



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

MINUTES
of
BOARD MEETING

Held on
June 20, 2013

Meeting Location: MassDEP
One Winter Street
Boston, MA

Prepared by: L. Read
[Approved: August 29, 2013]

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on April 17, 2013
3. Renewal dockets
4. Letter from applicant requesting more exam administrations be scheduled
5. Email from applicant regarding hardship caused by certain licensing requirements

1. **Call to Order:** Benjamin Ericson called the meeting to order at 2:21 p.m. The other Board members present were Gail Batchelder, Deborah Farnsworth, John Guswa, Debra Listerneck, Kelley Race, Robert Rein, and Farooq Siddique. Board member Kirk Franklin 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 Licensed Site Professional Association (LSPA); David Austin of the LSPA Technical Practices Committee; and Richard Kowalski of Arcadis.
2. **Announcements:** Mr. Ericson welcomed Robert Rein as the newest Board member, whose experience will be invaluable. Mr. Ericson also thanked Kelley Race and Deborah Farnsworth, for whom this would be the last Board meeting, for their generosity in giving of their time and talent to the Board for over eight years of service. Mr. Ericson noted there will be an event tonight to reflect on the accomplishments of the Board's recent retirees Ms. Race, Mr. Henry, Mr. Luhrs, and Ms. Farnsworth, and the Board's former General Counsel, Terry Wood.

Mr. Ericson also announced that Dr. Batchelder is planning to retire from the Board after 16 years of service and dedication to the Board. There was discussion of the 20-year anniversary of the Massachusetts Contingency Plan (MCP), and Dr. Batchelder's service for 16 of those 20 years, as well as the longevity of several Board members who served

for many of those years. Mr. Ericson said he and Ms. Coles-Roby have been working to make the LSP Board appointments a priority in the governor's office on a continuing basis. Dr. Batchelder said she has not filed an official resignation, and she will remain on the Board until the work of the Complaint Review Team (CRT) on which she serves is finished.

Mr. Ericson said the Board is saying farewell to Allen Wyman, who has done great work for the Board for 12 years as a Senior Investigator. Board members expressed concern over qualification and training of a replacement when Mr. Wyman is no longer with the Board.

Mr. Ericson announced the sad passing last Friday of attorney Peter Feuerbach, a significant member of the Massachusetts environmental community.

3. **Agenda:** Ms. Coles-Roby added to the agenda a letter from an applicant regarding the timing of the licensing examination. Ms. Race asked that the topic of Board communications be added to the agenda. The members present moved the following items to the beginning of today's agenda to ensure votes are taken before other discussion: Review of draft minutes of April 17, 2013 meeting; Decisions re: Licensing of Applicants; Renewal Applications and other licensing matters; and Letter from applicant regarding the timing of the licensing examination.

4. **Minutes:** Mr. Ericson distributed a new draft of the minutes of the meeting of the Board held on April 17, 2013, with his revisions to the draft in the packet for this meeting. Board members said the draft in the packet needed editing and correction. The members present discussed whether the minutes of the Board's meetings should be similar to a transcript of what was said, or alternatively, more of a summary of the Board's discussions. Board members commented that using the transcript style for minutes leads to problems with continuity of the writing, they would prefer that minutes summarize matters discussed in Board meetings, although exact quotes could be needed for sensitive matters, and individual Board members can request to have specific statements recorded in the minutes. Mr. Ericson said the "Open Meeting Law Guide" by the Office of the Attorney General states that minutes should include a summary of the discussion that is fair and representative, and should include dissenting opinions as well as the majority, especially when a member or members request that the minority opinion be included. **A motion was made and seconded to compile the comments on the draft minutes of the April 17, 2013 meeting, including comments from former Board member Robert Luhrs, who was present at the April meeting, and Ms. Read should edit those minutes into a fair and representative summary of the discussions, and the new draft should be re-circulated for review by the Board. The motion passed unanimously.**

