



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
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MINUTES
of
BOARD MEETING
Held on
February 5, 2013

Meeting Location: MassDEP

Northeast Region
205B Lowell Street
Wilmington, MA 01887

Prepared by: Beverly Coles-Roby and Lynn Read
[Approved: April 17, 2013]

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on December 11, 2012
3. Executive Session Minutes October 9, 2012
4. Executive Session Minutes December 11, 2012
5. Application docket
6. Renewal dockets
7. Memo regarding potential amendments to the LSP Board regulations
8. Table summarizing potential amendments to the LSP Board regulations
9. LSP Board Action Items
10. Open Meeting Law Guide, Office of the Attorney General
11. LSPA letter dated January 24, 2013

1. **Call to Order:** Ben Ericson called the meeting to order at 3:05 p.m. The Board members present were Gail Batchelder, Deborah Farnsworth, Kirk Franklin, Jack Guswa, Debra Listernick, Kelley Race, Robert Luhrs, and Farooq Siddique. The LSP Board staff members present were Beverly Coles-Roby, Lynn Read, and Allen Wyman. Also present were Wendy Rundle, Executive Director of the LSP Association (“LSPA”), David Austin, LSPA, Technical Practices Committee, Deidra Winterburn, Phillip Peterson, Wes Stimpson, and Gretchen Latowsky.
2. **Announcements:** Mr. Ericson thanked everyone for making him feel welcome. He indicated that he had had a chance to speak with all of the Board members, but not with Lynn Read or Allen Wyman, that he wants to be part of the team and to make it work. Mr. Ericson said it is clear that the Board plays a key role in making the processes of

chapter 21E and the Massachusetts Contingency Plan (“MCP”) operate well and understands that a major part of the environmental community is watching. He acknowledged that there needs to be adequate staff and that Terry’s loss is significant. He noted that the Board has challenges and that one of his priorities is filling the open spots on the Board. He has made outreach a priority as well as updating the LSP exam; reviewing the Board’s regulations; and speeding up the complaint process. Mr. Ericson thanked Elizabeth Callahan, one of the commonwealth’s foremost experts in the MCP for her service as the former Board’s chairperson. Mr. Ericson announced that Christophe Henry, who had conflicting commitments, resigned effective December 31, 2012. Mr. Henry had served on the Board since 2001, and was the longtime Chair of the Continuing Education Committee. He did other work for the Board, helping to develop the examination, Board training courses, and served on the CRT in many disciplinary cases. Mr. Ericson thanked him for his many years of service which will be commemorated with a plaque. Mr. Ericson announced that Terry Wood moved from LSP Board General Counsel to MassDEP’s Office of General Counsel. He acknowledged her expertise in the MCP and LSP Board regulations and that she is universally praised for her dedication. She will also be thanked more ceremoniously. He acknowledged that there were great people working here for a long time and was thankful. Ms. Race welcomed Mr. Ericson.

3. **Agenda:** Ms. Race asked why the final agenda for today’s meeting was not on the Board’s website. Ms. Latowsky said the agenda that was distributed to her as an attendee of today’s meeting is not the same as the version on the Board’s website. There was discussion about the fact that confusion came from comparing the list of documents in the packets that were sent to Board members and the agenda for the meeting which are two different documents but look similar.
4. **Previous Minutes:**
 - A. The Board considered the minutes of the Board meeting on December 11, 2012. Corrections were made by Ms. Batchelder, Mr. Luhrs, Ms. Race who also forwarded corrections from Mr. Henry, after which, the minutes were unanimously approved.
 - B. Ms. Race moved to approve the Executive Session Minutes of October 9, 2012, and December 12, 2012, as written, and they were unanimously approved. Mr. Ericson announced the Board will not be voting today on whether to make the Executive Session minutes public. The Board can vote on approving the minutes as the final version, but voting whether the minutes can be released to the public is not on the agenda. The Board must wait until it gets legal advice. Mr. Ericson stated the October and December Executive Session minutes are final but not for public dissemination. The decision whether to make them public will be made at another time. There will be a discussion of the Open Meeting Law later in this meeting.
5. **Decisions Regarding Licensing of Applicants:** The staff presented the following Application Docket:

