



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

MINUTES
of
BOARD MEETING
Held on August 13, 2015
[Approved: October 15, 2015]

Meeting Location: Massachusetts Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, MA

Prepared by: L. Williamson

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on June 18, 2015
3. Renewal Dockets #1, #2, #3, and #4
4. List of Action Items for LSP Board
5. Petition for Waiver, dated July 29, 2015
6. Email from Joel Loitherstein, dated August 3, 2015
7. Supervisor of Records Letter (SPR15/297), dated July 31, 2015
8. Governor Baker's Memorandum on Public Records Requests, dated July 30, 2015

1. **Call to Order:** Benjamin Ericson called the meeting to order at approximately 1:30 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, Debra Listernick, Robert Rein, Farooq Siddique, and James Smith. Board members absent were Kirk Franklin and John Guswa. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA) and Linda Segal.
2. **Announcements:** Mr. Ericson stated that he would like to acknowledge the efforts made by Ms. Coles-Roby and all the Exam Committee members in completing the new exam and the impressive work that went into the process. Mr. Ericson stated that he felt the creation of the new exam was landmark for revitalizing the program and the Board will now be able to move forward with other tasks that will further strengthen the health of the Board.

Mr. Ericson announced that he recently accepted the position of General Counsel for MassDEP and, as such, the Commissioner will likely be designating a new chairperson for the Board. He stated that he will work with the Commissioner to ensure a smooth transition, and assured the members that the Board's work will not suffer. He stated that

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he will stay on as chairperson until a replacement is named. Mr. Ericson stated that it has been a pleasure working with all the Board members and he is proud of the work the Board and its staff does.

The Board members offered their congratulations to Mr. Ericson on his new position.

3. **Agenda:** Ms. Coles-Roby requested that a discussion on Public Records be added to the Agenda under “Other Business”.
4. **Minutes of Meeting Held on June 18, 2015:** The members present reviewed the draft minutes of the meeting of the Board held on June 18, 2015. **A motion was made and seconded to approve the June 18, 2015 minutes as amended. The motion passed unanimously, with Mr. Austin and Mr. Siddique abstaining.**
5. **A-B. Decisions Regarding Licensing of Applicants:** The staff presented the following Application Docket:

ID #	Applicant Name/Company Name	ARP #	REC.
7007	Brian LaPierre/Lightship Engineering, LLC	274	A

Mr. Ericson asked the ARP to describe briefly the reasons for their recommendation. Ms. Campbell reported that the applicant had spent his entire career with one firm and accepted increasing responsibility as time went on. She also stated that his references were good. **A motion was made and seconded to accept the recommendation from Application Review Panel #274 that the application submitted by Mr. LaPierre be approved and that he be found eligible to take the exam. The motion was approved unanimously.**

C. **Application Committee:** No report was made.

6. **License Renewal Applications:**

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

Renewal Docket #1
Renewal Date: July 30, 2015
New Renewal Date: July 30, 2018
Has completed all requirements for renewal:

	LSP #	First	Middle	Last
1	1796	Kelly	J	McQueeney
2	4505	Edward	J	Weagle
3	9068	David	A	Melycher
4	4130	John	A	Chambers

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	LSP #	First	Middle	Last
5	7432	Daniel	W	Felton
6	6389	Sean	F	Healy
8	6176	George	E	Campbell
9	8882	Robert		Lucci
10	3188	Joseph	G	Lombardo, Jr.
11	7770	Kurt		Klages
12	7155	Thomas	J	Fennick
13	7839	Robert	E	Smith
14	9814	Eric	D	Henry
15	2365	Todd	D	Kirton
16	8641	Stewart	A	Wiley

Renewal Docket #2

Renewal Date: April 30, 2015

New Renewal Date: April 30, 2018

Completed requirements within 90-day extension:

	LSP #	First	Middle	Last
1	9985	James	R	Greacen
2	5586	Frank		Ricciardi
3	3427	Donald	J	Maggioli

Renewal Docket #3

Renewal Date: October 30, 2014

New Renewal Date: July 30, 2018

License expired on October 30, 2014, for lack of credits.

