



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

MINUTES
of
BOARD MEETING
Held on September 21, 2016
[Approved: October 19, 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 August 17, 2016
3. Renewal Docket #1
4. List of Action Items for LSP Board
5. Email from applicant re: July 13, 2016 Exam Results, dated August 31, 2016
6. Petition for Waiver, dated August 24, 2016
7. Copy of February 29, 2000 Regulations Committee Meeting Minutes
8. Email from Matthew Hackman, dated September 12, 2016

1. **Call to Order:** Maria Pinaud called the meeting to order at approximately 1:33 p.m. Also present were David Austin, Gail Batchelder, Kirk Franklin, John Guswa, Debra Listernick, Robert Rein, and James Smith. Board members absent were Kathleen Campbell and Farooq Siddique. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA), and Lisa Alexander and Jennifer Wharff of MassDEP.
2. **Announcements:** No announcements were made.
3. **Agenda:** Ms. Coles-Roby requested that an email from Matthew Hackman be added to the Agenda, as well as an update on the scheduling of a conference call with New Jersey's LSRP Board.
4. **Minutes of Meeting Held on August 17, 2016:** The members present reviewed the draft minutes of the meeting of the Board held on August 17, 2016. **A motion was made and seconded to approve the August 17, 2016 minutes as written. The motion passed unanimously, with Mr. Austin and Dr. Guswa abstaining.**

Ms. Coles-Roby stated that the minutes document the discussion that took place at the August 17, 2016 Board meeting regarding the number of times the exam has been offering over the last couple of years. She stated that she wanted to supplement that discussion with the specific dates those offerings were held. Ms. Coles-Roby stated the staff held exams on May 28, 2014, June 4, 2014, June 11, 2014, July 8, 2015, July 15, 2015, July 22, 2015, July 29, 2015, April 6, 2016, July 13, 2016, and July 20, 2016. She stated the Board will not be offering the exam again this year, and the priority is to move the cases forward and to prepare the annual fee mailings.

Ms. Listernick stated that she had recently looked at the LSP searchable database on the Board’s website and noticed an inconsistency in terminology. She questioned the proper license status terminology for individuals who failed to pay their annual fees. She stated the definitions section of the searchable database is misleading, and there is confusion over “expired” versus “revoked”. Ms. Coles-Roby stated that the staff will look into the issue.

5. **A-B. Decisions Regarding Licensing of Applicants:** The staff presented the following Application Docket:

ID #	Applicant Name/Company Name	ARP #	REC.
5572	Michael J. Horton/Mabbett & Associates Inc.	282	D

Ms. Pinaud asked the ARP to briefly describe the reasons for their recommendations. Ms. Coles-Roby reported that two members of the panel were present for the meeting earlier in the day, and both agreed that the applicant demonstrated the required Total Professional Experience, but did not have the required five years of Relevant Professional Experience. She stated that the panel felt that the applicant needed more projects applicable to MCP assessment, removal, and remediation. The panel recommended denying the application. **A motion was made and seconded to accept the recommendation from Application Review Panel #282 that the application submitted by Mr. Horton be denied. The motion was approved unanimously.**

Ms. Coles-Roby stated that she will draft the denial letter and forward it to the panel members for comments.

6. **License Renewal Applications:** The staff presented the following License Renewal Docket:

Renewal Docket #1
Renewal Date: October 30, 2016
New Renewal Date: January 28, 2017
 Has requested a 90-day extension:

	LSP #	First	Middle	Last
1	9999	Paul	G	Beaulieu

A motion was made and seconded to grant the LSP on Renewal Docket #1 a 90-day extension. The motion was approved unanimously.

7. Other Licensing - Related Matters:

A. Petition for Waiver: The Board members reviewed and discussed the Petition for Waiver, dated August 24, 2016. The Board was in agreement that good cause had been shown to extend the individual’s deadline for obtaining the necessary continuing education credits. **A motion was made and seconded to approve the petition for waiver and extend the LSP’s renewal deadline until April 30, 2017, while maintaining the current deadline for the subsequent renewal period. The motion was approved unanimously.**

B. New Panel Assignments and Scheduling: Ms. Coles-Roby reported that no new applications had been received this month.

C. Appeals Status Report: None.

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, 2015	Inactive	Taliadouros	Kleo

Mr. Smith noted that, according to the table, David DelMarco’s inactive status expired on September 1, 2016. Ms. Coles-Roby stated that his name should be removed from the list.

