not used or earmarked. Ms. Coles-Roby stated that she was not sure if we would lose the money after June 30th. She stated that if we lose the money, the psychometrician would have to wait to be paid.

- 11. **Status of Board Member Replacements by Governor:** Ms. Pinaud stated that she and Ms. Coles-Roby had met with MassDEP's Commissioner. She stated that a decision had been made on a recommendation, and Ms. Coles-Roby will be getting the paperwork together. Ms. Pinaud stated that she expects the process to take a couple of months. Ms. Rundle asked if one or two candidates were being sent up. Ms. Pinaud responded that one recommended candidate for the open environmental slot and a re-appointment will be sent up.

12. **Other Business:**

- A. **Action Items List:** Ms. Coles-Roby reported that adjustments were made to the Action Items List to make it more current and reflect the things that have been accomplished.

She stated that this current version is a more accurate reflection of the tasks outstanding. Mr. Siddique asked if there was any update on the exam software. Ms. Coles-Roby stated that the last time the software was updated was 2011. She stated that in the past DEP had an annual service contract, but it expired in 2014. She stated that it is up to DEP whether or not they want to sign a new contract, and she does not know whether it would be better to spend the money on a contract or purchase new software altogether. Mr. Siddique stated that if the Board wants to avoid any issues, new software should be purchased. He stated that with the new fiscal year coming up, now would be the time to see if could be purchased. Ms. Pinaud stated that the Board should look into updating the software and recommended that she and Ms. Coles-Roby speak to Victoria Phillips (MassDEP).

- B. Rules of Professional Conduct Inquiry:** This matter was addressed in the Professional Conduct Committee meeting.
- C. 309 CMR 3.09 Continuing Education Regulations- Proposed Amendments:** No report was made.
- D. House Bill 695- *An Act Establishing a Department of Environmental Protection Appeals Board*:** Ms. Coles-Roby reported that she is working on a letter to send to Representative Dempsey, who is the chair of the Ways and Means Committee. She stated that she has been told that there is protocol in place for this type of action and anything the Board drafts must first be reviewed by EEA. Ms. Coles-Roby stated that she has developed some talking points for the letter. She stated the procedures the Board currently follows is the process all Boards in Massachusetts follow. She stated that the decision about disciplinary matters is currently in the hands of experts that have already been chosen by the legislature. Ms. Coles-Roby stated that the proposed bill would usurp the authority of the Board and gives litigants a de novo hearing, the new Board would hear evidence and make rulings, and there would be a duplication of effort and involve the hiring of staff for the new Board. Ms. Coles-Roby stated that it was unclear what kinds of decisions could be appealed, such as applications, petitions of waivers, etc. She stated that she is also unsure what the new Board would be doing while waiting to receive an appeal. Mr. Siddique asked if the proposed Board would be doing anything different than what the current LSP Board does. Ms. Coles-Roby stated that they would oversee what the Board does. Dr. Batchelder asked if the LSP Board could then appeal the new Board's decision. Ms. Coles-Roby responded that yes, under MGL 30A, if it fits into one of the seven categories the Board could appeal the decision. Dr. Batchelder stated that this Bill would set a precedent for all agencies in the Commonwealth, and any agency could have a similar bill brought against them. Mr. Austin expressed concern regarding the timing of getting a draft letter approved and the conclusion of the current legislative session. Mr. Rein stated that he thinks it would be important for the letter to stress the cost, bureaucracy, and precedent associated with passing such a bill. Ms. Coles-Roby stated that she also plans to include the background of the situation which triggered this proposed bill in the draft letter.

E. LSP Board Bulletin: Ms. Coles-Roby stated that the staff continues to work on the Bulletin and the next edition will be sent out at the end of this month. She stated that the staff is also currently working with the IT department on a new internal database for tracking all the information for each LSP. She stated it will be a much easier system to use and the staff will no longer have to look in several different locations to obtain information. Mr. Smith asked if any progress has been made in instituting online payments. Ms. Coles-Roby stated that she needs to look into a new program that appears to be available to other agencies in EEA, and includes services like submitting public comments and paying permitting fees. She stated that she will be reaching out to this group to find out how the Board can get on the list.

F. House Bill 4188: Ms. Coles-Roby stated that Ms. Campbell had forwarded information to the Board members on a 2015 Supreme Court ruling in North Carolina. She stated that the case involved performing tooth whitening, which in North Carolina is not required to be done by dentists. She stated that North Carolina's Board of Dentistry, which has dentists sitting on it, sent 47 cease and desist letters to non-dentists who were performing teeth whitening. Ms. Coles-Roby reported that the Supreme Court found this to be a violation of the Sherman Act, which prohibits any entity from having a monopoly on anything that affects interstate commerce. She stated that the Court found that by issuing the letters, dentists were attempting to eliminate the competition. Ms. Campbell stated that the Supreme Court found that because the majority of the members of the North Carolina Board of Dentistry were dentists, they could be sued. She questioned if the LSP Board members were protected from lawsuits. Ms. Coles-Roby stated that unless the Board interferes with interstate commerce, this ruling would not apply. Ms. Campbell stated that Governor Baker filed an emergency bill (House Bill 4188) on behalf of most of the state's professional licensing boards in response to this Supreme Court ruling. She stated that the LSP Board is not included in the Governor's bill and suggested that the Board ask someone for input on this matter, and whether or not the Board members have immunity. Mr. Smith asked if the Board could ask the Governor's office why it was excluded from the list. He stated he would like to know the reason, or if it was an oversight, if the Board could be added. Ms. Coles-Roby stated that she would see if she could get clarification on issue.

13. **Future Meetings:** The Board's next meeting will be on June 16, 2016, in the Southeast Regional Office of MassDEP in Lakeville.

14. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 2:55 p.m.