



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
ONE WINTER STREET, 3rd Floor
BOSTON, MA 02108
PHONE: (617) 556-1091 FAX: (617) 292-5872

MINUTES
of
BOARD MEETING
Held on
April 17, 2013

Meeting Location: MassDEP
Central Region
627 Main Street
Worcester, MA 01608

Prepared by: Beverly Coles-Roby and Lynn Read
Approved: August 29, 2013

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on February 5, 2013
3. Application docket
4. Renewal docket
5. Changes Proposed by Allen Wyman to Draft Minutes of Meeting on February 5, 2013

1. **Call to Order:** Ben Ericson called the meeting to order at approximately 2:35 p.m. The Board members present were Gail Batchelder, Kirk Franklin, Jack Guswa, Debra Listernick, Kelley Race, Robert Luhrs, and Farooq Siddique. Board member Deborah Farnsworth was absent. 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"); Wes Stimpson of the LSPA; Lawrence Feldman of GZA GeoEnvironmental Inc.; and Joseph Wadland, Esquire.
2. **Announcements:** Mr. Ericson recommended that the Board schedule some time outside its regular meetings to discuss its long-term agenda. He said informal conversations about long term planning and priority-setting are consistent with the Open Meeting Law ("OML"), which allows the Board to meet in any setting if the purpose is planning its agenda, rather than deliberating about official Board business. He noted that MassDEP and the LSPA are celebrating the 20th anniversary of the Massachusetts Contingency Plan, and are holding discussions about what has been learned over time about the MCP, and the LSPA is celebrating the founding of the LSPA. He recommended the LSP Board hold similar discussions with stakeholders about its challenges and successes and what

has been learned since the Board’s founding in 1992.

Mr. Ericson announced that Robert Luhrs will be stepping down from the Board effective May 9, 2013. He thanked Mr. Luhrs for his extraordinary work and dedication, including co-chairing the Professional Conduct Committee and serving on many Complaint Review Teams. Board members discussed obtaining plaques and holding a recognition party in June for the Board members who have retired.

Mr. Ericson said there was a motion pending before the Board in a disciplinary adjudication, which would be addressed in a quasi-judicial session after the public meeting.

3. **Agenda:**

The members present discussed whether going forward, the Board could add items to the agenda during a Board meeting, or whether, if an item is not on the agenda, it cannot be discussed. **It was noted that the scope of permissible additions to the agenda should be researched.**

4. **Minutes:**

The Board considered the minutes of the Board meeting held on February 5, 2013. Corrections were made by Mr. Ericson, Ms. Listernick, Mr. Wyman, Dr. Batchelder, and Ms. Race. Board members discussed the need to ensure that the Board’s minutes regarding Mr. Wyman’s application for an LSP license accurately reflect how much exposure he had to the LSP Examination. Mr. Ericson said that the minutes prepared for recent meetings have been so detailed they are almost like a transcript, which is not required by the Open Meeting Law, and puts a burden on the Board to make sure every detail is correct. The members present discussed how the minutes are prepared, **and asked that the draft minutes be distributed within three weeks of the meeting.** Mr. Wyman distributed his written corrections to the draft minutes. After looking over Mr. Wyman’s written changes, Ms. Coles-Roby said Mr. Wyman could add to the minutes, but he could not delete statements that she had recorded in the notes she took during the meeting. **The minutes were unanimously approved with the submitted changes.**

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. |
|-------------|---|--------------|-------------|
| 7563 | <i>John Mannix/EndPoint, LLC.</i> | 250 | A |
| 2304 | <i>Edward G. Kontos, III/ Groundwater & Environmental Services, Inc.</i> | 250 | A |

Ms. Listernick and Mr. Siddique were recused and left the room. **A motion was made and seconded to accept the recommendation from Application Review Panel No. 250, i.e., that the applications submitted by John Mannix and Edward G. Kontos, III be approved and that they be found eligible to take the exam. The motion was approved unanimously.**

Ms. Listernick and Mr. Siddique returned to the room.

6. License Renewal Applications:

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

Renewal Docket #1

Renewal Date: April 30, 2013

New Renewal Date: April 30, 2016

Completed all requirements for renewal:

| LSP # | First | Middle | Last |
|-------|---------|--------|-------------|
| 6272 | Valerie | D. | Tillinghast |
| 6643 | Rosanne | M. | Joyce |

Renewal Docket #2

Renewal Date: January 30, 2013

New Renewal Date: January 30, 2016

Completed requirements within 90-day extension:

| LSP # | Last Name | First Name |
|-------|-----------|------------|
| 2443 | Woike | Herbert E. |

Renewal Docket #3

Renewal Date: October 30, 2012

New Renewal Date: October 30, 2015

License expired on October 30, 2012, for lack of credits.