E. Total Number of Active LSPs: As reported in the Agenda, the total number of Active LSPs was 531 as of September 13, 2016.

8. Examinations:

A. Exam Challenges: Dr. Guswa stated that the Exam Challenge Committee has received three exam challenges over the last several weeks, two of which have been completed. He stated that one of the challenges included eight questions and the other included ten. Dr. Guswa stated that both he and Mr. Siddique reviewed the challenges, and John Fitzgerald’s (MassDEP) recommendations, and agreed that all eight challenges from the first set should be denied, and all ten challenges from the second set should be denied. He stated the third set of challenges includes nineteen questions, and the Committee will be working on those next. Dr. Batchelder stated that the Board should consider a limit to the number of questions that can be challenged. Ms. Coles-Roby stated that she would also like to see a time limit on when challenges can be submitted

with respect to when the exam was taken. Mr. Austin stated that he doesn't have a problem with the number of questions being challenged because it is a new exam. Dr. Guswa questioned whether enough people had taken the new exams yet to prepare statistics for number of times each question was answered correctly and incorrectly. He asked if Chris Borges (MassDEP) would be able to pull this information together, and suggested it might be beneficial to have it before putting together the third exam. Dr. Guswa stated that he will prepare a summary of all the challenges received for the new exams, including how many times a particular question was challenged. He stated he will have the information for the November Board meeting.

Ms. Coles-Roby stated that the staff plans to offer the third exam in the spring of 2017. Mr. Austin stated that the Board previously discussed April 2017, specifically, as the next offering date. He questioned if the Board could set that as the date. Ms. Coles-Roby confirmed the Board will plan to offer the next exam in April 2017.

- B. Exam Inquiry:** Ms. Coles-Roby reported that she received an email from one of the individuals who took the July 2016 exam who wished to provide comments to the Board on the exam and to request that she be allowed to sit for an additional offering even though her eligibility expires in November 2016. The Board noted that this individual had submitted exam challenges, all of which were denied. Ms. Listernick commented that the Board has offered the exam once per year since the applicant was approved, as required by the Board's regulations. She also stated that, with respect to the applicant's comments about policies, the Committee was careful not to have questions about draft policies on the exam, and copies of policies have never been provided to test takers for use during the exam. Ms. Listernick questioned whether the second exam was actually harder than the first exam. Dr. Batchelder stated she didn't think it was, and that if in fact the harder questions got on the second exam, the cut score workshop would have accounted for that. Ms. Pinaud suggested that Ms. Coles-Roby respond to the letter by stating that the Board appreciates the feedback and the applicant may reapply. Mr. Smith added that the response should also note that the Board is in compliance with the regulatory requirement of offering the exam at least once per year.

9. 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. ESCI, LLC: *Introduction to SEVIEW 7.1- SESOIL and AT123D Modeling* (4 Technical credits, March 14, 2017, Westborough, MA).
Committee Recommendation: **Re-approve as course number 1385b**

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- b. Remediation Workshop: Environmental Remediation Workshop 2016 (4 Technical credits, November 15, 2016, Albany, NY and November 16, 2016, Waltham, MA).
Committee Recommendation: **Approve**
- c. GeoPractical: Introduction to Ground Penetrating Radar in Environmental Investigation (8 Technical credits, October 19, 2016, Amherst, MA).
Committee Recommendation: **Approve**
- d. GeoPractical: Glacial Geology of Northward Flowing Watersheds-Field Trip through the Nashua and Concord River Watersheds (8 Technical credits, November 2, 2016, Harvard, MA).
Committee Recommendation: **Approve**
- e. Rutgers: PAH Forensics Geochemistry (8 Technical credits, October 26, 2016, New Brunswick, NJ).
Committee Recommendation: **Approve**
- f. EPOC: In-Situ Thermal Remediation at the SRSNE Superfund Site (4 Technical credits, October/November 2016, Southington, CT).
Committee Recommendation: **Approve**

Course Re-approval Request:

- g. ECS: A Licensed Site Professional's Guide for Understanding and Navigating Through the Regulatory and Technical Challenges of an Underground Storage Tank (UST) Release in Massachusetts (4 Technical credits, October 5, 2016, Westborough, MA)
Committee Recommendation: **Re-approve**

Course Approval Request from LSP:

- h. NEIWPC: Soil Evaluator Course (8 Technical credits, August 30-October 4, 2016, various locations in MA)
Committee Recommendation: **Approve, contingent on LSP completing the course in its entirety and submitting a copy of the completion certificate**

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:** 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.