New Application Docket Number 1

ID #	Applicant Name/Company Name	ARP #	REC.
4828	<i>Deidra Winterburn / Woodward & Curran, Inc.</i>	249	A
5753	<i>Phillip Peterson / EnviroBusiness, Inc.</i>	249	A
4097	<i>Jeanne Westervelt Cooperstown Environmental</i>	249	Pending

A motion was made and seconded to accept the recommendation from Application Review Panel No. 249, i.e., that the applications submitted by Deidra Winterburn and Phillip Peterson be approved and that they be found eligible to take the exam, and to table Ms. Westervelt's application pending the receipt of further information by the ARP. The motion was approved unanimously.

6. License Renewal Applications:

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

**Board Meeting
February 5, 2013
DEP's NERO Office - Wilmington, MA**

**Renewal Docket #1
Renewal Date: January 30, 2013
New Renewal Date: January 30, 2016
Has completed all requirements for renewal**

LSP #	First	Middle	Last
4208	Michael	S	Lotti
5843	Michael	S	Stiller
6812	Cole	E	Worthy
1708	Derek	C	Volkin
1278	Jeffrey	A.	Hamel
3432	Dawn	M.	Riley

Renewal Docket #2**Renewal Date: October 30, 2012****New Renewal Date: January 30, 2016**

Completed requirements within 90-day extension:

LSP #	Last Name	First Name
2173	MacDonald	David R.
9819	Mooney	Joel S.
9290	Gevalt	Deborah H.
4120	Ricciardelli	Albert J.
9642	Demers	Gregg
5166	Penny	Michael C.
5521	Carey	Neal J
6786	Nickerson	Todd W.

Renewal Docket #3**Renewal Date: January 30, 2013****New Renewal Date: April 30, 2013**

Have requested a 90-day extension:

LSP #	LSP Name
2443	Herbert E. Woike
2039	Joseph R. McLoughlin, II

Renewal Docket #4**Old Renewal Date: July 30, 2011****New Renewal Date: January 30, 2016**

License expired on July 30, 2011, for lack of credits.
Individual was granted a six month extension of the 1-year
deadline to complete the renewal requirements.

Individual has completed renewal requirements within
the timeline granted and is now eligible for active status:

LSP #	LSP Name
8211	Paul R. Campagna

Renewal Docket #5**Old Renewal Date: January 30, 2011****New Renewal Date: January 30, 2016**

License expired on January 30, 2012 for lack of credits.
Individual has completed renewal requirements within
2-year deadline and is now eligible for active status:

LSP #	LSP Name
8501	Kleo T. Taliadouros
3676	Anne Marie C. Desmarais

Renewal Docket #6
Old Renewal Date: April 30, 2012
New Renewal Date: January 30, 2016

License expired on April 30, 2012 for lack of credits.
 Individual has completed renewal requirements within
 1-year deadline and is now eligible for active status:

LSP #	LSP Name
4994	James O'Loughlin

7. Other Licensing-Related Matters:

- A. New Panel Assignments and Scheduling.** The following Board members were assigned to Application Review Panel No. 250: Ms. Race, Mr. Ericson and Mr. Franklin.
- B. Appeals Status Report.** Ms. Coles-Roby reported that there are no pending appeals regarding the Board's denial of a license application.
- 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 1	First Name 1
1	9003	May 18, 2011	INACTIVE	Cummings	Robert
2	3217	July 29, 2011	INACTIVE	Ford	Deborah
3	7613	January 25, 2012	INACTIVE	Warren	Robert
4	9392	April 20, 2012	INACTIVE	Frothingham	Benjamin

- D. Total Number of Active LSPs.** The staff reported that the total number of Active LSPs as of the date of this meeting was **557** as of January 30, 2013.

