



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

MINUTES
of
BOARD MEETING
Held on
August 29, 2013

Meeting Location: New Bedford Whaling Museum
New Bedford, MA
Prepared by: L. Read
[Approved: October 31, 2013]

List of Documents Used at the Meeting:

1. Agenda revised August 19, 2013
2. Second Draft Minutes of Meeting held on April 17, 2013
3. Draft Minutes of Meeting held on June 20, 2013
4. Email dated April 22, 2013 from applicant regarding hardship caused by certain licensing requirements
5. Email dated August 21, 2013, from applicant requesting to take exam outside the two-year eligibility period
6. Email dated August 23, 2013, from applicant requesting to take exam outside the two-year eligibility period
7. Letter from Wesley Stimpson
8. Renewal docket
9. Draft Confidentiality Agreement and cover email from Ms. Coles-Roby

1. **Call to Order:** Benjamin Ericson called the meeting to order at approximately 2:20 p.m. The other Board members present were David Austin, Kirk Franklin, John Guswa, Debra Listernick, Robert Rein, and Farooq Siddique. Board member Gail Batchelder was absent. The LSP Board staff members present were Beverly Coles-Roby and Lynn Read. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA); Wesley Stimpson; and Cosmo Gallinaro of Common Sense Environmental, Inc.
2. **Announcements:** Mr. Ericson warmly welcomed David Austin as the newest Board member appointed by Governor Patrick.
3. **Agenda:** Mr. Ericson said two emails dated August 21, 2013, and August 23, 2013, and a letter from Mr. Stimpson of the LSPA, should be added to the agenda. Ms. Listernick made two corrections to the wording of agenda items 5 and 6.
4. **Minutes of Meeting Held on April 17, 2013:** The members present reviewed the second draft of the minutes of the meeting of the Board held on April 17, 2013.

Members noted the Board received a letter suggesting changes to the minutes of the meeting held on February 5, 2013, which were discussed during the April 17, 2013 meeting. **A motion was made and seconded to approve the second draft of the April 17, 2013 minutes. The motion passed unanimously.**

Minutes of Meeting Held on June 20, 2013:The members present reviewed the draft of the minutes of the meeting of the Board held on June 20, 2013. A few corrections were noted. **A motion was made and seconded to approve the minutes as corrected. The motion passed, with Mr. Franklin abstaining from voting.**

5. **Open Meeting Law, Executive Session Minutes:** Ms. Coles-Roby requested that all Board members sign the certification that they read and understand the requirements of the Open Meeting Law and the consequences of violating it. She said the certificate is at the end of the Open Meeting Law Guide, available at www.mass.gov/ago/openmeeting, and she can send it to those who have not signed.

Mr. Ericson said he asked the Office of General Counsel (“OGC”) at MassDEP to review the minutes of Executive Sessions that the Board approved for release to the public at its meeting on June 20, 2013. These minutes have been assigned to an OGC attorney who specializes in Public Records, who will be in touch with Ms. Coles-Roby.

Ms. Coles-Roby noted that the Board received a request from Allen Wyman, the Board’s former Senior Investigator, to be present at any executive sessions held to discuss the non-renewal of his contract as Senior Investigator for the LSP Board. Ms. Coles-Roby said she understood that even draft minutes of such executive sessions are subject to disclosure, but would also be reviewed by OGC for compliance with the Public Records Law. Ms. Coles-Roby said she consulted with an Assistant Attorney General (“AAG”) of the Commonwealth, who advised that the non-renewal of Mr. Wyman’s contract is not a matter of reputation, character, health, or violation of rules, which would be reasons the Open Meeting Law would permit an executive session to be held. She said the AAG advised that this is a question of overall performance, rehiring, and renewal of contract that must be discussed in public sessions of Board meetings. Mr. Ericson said he agreed with that determination, and there would be no executive session today because it would require advance public notice, and related matters would be discussed later in the agenda under Personnel, Budget, and Fees.

6. **Discussion of LSP Board Regulatory Changes:** Mr. Ericson said that, although the need to revise the licensing examination has prevented the Board from updating its regulations, the governor has asked agencies to place a priority on identifying opportunities to streamline regulations and make them more business-friendly and user-friendly. He said Ms. Wood and Ms. Callahan had circulated a memorandum about potential changes to the Board’s regulations, and he asked the Board to continue working with stakeholders like the LSPA before year end. Ms. Rundle said several LSPA committees have discussed changes they believe are needed. **The members present agreed to take the following actions:**

- **The Board will work with the MassDEP Bureau of Waste Site Cleanup to**

send an announcement soliciting suggestions for changes to the Board’s regulations;

- The Board will post a notice on its website soliciting suggestions for changes to its regulations and inviting the public to meetings to discuss potential amendments;
- A memorandum like the December 2012 memorandum will be circulated again in Word for comment by the Board members; and
- The agenda for the LSP Board’s next meeting will include potential amendment to the Board’s regulations.