11. **Personnel, Budget, and Fees:** Ms. Coles-Roby stated that interviews for the General Counsel position will begin in October. She stated that she will have a copy of the budget for the next fiscal year for next month's meeting, and that annual fee billing will be conducted in December.
12. **Status of Board Member Replacements by Governor:** Ms. Coles-Roby stated that she spoke to MassDEP's Chief of Staff, Stephanie Cooper, who reported that the packages for the open environmental slot and the one re-appointment have gone through EEA and are ready to be advanced to the Governor's office.

Dr. Guswa announced that he does not intend to renew his LSP license when it expires in January 2017, and therefore, as he serves in an LSP slot, he will no longer be qualified to sit on the Board. The Board members discussed the possibility of Dr. Guswa serving on the Board until he is replaced, and the impact his leaving will have on the Board. Mr. Smith read aloud from the statute which states that those filling LSP slots "...shall be licensed by the board at all times while they are members of the board". The Board members discussed the current status of the Board member slots and the possibility that the manufacturing slot could potentially be filled by an LSP who doesn't necessarily work directly for a manufacturing company but does a lot of work for manufacturing.

13. **Other Business:**

- A. **Action Items List:** Dr. Batchelder reported that she, Ms. Pinaud, and Ms. Coles-Roby have a meeting scheduled for September 29, 2016 at 11:00am to scope out what needs to be done with respect to the RPE clarification issue. Ms. Coles-Roby reported that she had not heard anything further from Victoria Phillips (MassDEP) on the exam software issue.
- B. **Conflict of Interest Inquiry:** Ms. Coles-Roby reminded the Board that an inquiry was made by MassDOR earlier this month about a conflict of interest issue. She stated that DOR was happy with the response and the promptness. She stated that the February 29, 2000 Regulations Committee Meeting Minutes provided the rationale for the response.
- C. **309 CMR 6.00 Design and Use of Licensed Site Professional's Seal:** Dr. Guswa stated that this issue came up again recently because it seems that a number of LSPs are using their stamp on Material Shipping Records. He stated that the Board issued an Advisory Ruling in 1998 addressing this issue. Mr. Austin stated that it should be on the shoulders of the LSPs to tell their clients and the receiving facilities that the stamp cannot be used for such purposes. The Board members agreed that a reminder, and reference to the Advisory Ruling, should be included in the upcoming issue of the Board's bulletin that an LSP stamp should only be used in connection with waste site cleanup activity opinions.
- D. **309 CMR 3.09 Continuing Education Regulations- Proposed Amendments:** Ms.

Coles-Roby stated that because Ms. Campbell was not able to attend today's meeting, the Board would finish up with Continuing Education at next month's meeting, and section 7.00 will be moved back to the November meeting.

- E. House Bill 695 - An Act Establishing a Department of Environmental Protection Appeals Board:** No report was made.
 - F. House Bill 4188 - An Act Relative to State Oversight of Professional Licensing Boards:** Ms. Coles-Roby reported that the Bill has been referred to the Joint Committee on Consumer Protection and Professional Licensure. She stated that she has contacted Erin Riley, Legislative Director for the Committee, and is waiting to speak to her to find out why the Board was not included in the Bill. She stated that she should have more information to report at next month's meeting.
 - G. New Jersey LSRP Board:** Ms. Coles-Roby reported that she received some new potential dates for a conference call from New Jersey's LSRP Board's Executive Director, and will forward them to the Board.
 - H. Email from Matthew Hackman:** The Board members acknowledged Mr. Hackman's email which suggested the Board consider allowing applicants to take the LSP Exam before they have the required years of total and relevant professional experience. The Board members agreed that this would not be feasible for the program.
14. **Future Meetings:** The Board's next meeting will be on October 19, 2016, in the Central Regional Office of MassDEP.
 15. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 2:52 p.m.