Individual has completed renewal requirements within

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

	LSP #	First	Middle	Last
1	8467	Kelly	M	Hansel

A motion was 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 motion was approved unanimously.

Renewal Docket #4
Renewal Date: July 30, 2015
New Renewal Date: October 29, 2015
Have requested a 90-day extension:

	LSP #	First	Middle	Last
1	9020	Neil	R	Schofield
2	6297	Eric		Axelrod
3	3210	Christen	M	Sardano
4	6581	James	R	Ash

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 reported that a total of seven LSPs failed to pay their annual fees and their status will be changed to “expired”. She stated that all individuals received three notifications including a letter sent by regular mail, a letter sent by certified mail, and a phone call. Ms. Rundle asked if any of the individuals had stated that they were retiring. Ms. Coles-Roby responded that a few did inform her of that when she placed calls to them and they will be listed as “withdrawn” in the Board’s database. Mr. Smith questioned if the Board’s database was linked to eDEP. Ms. Coles-Roby stated that the Board staff sent the list of names to the eDEP staff so they could make the necessary status changes in the system.

Ms. Coles-Roby reported that because the Board did not meet in July, the Board staff had to submit the docket to the eDEP group so those LSPs whose licenses expired on July 30th could continue to file between July 30, 2015 and today’s meeting. She stated that approximately five individuals whose license expired on July 30th mailed their renewal applications in a day or two before that deadline, and were not received until well after the deadline. Ms. Coles-Roby explained that the submittals are mailed to the lockbox and first go to the Department of Revenue before being delivered to the Board’s office. She stated that the Board staff would like to add a disclaimer to the renewal applications which states that the forms should be mailed at least 10 days ahead of the deadline to ensure timely receipt.

7. Other Licensing-Related Matters:

A. Petition for Waiver: Ms. Coles-Roby stated that the Board received a Petition for Waiver from an LSP who was unable to meet his/her continuing education requirements due to a serious medical issue. The LSP stated that he/she would be taking a course in September which would satisfy the remainder of the missing credits. **A motion was made and seconded to approve the Petition for Waiver and extend the LSP’s deadline for achieving the credits until October 30, 2015. The motion**

was approved unanimously.

- B. New Panel Assignments and Scheduling:** The following Board members were assigned to Application Review Panel #275: Mr. Austin, Ms. Listernick, and Mr. Siddique.
- C. Appeals Status Report:** There were no pending appeals of any denials by the Board of license applications.
- 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
9921	September 1, 2016	Inactive	DelMarco	David
2349	January 20, 2016	Inactive	Howell	Deborah

- E. Total Number of Active LSPs:** As reported in the Agenda, the total number of Active LSPs was 545 as of August 4, 2015.

8. Examinations:

- A. Dates of Next Exam:** Ms. Coles-Roby reported that the next exam will offered at the end of November/beginning of December 2015. She stated that the Exam Committee will need to reconvene to sort out the questions to create the second exam. Dr. Batchelder suggested that the Committee also put together the third exam at the same time. Ms. Listernick asked if the Committee could look at the statistics on the questions before putting together the third exam. Ms. Coles-Roby stated that she would request the statistics from Chris Borges (MassDEP). Mr. Austin questioned what the process would be for the Exam Committee to create the second exam, and if it would be possible for John Fitzgerald (MassDEP) to compile the questions for the second exam, as he did for the first. Mr. Austin also asked whether the psychometrician was still contracted. Ms. Coles-Roby stated that she will look into how much money is left in the contract and if it would be possible to get any more money allocated. She stated that she will set up a telephone conference with the Committee members to plan out the process. Ms. Coles-Roby informed the Board that she and Mr. Ericson had written a letter to Mr. Fitzgerald’s supervisor which acknowledged all of his efforts and support in creating the new exam.
- B. Newly Licensed LSPs:** Ms. Coles-Roby stated that twenty-two individuals took the exam in July 2015, and thirteen passed. She stated that the Board staff offered the exam on four consecutive Wednesdays in July, and all those who wanted to sit for the exam were given a spot. Ms. Coles-Roby reported that all of the offerings went smoothly with only a couple of instances of the exam not loading properly or passwords not working. In all of these instances the IT individual who assists the Board was able to correct the issues relatively quickly. The only inconvenience to the