Individual has completed renewal requirements within

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

| LSP # | Last Name | First Name |
|-------|-----------|------------|
| 1736 | Folan | Daniel W. |
| 6818 | Benevides | Alan A. |

Renewal Docket #4
Renewal Date: July 30, 2012
New Renewal Date: July 30, 2015

License expired on July 30, 2012, 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 # | Last Name | First Name |
|-------|-----------|------------|
| 2207 | Makovitch | Anthony W. |

Renewal Docket #5
Renewal Date: January 30, 2013
New Renewal Date: April 30, 2013
Requested a 90-day extension:

| LSP # | LSP Name |
|-------|-------------------|
| 7051 | Dennis P. Giustra |
| 5217 | William Gibbons |

A motion was made and seconded to renew the licenses of the LSPs on Renewal Dockets #1, #2, #3, and #4 for a three-year period ending on the dates indicated, and to grant a 90-day extension to the LSPs on Renewal Docket #5. The motion was approved unanimously.

B. Other Renewal-related Matters. The staff reported that no waiver requests had been received since the previous meeting, and there were no other renewal-related matters.

7. Other Licensing-Related Matters:

- A. New Panel Assignments and Scheduling.** The following Board members were assigned to Application Review Panel No. 249: Ms. Race and Mr. Siddique; Application Review Panel No. 251: Dr. Batchelder, Dr. Guswa, and Ms. Listernick; Application Review Panel No. 252: Mr. Ericson, Mr. Siddique, 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 five LSPs are the total number of LSPs currently on Inactive Status:

| | LSP Number | License Status Date | License Status | Last Name 1 | First Name 1 |
|---|------------|---------------------|----------------|-------------|--------------|
| 1 | 9282 | January 3, 2013 | INACTIVE | Welsh | Mark |
| 2 | 9003 | May 18, 2011 | INACTIVE | Cummings | Robert |
| 3 | 3217 | July 29, 2011 | INACTIVE | Ford | Deborah |
| 4 | 7613 | January 25, 2012 | INACTIVE | Warren | Robert |
| 5 | 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**.

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. Ms. Coles-Roby indicated that there were one or two more seats available for this administration of the exam, and asked whether the exam should be offered more than twice a year. Board members discussed the reasons for offering the exam twice a year, including lack of staff and more study time for those who failed the exam, and agreed to continue administering the exam twice per year.

B. **Status of Approval for Allen Wyman to take exam:** Mr. Ericson said Mr. Wyman had clearance from the Ethics Commission to take the LSP Exam, and the Board passed a resolution at its last meeting that there was no reason for Mr. Wyman not to take the exam unless the Ethics Commission said that he could not. Mr. Ericson said Mr. Wyman received a letter from the Ethics Commission stating that the issue of whether Mr. Wyman gained any unfair advantage from his employment with the LSP Board in taking the LSP licensing exam was a question of fact to be determined by the Board, and not by the Ethics Commission. Mr. Ericson read aloud from the Ethics Commission's letter to the Board, and said the Board's responsibility is to determine whether or not Mr. Wyman would have an unfair advantage in taking the Board's licensing exam, due to his position as a staff member for the Board. He said the Board should review Mr. Wyman's statements about how much exposure he had to the LSP Examination. Mr. Wyman indicated that the letter from the Ethics Commission was confidential and he wanted it kept within the Board.

Mr. Luhrs asked Mr. Wyman to state when he last saw the exam, and what he saw, so the Board could make a determination whether Mr. Wyman had any unfair advantage. Mr. Wyman said he last proctored the exam in December 2012, and last saw the exam in 2008, before the Board began offering the exam electronically. Board members asked Mr. Wyman if he could see the exam when he proctored, and Ms. Coles-Roby stated that when proctoring the electronic exam, Mr. Wyman had a paper copy of each exam with him in the exam room, in manila envelopes, and he had them with him in December 2012 in the event that something went wrong with the electronic

exams or the computers. Mr. Wyman stated that when he last helped correct the paper exams in 2008, the corrections were done quickly, by comparing the answer sheets to a key of the answers, and that there were three versions of the exam. During this grading process, the former Executive Director had the exam questions, and Mr. Wyman had the answers. Mr. Wyman said when he proctored the exam he could not see the exam. He also said that when Ms. Coles-Roby told him a couple of months ago that the exams were on the “W” drive, he asked the former General Counsel whether the exams were on the “W” drive, because he did not know the exams were on the server. Mr. Wyman told the Board he never accessed the exams on the “W” drive, and the Information Technology Office could check his computer to confirm he never accessed them. **Dr. Guswa moved that Mr. Wyman take the exam on June 5th because Mr. Wyman had no unfair advantage in taking the exam by virtue of being a staff member of the Board. Dr. Batchelder seconded the motion. The Board voted unanimously in favor.**