8. Examinations:

- A. Dates of Next Exam:** The dates for the next administration of the exam are May 29, June 5 and June 12, 2013.
- B. Discussion of Exam Eligibility:** A Board member asked Ms. Coles-Roby whether given the LSPA's concern relative to examination slots, sufficient space was available for those interested in taking the test. Ms. Coles-Roby responded that there were sufficient slots. Mr. Luhrs asked Mr. Wyman when he would sit for the LSP exam. Mr. Wyman said he had asked, but had not been assigned a date. Ms. Coles-Roby stated that it was Mr. Wyman's personal decision and that question would have to be answered by him. Mr. Wyman said that the Executive Director had forbidden him from discussing this with the Board. Ms. Coles-Roby

indicated that was not true. The Board asked why Mr. Wyman had not been assigned a date. During the discussion between the Board, Mr. Wyman, and Ms. Coles-Roby, Ms. Coles-Roby said they wanted a ruling from the Ethics Commission, and Mr. Wyman said he had called the Ethics Commission, who said the decision is up to the Board, but Ms. Coles-Roby wanted a written response from the Commission. Mr. Wyman said he was being put in a bad position in this discussion, and Mr. Luhrs suggested Mr. Wyman could leave the room. Mr. Wyman left the room. Mr. Ericson said Mr. Wyman had been approved to take the LSP exam, but there was a question when he should take it. Ms. Coles-Roby said before a date was chosen, she felt they should ask the Ethics Commission because the Board does not want to have an appearance that Mr. Wyman had an unfair advantage on the exam due to his employment with the Board, and should make sure everything is above board. Ms. Listernick said an ARP had considered the application, and that would have been the time to raise this issue. Mr. Luhrs said there were people who wrote the exam and sat on the Board who took the exam, and there was a long history of people who had contact with the exam who took it. He said it was in the Board's best interest to have a licensed LSP do the Board's investigations. Ms. Race said she hosted the group who went through all the exam questions at her office, and some of the LSPs at the meeting have taken the test after participating in developing it. She can supply those names.

Mr. Ericson said Ms. Coles-Roby's concerns were legitimate. In government, employees always want to stop and pay attention to what might look like receiving an unfair advantage from their public employment. He said he agrees it is in the Board's best interest to have a response from the Ethics Commission on this question. He said the information he is hearing now from Mr. Luhrs and Ms. Race is helpful and would support Mr. Wyman in taking the exam. Ms. Batchelder said the Board makes the call not the Executive Director. Mr. Guswa asked if Mr. Wyman had received a written decision from the Ethics Commission, and he noted there are MassDEP employees who are LSPs. Ms. Farnsworth asked if the Board takes special care with DEP employees who take the exam. Ms. Coles-Roby said a DEP employee is not the same as a Board employee who proctors the exam and has access to the questions. She said the exam is locked in her office, but Mr. Wyman had access because he proctored the exam within the last year. Mr. Luhrs said he can see how this issue came up, but he is concerned because there is nothing in the Board's statute that would keep Mr. Wyman from taking the exam, and it would not be good precedent that, for instance, a Board member who is not an LSP could not take the exam. He suggested the Board give Mr. Wyman an interim license.

