



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

MINUTES
of
BOARD MEETING
Held on January 16, 2014
[Approved: February 26, 2014]

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

Prepared by: L. Read

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on November 21, 2013
3. Renewal Dockets #1, #2, and #3
4. Letter dated August 14, 2013 to the Board from Wesley Stimpson, with attachment
5. List of Old Business

1. **Call to Order:** Benjamin Ericson called the meeting to order at approximately 1:32 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, John Guswa, Debra Listernick, Robert Rein, James Smith, and Farooq Siddique. Kirk Franklin was absent. Staff members present were Beverly Coles-Roby and Lynn Read. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA), Matthew Hackman, president of the LSPA, Wesley Stimpson, and Matthew Young.
2. **Announcements:** Mr. Ericson said the past year was very productive, and this meeting concluded his first year as chair of the Board. He said Board members can take satisfaction in the amount of work that has been done, including the work by the Exam Committee; the Board's ongoing discussions of regulatory reform; concluding a significant disciplinary case; and important conversations about the Open Meeting Law and how compliance with that Law helps the Board do its work. He also said the Board solidified a schedule of consistent meetings, added four new members while maintaining a smooth pace of work, and even with staff issues, has gotten a lot done. He said in calendar year 2014, the Board expects to complete its new licensing examination and regulatory reform. He stated that paying attention to time standards for the Complaint Review Teams is a good goal, depending on staffing levels, and the discussion of application review procedures will continue in 2014.
3. **Agenda:** The Agenda was adopted as written.

4. **Minutes of Meeting Held on November 21, 2013:** The members present reviewed the draft minutes of the meeting of the Board held on November 21, 2013, and made a small editorial change. **A motion was made and seconded to approve the November 21, 2013 minutes as amended. The motion passed unanimously.**

5. **Discussion of LSP Board Regulatory Changes:** Ms. Coles-Roby said the deadline for comments on potential amendments to the Board’s regulations has been extended to February 3, 2014. She said the content areas include: (1) fees and on-line payment; (2) re-filing of dismissed complaints; (3) approval of continuing education courses and internet courses; (4) review of license applications and the definitions of Relevant Professional Experience and Total Professional Experience; (5) challenges to examination questions; and (6) e-filing of all documents required to be submitted to the Board. She said there is a continuing need to consider complaints from the public about the regulations, their complexity, duplication within the regulations, technological changes, and the time elapsed since the last amendment. The members present discussed forming a committee to consider regulation amendments, and **Mr. Ericson, Ms. Campbell, Ms. Listernick, and Mr. Siddique volunteered to serve on Regulatory Amendment Committee. The members present asked this committee to check with the regulated community and former Board members about potential amendments.** Mr. Stimpson asked whether the Board has a target date for issuing amendments for public comment. Mr. Ericson said the Board wants to move as soon as possible, but must be realistic, and issuing proposed amendments and obtaining comment on them would no doubt take several months. Ms. Coles-Roby suggested this committee hold regular meetings and have a regular place on the Board’s meeting agenda. **Members asked the committee to put a high priority on electronic filing and other issues that have come up repeatedly, and consult the LSPA in setting priorities.** Ms. Rundle thanked the Board for extending the deadline, and said there are areas of the Board’s regulations that have received repeated comments. Mr. Hackman said the LSPA is interested in working with the Board, and has adopted policies for electronic distribution and filing that the Board might want to consider.

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

ID #	Applicant Name/Company Name	ARP #	REC.
7250	Daniel P. Gorman	256	A

The members present discussed that the Board routinely ratifies the recommendations of the Application Review Panels (ARPs), and discussed whether ARP members want to say anything to the full Board about applicants under consideration. Ms. Coles-Roby recommended that ARP members not make such comments, because the Board does not publicize the identity of Board members who serve on ARPs. Mr. Ericson said it is right for the Board both to be circumspect and to acknowledge that the ARP meetings are public meetings. Members stated there is value in bringing forward the ARP’s thinking to the Board, because the Board as a whole does not read the applications and otherwise,

the thoughts of any dissenting votes on the ARPs are lost. It was noted that the applicant approved today had one project in his most recent position, and the ARP decided he did not need to have other projects due to the scope of tasks in the one position, and the Board had considered his situation at the last meeting and instructed him to apply because it thought it was reasonable to consider his application. **A motion was made and seconded to accept the recommendations from Application Review Panel #256 that the application submitted by Daniel Gorman be approved and that he be found eligible to take the exam. The motion was approved unanimously.**

Mr. Austin, Ms. Campbell, and Ms. Listernick volunteered to serve on ARP #257.