Board members said that in December, 2012, the Board asked that items that need follow-up after a Board meeting should be put in boldface in the minutes, **and copied into a separate table or spreadsheet of action items.** The members present also stated that the minutes of the Board meeting on February 5, 2013, were approved at the April

17, 2013 meeting, but were not yet posted on the Board’s website. Ms. Coles-Roby said **the approved minutes of the Board meeting on February 5, 2013 will be posted on the website as soon as possible.** The members present also requested that the **Board meeting packet should include the same information that appears in the notices to the Secretary of State’s office, including the meeting schedule for Application Review Panels.** The members present also discussed whether Board meeting packets could be sent electronically only, including internet “cloud”-based distribution. Mr. Ericson said **research is needed about whether the Board is required to send hard copies of the meeting packet.**

5. **Decisions Regarding Licensing of Applicants:** The staff presented the following Application Dockets:

New Application Docket Number 1

ID #	Applicant Name/Company Name	ARP #	REC.
4097	Jeanne M. Westervelt (formerly Jeanne E. Martin) /Cooperstown Environmental LLC	249	D

A motion was made and seconded to accept the recommendation from Application Review Panel #249, i.e., that the application submitted by Jeanne M. Westervelt be denied and that she be found ineligible to take the exam. The motion was approved unanimously.

New Application Docket Number 2

ID #	Applicant Name/Company Name	ARP #	REC.
2858	Stephan H. Landry	251	A
9396	Lisa M. Irwin	251	A

A motion was made and seconded to accept the recommendation from Application Review Panel #251, i.e., that the applications submitted by Mr. Landry and Ms. Irwin be approved and that they be found eligible to take the exam. The motion was approved unanimously.

New Application Docket Number 3

ID #	Applicant Name/Company Name	ARP #	REC.
9932	Matthew J. Grove/Brown and Caldwell	252	A
6156	Jennifer L. Sweet/Haley & Aldrich, Inc.	252	A

A motion was made and seconded to accept the recommendation from Application Review Panel #252, i.e., that the applications submitted by Mr. Grove and Ms. Sweet be approved and that they be found eligible to take the exam. The motion was approved unanimously.

6. License Renewal Applications:

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

Renewal Docket #1

Renewal Date: July 30, 2013

New Renewal Date: July 30, 2016

Have completed all requirements for renewal:

LSP #	First	Middle	Last
1548	James	T.	Curtis
6260	Peter	P.	Burnell
2961	Brian	J.	Miller
3373	Timothy	J.	Snay
5888	James	J.	Soukup
3835	Jerry	T.	Tolosko
7236	Steven	T.	Fleming
3194	Elliott	B.	Jacobs
5022	Robert	A.	Francis

Renewal Docket #2

Renewal Date: April 30, 2013

New Renewal Date: April 30, 2016

Have completed all requirements for renewal:

LSP #	First	Middle	Last
4354	Christopher	E.	Gill
5928	Jonathan	S.	Moore
3560	Michael	P.	Flynn
1259	James	K.	Sullivan
5738	Scott	E.	Kraihanzel
4410	Peter	M.	Richards
4562	Jonathan	R.	O'Brien
5448	Edward	F.	Giordano
9969	Scott	K.	Parker
1488	David	M.	Sullivan

Renewal Docket #3

Renewal Date: January 30, 2013

New Renewal Date: January 30, 2016

Have completed all requirements for renewal:

LSP #	First	Middle	Last
7782	Richard	K.	Eby
7380	Kenneth	J.	Smith

Renewal Docket #4

Renewal Date: January 30, 2013

New Renewal Date: January 30, 2016

Completed requirements within 90-day extension:

LSP #	First	Middle	Last
5217	William	J.	Gibbons
2039	Joseph	R.	McLoughlin, II
7051	Dennis P.	P.	Giustra

Renewal Docket #5

Renewal Date: January 30, 2013

New Renewal Date: April 30, 2013

Have requested a 90-day extension:

LSP #	LSP Name
8904	David B. Sherman
4894	Ernest C. Ashley

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 # 253: Mr. Ericson, Dr. Guswa, and Mr. Rein.