test takers was starting a little later than expected, however all exams were completed by 5:00 p.m. Ms. Coles-Roby stated that the Board staff will be scheduling a debriefing with the IT group to determine how these issues may be avoided in the future. Ms. Coles-Roby reported that there was some confusion over the handouts for the scenario questions, so the Board staff has re-labeled the attachments to make it clearer which ones correspond to each of the questions. Ms. Coles-Roby also reported that for the first offering of the exam, the IT individual failed to move one of the scenario questions to the proper section, causing confusion. The question was omitted from the scoring for all those that took the first exam, and it was moved to the proper location before the second offering.

Ms. Coles-Roby stated that many of those applicants who did not pass the exam have been calling to schedule exam reviews and the Board can expect to be receiving some challenges shortly. She reported that the applicants have two hours to review those questions that were answered incorrectly and to write up any challenges. She stated that the procedure historically has been to have them write out the entire question which they are challenging and then present their argument. She stated that she does not see a need to write out the entire question and that providing the specific number of the question would be sufficient. The time it takes to write out the questions could be better spent on preparing their arguments. Due to the limited amount of time and the requirement to write out the entire question, many of which are long, most of the arguments, which are all handwritten are difficult to read and contain spelling mistakes and other grammatical issues. Ms. Coles-Roby stated that once a challenge is received, the Board staff types up the questions and arguments for the exam challenge committee to review. Ms. Listernick questioned whether the committee should review the arguments exactly as the individual prepared it, without the Board staff typing it up and correcting the spelling mistakes. Ms. Coles-Roby assured the Board that the staff only corrects spelling and punctuation so the exam challenge committee can focus on the individual's argument, and no changes are ever made to the argument itself.

Ms. Coles-Roby reported that she had received an email from one of the individuals who took the exam, Mr. Joel Loitherstein, who felt there were some questions that should be modified because there was more than one correct answer or there was no correct answer. Mr. Loitherstein asked if he could discuss his concerns with a member of the Exam Committee. Mr. Austin suggested that Mr. Loitherstein send the questions which he had concerns about to Ms. Coles-Roby, and she could forward them to the Exam Committee members for review. The Exam Committee members agreed that input is always welcomed. Dr. Batchelder suggested that Mr. Loitherstein submit a list of the questions only, not a discussion as to why they were concerning to him so that each of the members could form their own unbiased opinion of their accuracy. Ms. Coles-Roby stated that she would contact Mr. Loitherstein and would forward his questions to the Exam Committee members.

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. Rutgers University: *Environmental Forensics* (14 Technical credits, September 9-10, 2015, New Brunswick, NJ).
Committee Recommendation: **Approve expanded version of this previously approved course (Course #1415) as Course #1415a**
- b. MassDEP: *An Introduction on Risk Communication for LSPs* (2 DEP Regulatory credits, October 27, 2015, October 29, 2015, November 9, 2015, and November 12, 2015, Wilmington, MA).
Committee Recommendation: **Approve**
- c. Fitts Geosolutions: *An AqSim Short Course* (14 Technical credits, October 5-6, 2015, South Portland, ME).
Committee Recommendation: **Approve**
- d. AEHS Foundation: *31st Annual International Conference on Soils, Sediments, Water & Energy* (1 Technical credit per hour for workshops and ½ Technical credit per hour for conference, October 19-22, 2015, Amherst, MA).
Committee Recommendation: **Approve**
- e. NEWMOA: *1,4-Dioxane Assessment and Remediation Workshop* (5.5 Technical credits, September 22, 2015, Westford, MA and September 23, 2015, Danielson, CT)
Committee Recommendation: **Approve**
- f. LSPA: *Statistical Applications for LSPs* (8 Technical credits, date and location to be determined)
Committee Recommendation: **Re-Approve course with modified content and maintain same course number (Course #1281).**

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

C. Other Business: None.

10. Professional Conduct Committee:

A-B. Report from Committee Meeting: Ms. Coles-Roby reported that the Board discussed the Active Cases Table and the only modification to the Table was that the CRT Report for 13C-01 has been completed and will be presented at September's meeting. She also reported that a quasi-judicial session following

today's Board Meeting was originally planned for 05C-07 but will have to be postponed.

