



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

MINUTES
of
BOARD MEETING
Held on June 20, 2018
[Approved: August 15, 2018]

Meeting Location: Massachusetts Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Prepared by: L. Williamson

List of Documents Used at the Meeting:

1. Agenda
 2. Draft Minutes of Meeting held on May 16, 2018
 3. Renewal Dockets #1, #2, #3, #4, and #5
 4. Letter from the LSPA re: February 2018 Monthly Bulletin Q&A, dated May 1, 2018
1. **Call to Order:** Maria Pinaud called the meeting to order at approximately 1:30 p.m. Also present were David Austin, Kathleen Campbell, Kirk Franklin, Gregg McBride, Marc Richards, and James Smith. Board members absent were Gail Batchelder, Debra Listernick, and Farooq Siddique. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle (Executive Director of the LSP Association), and Deborah Marshall-Hewlitt (MassDEP).
 2. **Announcements:** No announcements were made.
 3. **Agenda:** Mr. McBride requested that a discussion regarding meeting scheduling be added to the Agenda.
 4. **Minutes of Meeting Held on May 16, 2018:** The members present reviewed the draft minutes of the meeting of the Board held on May 16, 2018. **A motion was made and seconded to approve the May 16, 2018 minutes as written. The motion passed unanimously.**
 5. **Decisions Regarding Licensing of Applicants:**
 - A. **Application Review Panel Recommendations:** The staff presented the following Application Docket:

| ID # | Applicant Name/Company Name | ARP # | REC. |
|------|---|-------|------|
| 7240 | Heather A. Ballantyne/GEI Consultants, Inc. | 297 | A |

Ms. Coles-Roby reported that the members of ARP #297 recommended approving Ms. Ballantyne’s application. She stated that Ms. Pinaud thought the applicant had a good range of MCP experience, demonstrated experience with variety of contaminants, worked on PIP sites, and had good references. Mr. Smith indicated that the applicant demonstrated sufficient relevant professional experience and Ms. Campbell agreed that the applicant had the necessary qualifications and demonstrated breadth and depth of experience.

A motion was made and seconded to accept the recommendation from Application Review Panel #297 that the application submitted by Ms. Ballantyne be approved and that she be found eligible to take the exam. The motion was approved unanimously.

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

Renewal Docket #1

Renewal Date: April 30, 2018

New Renewal Date: July 29, 2018

Has requested a 90-day extension:

***Correction to the May Docket**

| | LSP # | First | Middle | Last |
|---|-------|--------|--------|----------|
| 1 | 3427 | Donald | J | Maggioli |

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

Renewal Docket #2

Renewal Date: July 30, 2018

New Renewal Date: July 30, 2021

Have completed all requirements for renewal:

| | LSP # | First | Middle | Last |
|---|-------|---------|--------|----------|
| 1 | 3798 | William | P | Kenney |
| 2 | 4505 | Edward | J | Weagle |
| 3 | 7432 | Daniel | W | Felten |
| 4 | 8137 | Jeffrey | S | Holden |
| 5 | 8641 | Stewart | A | Wiley |
| 6 | 9068 | David | A | Melycher |

| | LSP # | First | Middle | Last |
|----|--------------|--------------|---------------|--------------|
| 7 | 6815 | Joel | S | Loitherstein |
| 8 | 9903 | Gary | W.T. | Hedman |
| 9 | 9552 | Robert | S | Rego |
| 10 | 5107 | Gregory | R | Morand |

A motion was made and seconded to renew the licenses of the LSPs on Renewal Docket #2 for the three-year period ending on the date indicated. The motion was approved unanimously.

Renewal Docket #3

Renewal Date: January 30, 2018

New Renewal Date: July 30, 2021

License expired on January 30, 2018 for not submitting renewal documents.

Individual has completed renewal requirements within
1-year deadline and is now eligible for active status:

| | LSP # | First | Middle | Last |
|---|--------------|--------------|---------------|-------------|
| 1 | 8614 | Todd | E | Piskovitz |
| 2 | 5427 | Raimundo | J | Matos |

A motion was made and seconded to renew the licenses of the LSPs on Renewal Docket #3 for the three-year period ending on the date indicated. The motion was approved unanimously.

Renewal Docket #4

Renewal Date: October 30, 2017

New Renewal Date: July 30, 2021

License expired on October 30, 2017 for not submitting renewal documents.