The following Board members were assigned to Application Review Panel # 254: Mr. Siddique, Ms. Listernick, and Mr. Rein.

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	First Name
9282	January 3, 2013	Inactive	Welsh	Mark
9003	May 18, 2011	Inactive	Cummings	Robert
3217	July 29, 2011	Inactive	Ford	Deborah
7613	January 25, 2012	Inactive	Warren	Robert
9392	April 20, 2012	Inactive	Frothingham	Benjamin

D. Total Number of Active LSPs. As reported in the Agenda, the total number of Active LSPs was 562 as of June 13, 2013.

8. Letter Requesting Earlier Administration of Exam

The Board discussed a letter from an applicant describing delays in processing his application, and his concern that the limited number of seats for the second of two exam administrations in 2013 might be filled before his application is approved. The letter requested that the exam be offered prior to the next planned administration in November and December, 2013. The members present discussed that MassDEP’s 2013 proposed MCP amendments make this a critical moment to make the LSP licensing exam available to as many approved applicants as possible. The members present instructed the staff to **administer the exam as many days as necessary during the administration period in November and December 2013 to ensure that all approved applicants who wish to take the exam in 2013 may do so.** There was discussion of the impact of several days of proctoring on the three staff members, and Mr. Ericson said he would try to **find more proctors if needed.**

9. Open Meeting Law, Executive Session Minutes

Mr. Ericson reviewed Open Meeting Law requirements for executive session minutes, and the Board discussed whether the minutes of the Board’s executive sessions in 2012 should continue to be executive session minutes and not public. Mr. Ericson said the Open Meeting Law requirements for meeting minutes are important because the minutes are how the public can view what the Board is doing. As discussed earlier, Executive session minutes must be a fair and accurate summary of the discussion. All business on the Board meeting agenda is subject to the Open Meeting Law, and communicating about Board business with a quorum is “deliberation.” Mr. Ericson said that although conversations about long-term Board practices or policies are not necessarily deliberations, and communicating with less than a quorum is not deliberation, in general, official Board business should be conducted in an open meeting, and Board members should avoid private communication about official Board business.

Mr. Ericson said as long as releasing the minutes of an executive session may defeat the lawful purposes of the executive session, the Board may withhold from disclosure the minutes, the materials used in preparing the minutes, and all documents used in the executive session. However when the reason for the executive session ends, the minutes must be released. Mr. Ericson said the reason for the Board's original executive session in March 2012 was to discuss complaints by an outside person against an employee of MassDEP, which is one of the lawful reasons for which an executive session may be held. He said the reasons for the additional executive sessions held in 2012 were to review and approve minutes related to the March 2012 executive session, and therefore those additional executive sessions are covered by the lawful purpose of the March executive session and were withheld. Mr. Ericson said if the reason for the executive sessions has ended, under the Open Meeting Law, the minutes must be released, unless they contain material that is exempt from disclosure under the Public Records Law. The Board members present discussed these principles and how they apply to the minutes of the executive sessions, which were held on March 27, 2012, May 15, 2012, July 26, 2012, October 9, 2012, and December 11, 2012. **A motion was made and seconded that the lawful reason for the executive sessions held on March 27, 2012, May 15, 2012, July 26, 2012, October 9, 2012, and December 11, 2012 has ended, and the minutes of those executive sessions therefore can be released under the Open Meeting Law. The motion passed unanimously.**

Mr. Ericson stated that although the reason for the 2012 executive sessions has ended, the Board is not required to release the minutes until someone asks for them. He stated he will ask the general counsel of MassDEP to assist the Board by reviewing the minutes of the Board's 2012 executive sessions to determine whether they contain information that is exempt from disclosure under the Public Records Law, including personnel and medical information, and other materials related to a named individual for whom disclosure would be an unwarranted invasion of personal privacy and should not be released. Ms. Coles-Roby stated that as the subject of the minutes, she has a right to review the minutes for private information exempt from the Public Records Law. Mr. Ericson said review for compliance with the Public Records Law is very important, someone completely outside the Board or its staff should do that review, and MassDEP has attorneys who do Public Records review and could review the former executive session minutes. **A motion was made and seconded to release to the public the minutes of the executive sessions held on March 27, 2012, May 15, 2012, July 26, 2012, October 9, 2012, and December 11, 2012, unless they are subject to any applicable exemption under the Public Records Law. The motion was approved unanimously.**