Mr. Ericson said he did not hear anyone objecting to Mr. Wyman taking the exam. Mr. Stimpson said that there was an interim period of time before he was allowed to take the exam after he worked on it. He noted this is different from Mr. Wyman, because there would be a perception that Mr. Wyman could have access to questions along the way. Ms. Latowsky suggested the Board could

prepare a special exam for Mr. Wyman from the bank of exam questions. Mr. Ericson said he appreciates the suggestions and wants Mr. Wyman to be able to take the exam, but the Board has to take special precautions so no appearance will be created of unfair advantage. Ms. Coles-Roby will call and find out how this can be resolved. Ms. Batchelder said the Board should be the one to receive the response from the Ethics Commission. Ms. Coles-Roby said Mr. Wyman must be the person to get something in writing. Ms. Farnsworth said she does not see the need to receive a written decision from the Ethics Commission. She moved that Mr. Wyman be permitted to take the exam, and that he be allotted a slot in the next group of exams offered by the Board. Ms. Coles-Roby said the law says the appearance of impropriety must be avoided, and we know Mr. Wyman has seen the exam; it's not unfair to take the extra step to be sure to avoid that appearance.

Mr. Luhrs said we are a licensing board, as well as a disciplinary board, and it is incumbent on the Board to allow those who are qualified and who the Board knows have the ability to take the exam be allowed to do so. He said Mr. Wyman is right in line with our charter; that we need to weed out those not qualified to do the work is paramount in his mind. He has worked with Mr. Wyman, he knows Mr. Wyman is as qualified, or more qualified, than any other applicant who has walked in the door, and the Board should give him a date to take the test. Mr. Luhrs moved that Mr. Wyman be permitted to take the exam during the next administration, and unless the Ethics Commission rules before the exam that Mr. Wyman should not take it, that he be permitted to take the exam. Mr. Luhrs amended his motion to state that the Board will ask Mr. Wyman to pursue getting a ruling from the Ethics Commission, but otherwise his motion remains the same so long as they don't come back with the answer that he cannot be allowed to sit for the exam. Mr. Luhrs added that if the Ethics Commission procrastinates we should vote to allow him to sit for the exam. Mr. Siddique said the LSP Board is an ethics board, and can make the decision whether Mr. Wyman should take the exam. Ms. Farnsworth said the ARP had already approved Mr. Wyman to take the exam, and the Board had voted to approve him taking the exam, therefore it is not necessary for the Board to do anything more, and that this was harassment. Ms. Coles-Roby stated that it was not harassment to make sure that we comply with the law. Ms. Race stated that this needs to come to us before it goes to anyone else. Ms. Batchelder asked whether Mr. Wyman, who was out of the room, was awaiting a reply from the Ethics Commission. Mr. Ericson told the Board that the Ethics Commission can overrule the Board. Mr. Wyman, who had returned to the room, stated that Ms. Coles-Roby told him to file a request for an opinion with the Ethics Commission. It wasn't his choice. He was concerned because this conversation had put him in an untenable situation between the LSP Board and his supervisor. Mr. Luhrs repeated his motion, which was to give Mr. Wyman a slot in the next test period while he goes ahead and pursues a ruling from the Ethics Commission in writing. Ms. Race seconded the motion. The Board voted unanimously in favor of Mr. Luhrs' motion.

Mr. Ericson said there will always be matters he will not be able to bring before the Board. He understands the Board's position. He said Mr. Wyman is a state employee and all state employees are subject to the ethics rules for public employees. The LSP Board cannot overrule them.

C. Exam Challenges: None.

D. Exam Subcommittee: Ms. Coles-Roby and Ms. Batchelder reported that they had met on January 9, 2013 and February 1, 2013. They have set a goal of eighteen months to complete the process. MassDEP employee Chris Borges participated in the second meeting. They began by reviewing the Master Content Outline which sets out the nine categories of questions. Next, they began flagging items such as RAO and Tier Classification in anticipation of changes in the Massachusetts Contingency Plan regulations. The subcommittee will present the questions electronically to the full committee once they are sorted. They further reported that as had occurred in the past, they will involve the LSPA by asking its members to submit questions.

9. Continuing Education Committee Report:

Course and Conference Approval Requests. Mr. Wyman reported that the Committee had met earlier in the day and had the following course recommendations to present to the full Board:

- a. Directional Technologies: Horizontal Remediation Wells (8 non-DEP Technical credits).
Recommend Approval.
- b. Microbialinsights: Integrating Molecular Biological Tools into Site Management (4 non-DEP Technical credits).
Recommend Approval.
- c. GSI: Risk Based Correction Action Modeling (8 non-DEP Technical credits).