Individual has completed renewal requirements within
1-year deadline and is now eligible for active status:

| | LSP # | First | Middle | Last |
|---|--------------|--------------|---------------|-------------|
| 1 | 1808 | John | J | McHugh |

A motion was made and seconded to renew the license of the LSP on Renewal Docket #4 for the three-year period ending on the date indicated. The motion was approved unanimously.

Renewal Docket #5

Renewal Date: July 30, 2017

New Renewal Date: July 30, 2021

License expired on July 30, 2017 for not submitting renewal documents.
Individual has completed renewal requirements within
1-year deadline and is now eligible for active status:

| | LSP # | First | Middle | Last |
|---|--------------|--------------|---------------|-------------|
| 1 | 9865 | William | C | Beyer |

A motion was made and seconded to renew the license of the LSP on Renewal Docket #5 for the three-year period ending on the date indicated. The motion was approved unanimously.

C. New Panel Assignments: The following Board members were assigned to Application Review Panel #298: Mr. Richards, Ms. Pinaud, and Mr. Franklin.

6. Other Licensing-Related Matters:

A. Appeals Status Report: There were no pending appeals of any denials by the Board of license applications.

B. 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 |
|-------------------|----------------------------|-----------------------|------------------|-------------------|
| 9070 | January 30, 2017 | Inactive | Kemper | Timothy |
| 9830 | March 1, 2017 | Inactive | Gates | Richard |
| 5019 | December 4, 2017 | Inactive | Rein | Robert |

C. Total Number of Active LSPs: As reported in the Agenda, the total number of Active LSPs was 503 as of June 11, 2018.

7. Examination Reviews: Ms. Coles-Roby reported that three of the four individuals who did not pass the May 2018 exam have come in for exam reviews, and one submitted a challenge. She reported that the challenge has been reviewed by the Board's technical expert, who recommended denial. She stated that she forwarded the challenge and recommendation to the exam challenge subcommittee for review and is waiting for a response. Ms. Coles-Roby reported that the next exam will be offered in late November/early December 2018.

8. Continuing Education Committee Report:

A-B. Report on Course and Conference Approval Requests: Mr. Austin reported that the Committee met earlier in the day and made the following course recommendations to the Board:

- a. Rutgers: *Forensic Geochemical and Geophysical Statistical Data Visualization* (6 Technical credits, July 27, 2018, Somerset, NJ).
Committee Recommendation: **Approve**
- b. Remediation Seminars: *Optimization and Monitoring for Bioremediation of Chlorinated Compounds* (4 Technical credits, July 26, 2018, Warwick, RI).
Committee Recommendation: **Approve**
- c. LSPA: *The Basics of Monitored Natural Attenuation* (4 Technical credits, date and location to be determined).
Committee Recommendation: **Approve**

A motion was made and seconded to accept the Continuing Education Committee's recommendations. The motion passed unanimously. Ms. Campbell abstained from voting.

9. **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.

10. **Other Business:**

A. Public Records Request: Ms. Coles-Roby reported that the Board received a Public Records Request on May 25, 2018 from a Washington D.C. law firm. She stated that the LSP who was the subject of the Request had been the subject of two prior requests by other entities. She stated the documents were provided electronically on May 31, 2018, and the LSP was notified.

B. Website Update: Ms. Coles-Roby reported that all of the Board members' contact information has been taken off the website so as to not encourage the public to contact Board members directly about official Board business. She stated that the staff should be the buffer between LSPs and the Board members.

Ms. Coles-Roby reported that the online searchable database is still problematic, and she has requested that it be fixed. She stated that the "State" field automatically populates as Massachusetts, which is an issue for LSPs who are located in another state, such as Rhode Island or New Hampshire. She reported that the staff has received numerous phone calls about the issue.

Ms. Coles-Roby reported that the staff's email addresses will soon be changing from @state.ma.us to @mass.gov. Ms. Rundle asked if this change will apply to MassDEP staff as well. Ms. Pinaud responded that it will apply to all state employees.

C. Personnel, Budget, and Fees: Ms. Coles-Roby stated that she had approved the posting for the General Counsel position. She stated the posting should be coming out

in the next couple of weeks, and interviews will be conducted this summer.