Ms. Rundle said the LSPA will again invite the Board to a meeting of the LSPA’s membership and/or leadership, and would publish an announcement soliciting comments and suggestions for potential changes to the LSP Board’s regulations.

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

New Application Docket Number 1

ID #	Applicant Name/Company Name	ARP #	REC.
1450	Guy P. Dalton/GZA GeoEnvironmental, Inc.	253	Table
8555	Jessica L. Fox/Vertex Environmental Services, Inc.	253	Table

The members present accepted the recommendation from Application Review Panel #253 that the applications submitted by Guy Dalton and Jessica Fox be tabled *and these applicants be asked to provide further information to be added to their applications as soon as possible, to maximize their chances, if their applications are approved, of taking the examination in the next exam administration.*

New Application Docket Number 2

ID #	Applicant Name/Company Name	ARP #	REC.
4683	Timothy. F. Nevins	254	A
5927	Erin M. Kirby (f/k/a Erin M. Gorman)	253	A

A motion was made and seconded to accept the recommendation from Application Review Panel #254, i.e., that the applications submitted by Timothy Nevins and Erin Kirby be approved and that they be found eligible to take the exam. The motion was approved unanimously.

- C. **Correspondence from Applicant Regarding Hardship:** The members present discussed a written request dated April 22, 2013, from a prospective applicant, regarding hardship caused by the requirement that at least three years of the relevant professional experience (“RPE”) must have occurred within five years prior to submission of the

application. The applicant stated that due to a poor economy and a layoff, the applicant had 26 months of RPE within the last five years, and wished to know whether the Board would consider his/her application. Several Board members discussed concerns that, if the Board allowed one person special consideration, other similar requests would follow. **After discussion, a motion was made and seconded to deny the prospective applicant's request. The motion passed unanimously. The Board asked the staff to inform the applicant that three years of RPE is an important component of the application.**

- D. Request for Extension of Exam Eligibility Date:** The members present also discussed a written request dated August 21, 2013, for an extension of the two-year period in which an approved applicant may take the LSP licensing examination. The request stated the applicant had been completing a master's degree, thus had not had time to take the exam. The members present noted the applicant had taken the exam once, but did not take it again. **A motion was made and seconded to deny the request. The motion passed unanimously.**
- E. Second Request for Extension of Exam Eligibility Date:** The members present discussed a written request dated August 23, 2013, for a waiver so that the applicant could either take the exam before the next administration of the exam, to avoid the expiration of the eligibility period on September 15, 2013, or extend the date of eligibility. The request did not include any explanation. **A motion was made and seconded to deny the request. The motion passed unanimously. Ms. Rundle said she encouraged the Board to explain these decisions and build a record. Members asked that the staff inform applicants that the two-year limitation on taking the exam is important, and applicants are encouraged to reapply.**
- 8. 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
9810	Patrick	D.	Corcoran
9458	Rachel	B.	Leary
4437	James	P.	Parker
3206	Jeffrey	P.	Lambert
3606	Michael	A.	Penzo
5121	Philip	D.	McBain
3494	Theresa	A.	Miller-Kleiner
2261	Richard	J.	Hughto
9197	Christopher	G.	Mariano
2893	Andrea	D.	Stiller
6501	Richard	E.	Warren
7496	Valerie	A.	Miller
9687	Virginia	A.	Irvine
4284	Bruce	C.	Ross
5373	James	B.	Matz
1500	Douglas		Pierce

Renewal Docket #2

Old Renewal Date: October 30, 2012

New Renewal Date: October 30, 2016

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 #	LSP Name
7933	Riccio, Anthony R.