C. Mr. Stimpson's Letter: The Board decided to complete all licensing matters on the Agenda, then consider Mr. Stimpson's letter after Agenda item #7 below.

7. License Renewal Applications:

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

Renewal Docket #1
Renewal Date: January 30, 2014
New Renewal Date: January 30, 2017
 Have completed all requirements for renewal:

	LSP #	First	Middle	Last
1	8493	Brian	F.	Klinger
2	2963	Ian	M.	Phillips
3	6799	Neil	M.	Ram
4	1847	William	A.	Simmons
5	2398	Lawrence		McTiernan
6	4021	Robert	W.	Pease, Jr.
7	2754	Gordon	T.	Bookman
8	9095	Sami	A.	Fam
9	5711	Paul	J.	McManus
10	5019	Robert	P.	Rein
11	5160	David	A.	Carlson
12	4217	John	H.	Guswa
13	6105	Anthony	F.	Andronico
14	4669	Christine	R.	LeBlanc
15	7798	Robert	A.	Dangel
16	4755	Ambrose	J.	Donovan
17	6522	James	A.	Luker, Jr.
18	8403	John	J.	Spirito

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	LSP #	First	Middle	Last
19	2259	Joseph	M.	Jammallo
20	3760	Craig	E.	Blake
21	8456	Timothy	S	Stone
22	6543	Steven	B	Shope
23	1855	Michael	R	Ainsworth
24	4492	Donald	W	Podsen
25	9342	James	D	Fitzgerald
26	7924	Jeffrey		Garretson
27	5222	Cosmo	D	Gallinaro
28	9997	J. Andrew		Irwin
29	8765	Duncan	W	Wood
30	5371	Elissa		Brown
31	9070	Timothy	W	Kemper
32	9788	David	J	Crispin
33	1148	Michael	F	Conway
34	7804	Edward	P	Van Doren
35	7343	Keith	W	Veren
36	6118	Raymond	C	Johnson
37	4966	William	J	Mallio
38	7877	David	J	Lang
39	6713	Nancy	C	Roberts
40	7755	Ralph	P	Penney
41	2349	Deborah	Z	Howell
42	2062	David	G	Austin
43	4026	Todd		Alving
44	9995	George	G	Preble
45	3972	Derek		Tomka
46	8260	Charles	E	Teale
47	7231	Robert	J	Leventry
48	8959	Anthony	M	DelTufo
49	5767	Paul		Reiter
50	9055	Michael	P	Clark
51	3264	Charles		Myette
52	2400	John	E	Adams
53	4813	Kevin		Sheehan
54	4836	James	D	Okun
55	9908	Kevin	J	O'Reilly

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	LSP #	First	Middle	Last
56	9092	James	B	O'Brien
57	1927	Russell		Fitzpatrick
58	4662	Yee	K	Cho
59	6250	Michael	J	Brown
60	1900	Janine		Commerford
61	9451	Martha	L	Zirbel
62	7351	Brian	V	Moran
63	6508	Richard	E	Doherty
64	3133	Dennis	G	Tuttle
65	8998	Andrea	E	Sewall
66	2061	James	F	Begley

Renewal Docket #2

Renewal Date: October 30, 2013

New Renewal Date: October 30, 2016

Completed requirements within 90-day extension:

LSP #	First	Middle	Last
9536	Marylou		Armstrong
1203	Michael	R.	Kulbersh
5408	Andrew		Bakinowski
6889	Caron	S	Koll

Renewal Docket #3

Renewal Date: January 30, 2014

New Renewal Date: January 30, 2017

Have requested a 90-day extension:

LSP #	LSP Name
9882	Steven Rumba
1698	Thomas P. Simmons
4078	Michael J. Pierdinock
1008	Richard Stromberg
6039	Denis D'Amore
6442	Alan E. Weiss
8412	Frank Sweet
3266	Kenneth J. Snow
9445	Brandon J. Fagan
3452	Michael J. DeRosa
8624	Linda F. Martin
6542	Kenneth T. Menzies

9763	Lawrence H. Lessard
7639	David L. Bramley
3063	Richard J. Cushing
5407	Fred K. Taylor
2140	Peter McGlew

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

Ms. Rundle said the LSPA would be happy to receive a list of LSPs who are priorities for registration for 90 days who need DEP credits. Mr. Hackman said MassDEP told him it offers enough regulatory credits for LSP renewals, and the Board should discuss this with MassDEP.