- D. Online Fee Payments:** Ms. Coles-Roby reported that she has been notified that online fee payments are coming. She stated LSPs will be able to pay fees by credit card, or bank-to-bank. She stated the rollout is estimated for August 2018. Ms. Coles-Roby stated that the staff will need to find a way to handle renewal documents electronically, and a separate email address specifically for the submittal of renewal documents may be necessary.
- E. Status of Board Member Replacements by Governor:** Ms. Pinaud reported that she and Ms. Coles-Roby met with MassDEP's Chief of Staff, Brian Ferrarese, to discuss the status of Board member replacements. She stated that they were told the administration is looking for applicants for the vacant environmental slot, and they were encouraged to reach out to potential candidates; however, they were not given the green light to post the vacancy. She stated the point of contact is Mr. Ferrarese, and candidates will be vetted through EEA. Ms. Coles-Roby stated that interested parties should send a cover letter, resume, and letters of reference to her. She stated that she has also requested information about Mr. Smith's Request for Reappointment which is still pending. Mr. Austin asked if this would be a long process considering the Board can't even post the position. Ms. Pinaud stated that she was not aware how long it would take. Mr. Austin noted that last time it took so long that candidates ended up dropping out. Mr. Richards asked about the term schedule for all the current Board members. Ms. Coles-Roby stated that she provided that information to the Chief of Staff, and almost everyone on the Board's term is up. She stated the term is four years but Board members continue to serve until they are reappointed or resign.
- F. 309 CMR 9.00 and 309 CMR 8.00 Proposed Amendments:** Ms. Coles-Roby stated that a subset of the Board met earlier in the day and reviewed the proposed revisions to 309 CMR 9.00. She stated the Board initiated a discussion about LSPA's suggestion of implementing a retired category, and the discussion will continue at the next meeting. Ms. Coles-Roby stated the Board also began reviewing 309 CMR 8.00 and completed the first two sections. She stated review of 309 CMR 8.00 will continue at the next meeting.
- G. 309 CMR 2.02- Relevant Professional Experience:** Ms. Coles-Roby stated that this discussion will be postponed until the next meeting.
- H. LSPA Query- 309 CMR 4.03(14):** Ms. Rundle stated that the LSPA's Loss Prevention Committee was concerned about the answer to a Q&A that was presented in the Board's February 2018 Monthly Bulletin. She stated the Committee asked the LSPA Board to write a letter to the Board asking for clarification. The Q&A pertained to an LSP's obligations under 309 CMR 4.03(14). Specifically, the Committee was concerned over the use of the terms "fully" and "all" in the sentence: "Be sure to fully describe all material facts, applicable statutes, guidance, or regulations to the prospective client." Ms. Rundle stated that it would be impossible to meet this expectation. She stated this language is not from the regulations but appears to be an

interpretation. She stated LSPs are accustomed to reading MassDEP's Q&A's and want to know if the Board intended this to be guidance. Ms. Coles-Roby stated that the staff no longer has time to do the Bulletin so there will be no further issues. She stated the interpretation pertains to what is knowable at the time. She stated the reasonable man standard as is covered by 309 CMR 4.0 and requires LSPs to act in good faith and make a reasonable effort. She stated an LSP can only be responsible for what is known at the time. Ms. Rundle stated that LSPs often encounter unexpected situations when working at a site that cannot be predicted at the outset. She stated an LSP may not know at the beginning that a particular policy may eventually become applicable at a site. Ms. Campbell stated the terms "fully" and "all" add extra emphasis and can cause strife. Mr. McBride agreed. Ms. Pinaud added that a Q&A cannot be more stringent than the regulations. She suggested the Board issue an update or retraction to the Q&A. Ms. Coles-Roby agreed to issue an update to the response. Mr. Smith stated that it would still be valuable for the Bulletin to be issued periodically when the Board has information it would like to disseminate to all LSPs, such as the upcoming institution of online fee payments. Ms. Coles-Roby stated the staff can still make announcements through its email list.

I. Meeting Scheduling: Mr. McBride suggested that the Board consider listing the start time for all three meetings as 12:30 p.m., instead of 30 minutes apart, so that the Board could eliminate the gaps between the meetings. The other Board members voiced their support of the suggestion. Mr. McBride stated that he served on a Conservation Commission where this was instituted. Ms. Coles-Roby stated that she will check with the Attorney General's office. She stated that she forwards the meeting schedule to the Secretary of State 48 hours prior to each month's meeting. She stated she will look into it and report back at the next meeting.

11. Future Meetings: The Board's next meeting will be on August 15, 2018, in the Northeast Regional Office of MassDEP in Wilmington.

12. Adjournment: A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 2:17 p.m.