C. Exam Challenges: Ms. Coles-Roby informed the Board that there were two challenges to several exam questions, and John Fitzgerald reviewed the challenges and recommended editing two of the three questions challenged. Board members discussed the Board’s past practice of forming a committee to consider exam challenges, including two Board members and MassDEP employees Paul Locke and John Fitzgerald. Dr. Guswa and Mr. Siddique volunteered to review Mr. Fitzgerald’s recommendations, and will first check to see if the challenges are within their areas of expertise. **A motion was made and seconded that, pending approval by Dr. Guswa and Mr. Siddique, the Board accept or reject the challenges as recommended by Mr. Fitzgerald, and a second motion was made and seconded that, pending Dr. Guswa and Mr. Siddique’s review, the Board accept John Fitzgerald’s recommended changes to the exam questions so they can be put into the next exam. The Board voted unanimously in favor of both motions.**

D. Exam Subcommittee: Ms. Coles-Roby reported that another Exam Committee meeting was planned for April 29th. Board members said the committee’s work is urgent, because MassDEP has proposed amendments to the Massachusetts Contingency Plan that will likely become final by 2014, and the MCP amendments will require changing some exam questions. Members discussed that the process of creating and reviewing exam questions is involved and time-consuming. A suggestion was made to form a subcommittee to work with MassDEP on exam changes arising from the regulation changes, and the remainder of the committee could work on the other parts of the exam. Ms. Coles-Roby agreed to set up a meeting of the full committee.

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. Battelle: Seventh International Conference on Remediation of Contaminated Sediments (12 non-DEP Technical credits)
Recommend Denial
- b. Battelle: Efficiencies in Sediment Remedial Selection and Implementation (4 non-DEP Technical credits).
Recommend Denial.
- c. The Academy at DHI: FEFLOW Introduction to Groundwater Modeling (33 non-DEP Technical credits).
Recommend Approval.
- d. MassDEP: Incremental Sampling Methodology (1 DEP Regulatory credit).
Recommend Approval.
- e. GWPC: Well Integrity Workshop (6 non-DEP Technical credits).
Recommend Denial.
- f. UNH: Intro to ArcGIS 10.1 (18 non-DEP Technical credits).
Recommend Approval. Contingent upon Continuing Education Coordinator verifying the presenter's biography is in the record and getting attendance verification.
- g. RemTEC: RemTEC Summit 2013 (1:2 non-DEP Technical credits).
Recommend Approval.
- h. MassDEP: An Overview of Proposed Amendments to the Massachusetts Contingency Plan (1 DEP Regulatory credit).
Recommend Approval.
- i. MassDEP: Demystifying the Audit Process (1 DEP Regulatory credit).
Recommend Approval .
- j. MassDEP: Characterization of #2 Fuel Oil Spills (2 DEP Regulatory credits).
Recommend Approval.

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

Other Continuing Education Business:

- A. Clarification of Board's Policy Regarding Courses Offered Prior to Board Meetings.** The Committee recommended that "For any new MassDEP course offered prior to the scheduled LSP Board meeting, the Committee recommends

granting approval authority to the Continuing Education Committee Chairperson or Acting Chairperson. This approval is contingent upon the course presenter(s) meeting all other requirements of 309 CMR 3.09(6), and only for courses directly related to the MCP.” **A motion was made and seconded to accept the Committee’s recommendation. The motion was approved unanimously.**

- B. **Clarification of Board’s Policy Regarding Course Presenters .** Mr. Wyman reported that an LSPA Education Committee Member asked whether an LSP with a previously suspended license could teach an LSP Board approved course. The members present discussed the Board’s precedent for not allowing an LSP to teach a course who had been disciplined. Mr. Wyman pointed out that any change in course instructor requires prior Board approval as stated in the Board’s regulations. **The members present asked Mr. Wyman to inform the LSPA of the precedent and to request information about the course’s content that the Committee would review in relation to the discipline imposed.**

10. **Professional Conduct Committee:** The Board agreed to forego a 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**

A. **Budget**

Ms. Coles-Roby informed the Board that the legislature was working on the budget for the next fiscal year, and it appeared from the budget proposed by the House of Representatives that layoffs would not be necessary. She hoped to have a report for the next Board meeting.