Committee members noted that this course was taken in October 2011 and those retroactive requests for approval are disfavored and generally not recommended to the Board for approval. The Committee had no information to consider this request for retroactive approval different than any other previously denied.

Recommend Denial.

- d. SETAC: ArcGIS Online: Interactive Web Mapping and Problem Solving for Environmental Professionals (6 non-DEP Technical credits).
Recommend Approval. Discussion ensued as to whether there was enough content applicable to what an LSP needs to do their job. Some of the Committee members had mixed feelings as to the applicability of the course. It was agreed, however, that an LSP does use GIS as a tool for many LSP driven decisions and

should thus be familiar with the capabilities of GIS. Ben Ericson abstained from the vote.

- e. UMass: Wetlands Assessment and Field Techniques (70% grade, 50% audit non-DEP Technical credits).
Recommend Approval. The 70% or 50% is to be calculated from the total class time of 35.5 hours.

RCS:

- Massachusetts Hazardous Waste Generator and US DOT Hazardous Material Handler Training Compliance (16 non-DEP Technical credits).
Recommend Denial.
- Massachusetts Hazardous Waste Generator and US DOT Hazardous Material Handler Training Refresher (8 non-DEP Technical credits).
Recommend Denial.

The Committee believed that the relevant content in these two courses was not sufficient or reasonably likely to maintain or enhance the licensee's ability to competently perform, supervise and/or coordinate response actions (*i.e.*, assessments, containments and/or removals) in Massachusetts.

- f. LSPA: Hydrogeology of New England (8 non-DEP Technical credits).
Recommend Tabling. The Committee requested the presenter document the difference between this course and the previously approved Hydrogeology of Massachusetts.
- g. LSPA: Bioremediation. Principles, Techniques, and Applications (4 non-DEP Technical credits).
Recommend Approval.
- h. LSPA: Preparing Conclusive MCP Phase Reports (5 non-DEP Technical credits).
Recommend Approval.
- i. AIPG: Fractured Rock Hydro and Geophysics (8 non-DEP Technical credits).
Recommend Approval.

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

Other Business: In the wake of Christophe Henry's resignation from the LSP Board, John Guswa was nominated as the Continuing Education Chairperson. He accepted and was unanimously approved. A subcommittee comprised of Ben Ericson, Beverly Coles-Roby, Gail Batchelder and Wendy Rundle was formed to review Internet Courses pursuant to 309 CMR 309(10).

10. **Professional Conduct Committee:** Mr. Franklin reported that there were no actions required by the Board members as a result of the Professional Conduct Committee held earlier in the day.

11. **Personnel, Budget, and Fees**

A. LSP Staff Roles and Responsibilities

B. LSP Board Action Items: The Board reviewed the document.

12. **Status of Board Member Replacements by the Governor:** Ms. Coles-Roby said the process of replacing Board members is moving along. She has potentially found six candidates: one who is interested in the labor union slot, and others that include LSPs, hydrogeologists, and one who may be interested in the petroleum slot. Mr. Ericson said he will follow up, interview the candidates, and bring back a report to the next meeting. He encourages the LSPA to keep recommending candidates. Mr. Luhrs asked that replacements be scheduled to keep the staggered terms. Ms. Batchelder said the hydrogeologist cannot be an LSP. Ms. Latowsky said she is extremely concerned that not all the Board members be replaced at the same time. She said if the Board loses all its institutional memory, it would change the operation of the Board. Beverly Coles-Roby said Board members are encouraged to reapply. Mr. Siddique said he had made the point that reapplying is not necessary under the Board's statute. Mr. Ericson said it would be very helpful for members to reapply. He said it is true that membership continues past the four year term, but it would be very helpful to bring to the governor a slate of new and reconfirmed Board members. Otherwise, the governor may appoint some new people to replace current Board members. Mr. Guswa said if Board members want to stay on the Board, they should reapply, but replacements should be staggered.