C. Other Business: None

- 11. Personnel, Budget, and Fees:** Ms. Coles-Roby reported that the Board staff has been stretched to their limits between administering the exam, the large number of license renewal applications for July, and the on-going public records request. She stated that she has put in a request for a General Counsel, an Assistant General Counsel, and a full-time Program Coordinator but the Governor's hiring freeze is currently preventing the postings. Ms. Coles-Roby stated that she is concerned that the Board is going to reach a point in the disciplinary process for some of the cases where progress is going to stop because there isn't a second attorney to represent the Board. Dr. Batchelder stated that there is precedent for having an attorney temporarily assigned to the Board staff, as John Reisma had been previously, and questioned if the Board could borrow an attorney from MassDEP's staff. Mr. Ericson stated that the Board would need to consider that carefully because of the perception that a MassDEP person working for the Board may be a conflict of interest. He stated that if the Board reaches the point in a case where it can't move forward without a second attorney, the Board may have to consider that at that time. Ms. Coles-Roby stated that she has informed the Commissioner of this issue. She also stated that if the Board had additional staff, it could undertake more proactive tasks in addition to the normal day to day duties.

Ms. Coles-Roby reported that she is also planning to look into why the Board hasn't received any new complaints recently, and would like to meet with the Bureau of Waste Site Cleanup (BWSC). Dr. Batchelder suggested that it maybe that they think the Board is overwhelmed and can't handle additional complaints right now. Ms. Coles-Roby stated that if the Board receives a complaint, the staff can still do the intake and start the process of sending out the letters and retrieving the applicable file documents. Mr. Ericson stated he thinks talking to the enforcement staff is a good suggestion, but that it is not a matter of BWSC practice to avoid submitting complaints. He stated that he has encouraged staff to bring issues to the Board's attention.

- 12. Status of Board Member Replacements by Governor:** Mr. Ericson stated that no progress was made this past month due to the exam.

13. Other Business

- A. Public Records:** Mr. Ericson reported that Governor Baker issued a Memorandum on Public Records Requests which affects all Agencies in the Commonwealth. He stated that many Agencies will have to come up to speed on responding to these requests, but the Board is in a very good position due to Ms. Coles-Roby's expertise in the matter and the procedures the Board already has in place for responding to public records requests. Ms. Coles-Roby stated that she is the Records Officer for the Board and the Board is already in compliance with the majority of the requirements specified in the

Memorandum. She stated that one of the changes relates to contacting the requestor, which should now be done within five days as opposed to ten. The second change concerns the amount of time to respond to public records requests. The Memorandum indicates that response to straightforward requests should be made within ten days. Ms. Coles-Roby stated that the Board is already in compliance with the rate per hour fees for search and retrieval and the cents per page for production costs, as well as having a tracking system in place for responding to requests. Ms. Coles-Roby stated that the Memorandum was effective immediately and the requirements will be met for all public records requests moving forward.

Ms. Coles-Roby reported that the Secretary of State issued an Order in response to Allen Wyman's appeal of the Board's response to his public records request. She stated that the Order is dated July 31, 2015, was postmarked August 5, 2015 and was not received until August 10, 2015. The Order required a revised response to the public records request within ten days, which would have been August 10, 2015 (the date it was received). Ms. Coles-Roby stated that, upon receipt, she immediately contacted the Secretary of State's office and spoke to Mr. George Mikhael. She explained that the Order was only received that day and it would be impossible to meet the deadline. Mr. Mikhael stated that his office had not yet been contacted by the requestor and advised Ms. Coles-Roby to respond as soon as practicable. Ms. Coles-Roby asked Mr. Mikhael what would happen if they did hear from the requestor, and was told "we'll cross that bridge when we get there".