B. **Staff Roles and Responsibilities**

Mr. Luhrs asked Mr. Ericson for information on the Board’s need for legal counsel in pending disciplinary cases. Mr. Ericson said he recognized that the staff needed more legal help and was also down an investigator, but until the budget is known he cannot say anything about replacing the Board’s former General Counsel, Terry Wood. He said there are a couple of options for legal help. The first is having a specially assigned MassDEP Office of General Counsel (“OGC”) attorney who had not worked with the Bureau of Waste Site Cleanup so there would be no appearance of a conflict of interest. A benefit of this option was it would not cost any money. The second option is hiring an outside lawyer, which must be approved by the Secretary of Energy and Environmental Affairs. Mr. Feldman asked if it was possible to get an attorney from another state agency. Mr. Ericson indicated that agencies such as the Department of Conservation and Recreation, or the Executive Office of Energy & Environmental Affairs have few lawyers. Mr. Luhrs said that these issues had been pending for several months and asked Mr. Ericson for his recommendation. Mr. Ericson recommended that the Board ask MassDEP to assign a lawyer from its Office of General Counsel. **A motion was made and seconded that the Board ask**

MassDEP's Office of General Counsel for a lawyer to be assigned to the Board. The Board voted unanimously in favor of the motion.

12. Status of Board Member Replacements by the Governor: Mr. Ericson informed the Board that there are about ten candidates for the Board vacancies, including one candidate for the Labor slot, one for Mr. Luhrs' Manufacturing slot, and for the Petroleum slot vacated by Mr. Henry. Everyone who applied was interviewed, and the candidates seemed strong. He said one current Board member has requested reappointment. Mr. Ericson said once we send this set of candidates to the Governor's Office, appointments and reappointments should be made on a regular basis, the Board should send up candidates every year, and staggered terms should be maintained.

13. Other Business:

A. Discussion of LSP Board Regulatory Changes: Mr. Ericson stated that in the next couple of weeks he will have more information on potential changes to the LSP Board's regulations. He also said he looked forward to the LSPA's comments, because stakeholder comments could be helpful. Board members noted that a discussion of the regulation changes was described in a memorandum drafted by Terry Wood that was distributed in December 2012.

B. Proposed Amendments to Massachusetts Contingency Plan: It was the consensus of the Board members to table their discussion of the amendments to the MCP proposed by MassDEP.

C. Open Meeting Law and its application to Executive Committee Minutes: Mr. Luhrs asked for an update before he leaves the Board on the application of the Open Meeting Law to minutes of the Board's executive sessions held in 2012. Mr. Ericson said he and Ms. Coles-Roby consulted with an attorney in the Attorney General's Office who worked on Open Meeting Law issues. **Board members asked that at the next meeting, the issues pertaining to the Board's Executive Sessions and the Open Meeting Law should be moved to the beginning of the agenda.** Mr. Ericson said that under the 2010 amendments to the Open Meeting Law, Board members must review the requirements of the law and sign the certification form required by the Attorney General's regulations. The members present discussed whether the 2010 amendments to the Open Meeting Law are retroactive such that all of the Board's executive session minutes, both before and after the 2010 amendments, must be reviewed and released to the public if the purposes of the executive sessions no longer exist. Ms. Coles-Roby recommended that all executive session minutes, both before and after the 2010 amendments, be reviewed and released if the purpose of the executive session no longer exists. She reported that, other than the executive sessions held in 2012, there are three or four sets of LSP Board executive session minutes since the Open Meeting Law was amended in 2010.

D. LSPA Meeting March 22, 2013: Ms. Coles-Roby reported that she and Ben Ericson met with the LSPA President Cole Worthy and LSPA Executive Director,

Wendy Rundle on March 22, 2013, about the LSPA's letter to Secretary Richard Sullivan dated January 24, 2013. The items discussed included LSP Board vacancies and succession planning, the Board meeting schedule, due process, administrative and technical issues, and how the Board and the LSPA can best work together to resolve these issues.

E. LSPA News Topic: Ms. Rundle proposed that the next article for the LSPA newsletter describe the LSP Application for Licensure process. Ms. Race said the Board wants to review any article before it is submitted to the LSPA.

14. **Scheduling of Next Meeting:** The Board is next scheduled to meet on May 16, 2013, at the MassDEP Western Regional Office and June 20, 2013, at MassDEP Boston.
15. **Adjournment.** At approximately 5:00 p.m. the meeting was adjourned.