Mr. Ericson stated that he will ask MassDEP's general counsel to review the executive session minutes to determine whether they contain information that is exempt from disclosure under the Public Records Law.

The members present asked the staff to put on the agenda for the next meeting the issue whether to release minutes of executive sessions held before 2012.

Mr. Ericson thanked the members present for their interest in the transparency of Board meetings.

10. Email Regarding Hardship: The Board tabled the discussion of the email regarding hardship.

11. Examinations:

A. New Licensees. As reported in the Agenda, the following approved applicants passed the licensing examination and are now LSPs:

- **Patricia M. Pinto (#6161) May 29, 2013**
- **Brian J. Horan (#4396) May 29, 2013**
- **Deidra R. Winterburn (#4828) May 29, 2013**
- **Jedd Steinglass (#8848) May 29, 2013**
- **Allen G. Wyman (#5995) June 5, 2013**

B. Dates of Next Exam: The staff reported that the dates for the next administration of the exam will be in November and/or December, 2013.

C. Exam Challenges: The Board did not discuss exam challenges.

D. Exam Subcommittee: Ms. Coles-Roby and Dr. Batchelder stated that the exam subcommittee met recently and another meeting is planned soon.

12. Continuing Education Committee Report:

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

Sponsor: LSPA

Course Title: *Air and Soil Gas Sample Collection and Analysis: How to Collect Relevant and Representative Data*

Credits Requested: 4 non-DEP Technical Credits

Committee Recommendation: **Approve**

Sponsor: LSPA

Course Title: *Preparing Conclusive MCP Phase Reports – LSP Course #1468*

Credits Requested: 6 non-DEP Technical Credits (request is to add one additional credit to the original 5-credit course)

Committee Recommendation: **Approve.**

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

B. Other Business: None.

13. **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.

14. **Personnel, Budget, and Fees**

Board members said the decision not to renew the contract of the Board's Senior Investigator was made by the Board's Executive Director and without any consultation with the Board, and they questioned why there was no discussion during the April 2013 Board meeting of not continuing the investigator's contract when the agenda item "Personnel, Budget, and Fees" was discussed. Members questioned how decisions regarding staffing and contracts can be made without input from the Board. During discussion, Board members said this decision takes away from the Board the person who brings together and analyzes the site data and information in disciplinary cases, and the loss of the Senior Investigator's services will impede the members' ability to obtain the right information and do their work for the Board. They said the Board is unlikely to be able to replace those services, and in the past, the Board Chair directly supervised the staff and brought contract issues to the Board for discussion. Mr. Ericson acknowledged the Board needs investigators and lawyers who can do this work, and it will be an ongoing issue how the Board can participate in personnel and budget issues. The members present discussed the possibility of holding an executive session to discuss this matter. Mr. Wyman asked that these minutes reflect his request to be present at an Executive Session so the matter is discussed "with honesty and integrity." A Board member requested that an Executive Session about the decision not to renew the investigator's contract be put on the agenda for the next meeting.

15. **Status of Board Member Replacements by Governor:** Ms. Coles-Roby said that four Board member replacements will be appointed soon for the Labor position and retired Board members Christophe Henry, Kelley Race, and Deborah Farnsworth.

16. **Other Business**

LSPA News Topic: The Board did not discuss a topic for the LSPA newsletter.

17. **Scheduling of Future Meetings:** The Board agreed to hold its next meeting on July 30, 2013, or in August, the final date and a location to be determined.

18. **Adjournment:** The meeting was adjourned at approximately 5:10 p.m.