Ms. Coles-Roby reported that the staff is meticulously documenting the number of hours it is spending on compiling and redacting the requested records, and has worked solely on this task since Tuesday of this week. She reported that the staff has identified seventy-one files that meet the request (all complaints which resulted in dismissal by the Board). From these files the requestor asked for copies of the complaint, the LSP response, and the dismissal letter. Ms. Coles-Roby reported that currently the files for twenty-seven of these cases have been segregated, review, copied and are ready to go. She stated that redaction will not be required for those complaints that were filed by MassDEP, as they are publically available; however, those filed by private individuals must be reviewed for redaction of any personal information such as social security numbers, checking account numbers and other banking information. Ms. Coles-Roby stated that the staff is also counting the number of pages in each of document in order to determine production costs. She stated that of those twenty-seven files that have been completed, total pages range from six to two hundred twenty-five. She also informed the Board that she had obtained an hourly rate for the lowest paid employee capable of performing the task from human resources, which is \$23.98. Mr. Smith questioned if the staff could provide a good faith estimate based on the work already completed in order to issue the response letter. Ms. Coles-Roby stated that the Order requires a detailed response and must, with specificity, explain how a particular exemption applies to each and every item that is redacted.

Ms. Coles-Roby reported that the Order states that the files should not be provided to the requestor until payment is received. She stated that it was her understanding that

the request was originally made when the requestor was chair of the LSPA Loss Prevention Committee and had applied for a grant to obtain the files. Ms. Rundle stated that the grant was not awarded to the requestor and that he made the request as an individual, not on behalf of the LSPA. Dr. Batchelder asked if the requestor had the option of reviewing the files in person in order to avoid paying for copies. Ms. Coles-Roby stated the requestor could choose to do so, but segregation and redaction would still need to be completed.

Ms. Listernick questioned whether the Governor's Memorandum which states that no more than eight hours per week should be dedicated to a public record request was applicable. Ms. Coles-Roby stated that the letter received from the Secretary of State was an Order and its requirements supersede the Memorandum.

Ms. Coles-Roby stated that she hopes to have a response prepared by Monday, and under normal circumstances would call requestors to keep them informed on the status of their request. However, due to the lawsuit filed by this individual, she is unwilling to do so and would like to be as precise as possible with all costs associated with this request.

Ms. Listernick asked if Ms. Coles-Roby was able to give the Board any information on the lawsuit. Ms. Coles-Roby stated the Mr. Wyman filed a lawsuit because he feels that his contract was wrongfully not renewed. The lawsuit has been filed under the Massachusetts race discrimination law G.L. c.151B. Ms. Coles-Roby stated that Mr. Wyman is suing her in official and individual capacity, and MassDEP. She informed the Board that Mr. Wyman was a contract employee who would sign a contract each July 1st for employment until June 30th the following year. She stated that his contract ended on June 30, 2013, and it was decided not to renew it. Ms. Coles-Roby reported that the lawsuit alleges that she intentionally interfered with Mr. Wyman's contractual relations and with his LSP license because she and MassDEP insisted that he get a decision from the Ethics Commission before sitting for the LSP exam due to his work with the Board and history of proctoring the exam. She stated that the lawsuit started off at the Massachusetts Commission Against Discrimination; however, it was ultimately moved to Superior Court. Ms. Coles-Roby reported that the Attorney General's office is representing herself and MassDEP. The lawsuit is currently in the discovery phase and interrogatories are being filed. She stated that a Motion to Dismiss has been filed but no response has been received yet. The next step in the process will be depositions. Ms. Coles-Roby informed the Board members that some of them will likely be called as percipient witnesses and there will be subpoena power behind it.

- B. Legislative Matter:** Mr. Ericson stated that he had not had the opportunity to talk to Senator Rush.
- C. Action Items List:** No report was made.
- D. Website Update:** No report was made.

E. Regulations Committee Meetings: No report was made.

14. **Future Meetings:** The next Board Meeting is scheduled for September 17, 2015 in MassDEP's Boston office.
15. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 3:30 p.m.