Ms. Coles-Roby reported that she was making progress in identifying candidates, for the LSP, hydrogeologist and possible the labor slots. Ms. Batchelder stated that we need to look very carefully into whether the hydrogeologist position can be held by a LSP. Despite the LSPA's assertion that the hydrogeologist position has been held in the past by an LSP, Ms. Batchelder believed that Larry Feldman moved into an LSP slot once he received his permanent license as opposed to an interim license. The statute makes a clear distinction between LSP slots and the hydrogeologist position on the Board, and putting a LSP into that slot must be carefully considered to determine whether doing so is within the statute.

13. **Other Business:**

A. Discussion of Regulatory Changes: Tabled

B. Discussion of LSP Board Regulatory Changes: Tabled

- C. Executive Office of Energy and Environmental Affairs Regulatory Review: Tabled
 - D. Massachusetts Contingency Plan Changes: Tabled
 - E. Open Meeting Law: Mr. Ericson said the question before us is whether to make public the Executive Session minutes. The Board has had a discussion on the topic, but not a full analysis that would allow the Board to make a decision. Whether the reason to go into Executive Session still exists is a significant legal analysis. There are two steps for the Board to take: first, general training on the Open Meeting Law (“OML”), and second, specific analysis for the Board to consider. Ms. Wood did some analysis, but did not cover all the issues. Ms. Coles-Roby has coordinated all the work to give the questions to the Attorney General’s Office. Mr. Luhrs said he is frustrated. Four months ago the Board asked for its own attorneys, Read, Wood, Coles-Roby, to give the Board an analysis, and later made this request in email. The Board has not had the benefit of any information for one full quarter of the year, which is unacceptable. This work should have been completed by now. Mr. Ericson said he cannot disagree with Mr. Luhrs. However, Mr. Ericson did not know all the facts, and these are tricky enough questions. There were a series of meetings, which complicates because it imports issues from past meetings. The rolling discussion has contributed to the inability to pinpoint questions and get answers. Mr. Luhrs asked Mr. Ericson to take the lead as someone who did not participate so the Board can have direct guidance from a state officer. Ms. Race said this is taking too long. Ms. Farnsworth said she recommends the Board not have any more Executive Sessions. Mr. Ericson said the OML is a really good law and experience should allow us to feel good about everything we do. Mr. Luhrs said he understood Ms. Wood had prepared a brief on these questions, and asked if the Board could receive it. Mr. Ericson said it did not have all the analysis we want. Mr. Coles-Roby said she sent links to the OML training, and today has a handout from the Attorney General’s office, for a rudimentary understanding of how the law operates.
 - F. LSPA Letter: Mr. Ericson said the Board received the LSPA letter, and the Board has the same goals on these issues and will work on them as soon as possible. Ms. Rundle said the letter was written out of true concern and she hoped it would not be taken as adversarial. The LSPA cares, the Board is crucially important to the profession, but there is a great concern. The issues are not abstract for LSPs; they are basic logistical issues that affect them. Mr. Luhrs asked that if the LSPA receives a response from EOEEA, the LSPA share it with the Board. Ms Rundle said that she had heard from Ms. Coles-Roby and Mr. Ericson. Ms. Latowsky stated that the Board had received her letter, and she thinks that it speaks for itself. She also said that she was concerned about a measured succession of Board members.
 - G. LSPA News Topic: Ms. Coles-Roby indicated that she forwarded an article on Advisory Opinions to Ms. Rundle for edit.
14. **Scheduling of Next Meeting:** The Board is next scheduled to meet on March 5, 2013, at a location to be determined.

At approximately 5:17 p.m. the meeting was adjourned.