Renewal Docket #3

Renewal Date: April 30, 2013

New Renewal Date: April 30, 2016

Completed requirements within 90-day extension:

LSP #	First	Middle	Last
4894	Ernest	C.	Ashley

Renewal Docket #4

Renewal Date: July 30, 2013
New Renewal Date: July 30, 2016
Have requested a 90-day extension:

LSP #	First	Middle	Last
6645	Katherine	A.	Fogarty
4513	Marilyn	M.	Wade
6364	Christophe	M.	Henry

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

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

9. Other Licensing-Related Matters:

A. New Panel Assignments and Scheduling. There were no new applications to be assigned to Application Review Panels.

B. Applicant Hardship Request. The hardship requests were considered above at item 7C.

C. Appeals Status Report. Ms. Coles-Roby reported that there are no pending appeals regarding the Board's denial of a license application.

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
9282	January 3, 2013	Inactive	Welsh	Mark
9003	May 18, 2011	Inactive	Cummings	Robert
7613	January 25, 2012	Inactive	Warren	Robert
9392	April 20, 2012	Inactive	Frothingham	Benjamin

Board members noted that under the Board's regulations, an LSP may not remain on inactive status for more than two years, after which the LSP's license lapses. The members requested that the names of such LSPs be removed from the Inactive Status Report.

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

At approximately 3:40 p.m., Mr. Gallinaro left the meeting.

F. **Letter from Wes Stimpson.** Mr. Ericson said the letter from Mr. Stimpson would be discussed in detail at a future meeting, but it was helpful because it gives the Board an opportunity to discuss its past practices, the exact requirements of the current regulations, and whether they should be different. Mr. Stimpson said since the LSP program was first established, the Board's regulations required applicants to have experience making decisions in the course of a site cleanup project about how to satisfy the cleanup regulations, the client, and the public interest, and this experience cannot be tested in the licensing examination. He said his letter asks why the Board wavered from those requirements if the licensing regulations have not changed. Members said the Board usually relies on the Application Review Panel's ("ARP") understanding of the applicant, and here the Board knew the applicant. Members said it is complex to work with a client. Mr. Ericson said this letter raised important issues for the Board to review as part of updating the Board's regulations. Ms. Coles-Roby said that records of ARP deliberations are subject to the Public Records Law.

10. **Examinations:**

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

- **John L. Cuddihee (#2832) June 12, 2013**
- **Edward G. Kontos, III (#2304) June 12, 2013**

E. **Dates of Next Exam:** The staff reported that the dates for the next administration of the exam will be November 29, 2013, December 4, 2013, and December 11, 2013, and that all applicants approved to take the exam will be accommodated pursuant to the Board's instructions at its meeting on June 20, 2013.

F. **Exam Challenges:** Ms. Coles-Roby reported that many applicants who fail the exam are challenging some of their exam questions, because recently a successful challenge raised a failing score to a passing score. She said currently, one applicant is challenging 17 questions, and another is challenging 10 questions, and the challenges have become burdensome for the technical advisor who reviews them. She also said challengers expect to receive the results of their challenges before the next exam administration. Members instructed the staff to tell the challengers that the Board will not schedule a special administration of the exam and may not resolve challenges before the next exam administration, thus the challengers should register for the next exam. **Members said the Exam Committee should receive copies of the exam challenges.**

G. **Exam Subcommittee:** Members said they would send Ms. Coles-Roby their comments on the Confidentiality Agreement she proposed. Mr. Stimpson said Committee members were concerned if the exam materials were sent electronically to Exam Committee members, because the exam materials could then be accessed by others. Members said the committee should be able to use modern technology to make it more efficient. **Members instructed the staff to schedule four days of face to face meetings to review the existing exam questions and draft new questions with the MassDEP technician who can edit the electronic exam.**

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:** Ms. Coles-Roby reported that the position of Senior Investigator has been posted and a panel including her, Ms. Read, Ms. Wyche, and Human Resources staff from MassDEP will interview a slate of about 10 applicants beginning in the next few weeks, under procedures required by MassDEP. Board members asked whether the pool of applicants have the technical qualifications necessary for this position, and said they were concerned that the Board had not had any input. Mr. Ericson said he could get technical help from MassDEP for reviewing applicants. Board members discussed how they could have meaningful input into the selection process for this position, such as preparing interview questions, sitting on the interview panel, or applicants could be asked to complete a homework assignment. **Mr. Ericson and Ms. Coles-Roby stated they would review these options and report back to the Board.**
- 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: Ms. Rundle said the LSPA would submit an article profiling the new Board members.

17. Scheduling of Future Meetings: The Board discussed meeting on a regular monthly basis, discussed potential days for such meetings, and Mr. Ericson said he would send a schedule of monthly meetings through June 2014. A location for the next meeting is to be determined.

18. Adjournment: The meeting was adjourned at approximately 5:00 p.m.