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.

8. Other Licensing-Related Matters:

A. New Panel Assignments and Scheduling. See item 6B above.

B. Appeals Status Report. There are no pending appeals regarding the Board’s denial of license applications.

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
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 563 as of January 8, 2014.

E. Mr. Stimpson’s Letter. Mr. Ericson said Mr. Stimpson’s letter dated August 14, 2013, raised issues that fit well into the Board’s regulatory reform efforts, such as the meaning of the terms “relevant professional experience” and “waste site cleanup decision making experience” in the Board’s regulations, and the record each ARP creates. Mr. Ericson said he believes those terms emphasize practical experience, including supervision of project-based work, active participation in field work, and analysis of field work, but at the same time, the regulations provide for judgment based on the whole record of the applicant’s waste site cleanup experience. He said the definitions are not a checklist, but

the Board must look at the whole applicant. He said that the particular applicant whose approval prompted the letter had a decade or more of deep experience with the MCP and what LSPs do, and reviewed a lot of LSP work, but was not a primary decision-maker out in the field, and the field work requirements were not met, even if the applicant was extremely knowledgeable. He said the letter raised the question whether such applicants meet the Board's requirements to take the LSP exam.

Mr. Stimpson said there is a distinction between real-time decision making and hindsight. Mr. Hackman said the Board's regulations place value on contemporaneous decision making, and it is fundamentally different to look at LSP decisions in hindsight versus making those decisions in the moment. Mr. Stimpson asked what skill set the Board wants, because an LSP has a lot of masters, and must make decisions in a short period based on limited information, and these skills can't be tested in an exam. Board members discussed application requirements of decision-making about what site cleanup work gets done at what time, and by whom, as a temporal process that is continually adjusted with new data from the site, as well as written work product by the applicant. Mr. Stimpson and Mr. Hackman said they believe the Board should consider actual decision-making necessary for a license, and if it is not necessary, then some applicants have been incorrectly denied for lack of such experience. The members present discussed that the letter asks the Board to review whether its decision deviated from the standards for what the terms "relevant professional experience" and "waste site cleanup decision making experience." Members said some parts of the regulations clearly must be "checked off" as met, and other parts require the Board to consider the applicant as a whole, and this applicant knew about good and bad LSP decisions in ways that would be hard to replicate. Members discussed a past denial of an applicant because his work as a paralegal was in directing environmental consultants, rather than making decisions (and some of the work at issue was governed by statutes other than M.G.L. c. 21E or the MCP). Mr. Hackman said the recent applicant had waste site cleanup decision making experience, but not practical experience. Ms. Coles-Roby asked whether a precedent has been set. Dr. Guswa said the Board's regulations state the Board can consider alternate experience to be equivalent, and he requested that the Board document the thought process of the ARPs. Board members stated that the Board did not waive the licensing requirements in this instance, they interpreted the regulations. Members noted that the key issue for every ARP is whether the applicant was a principal decision maker. Mr. Hackman asked whether the Board is bound by its own regulations. The members present said the Board is absolutely bound by its regulations, and it also interprets them and needs to make those interpretations clear. Ms. Rundle said it would be helpful if the Board issued guidance, which would improve applications and help the Board, as well. **The members present decided that Board members Ericson and Batchelder will review these issues with the help of a staff attorney and will set action items for the next meeting, possibly including the issuance of guidance or proposed amendments to the regulations. The Board will respond to Mr. Stimpson directly, in the context of the decision how it will address these issues for the regulated community and other interested parties.** Mr. Ericson thanked Mr. Stimpson for raising these issues and accommodating the Board's need to consider the issues for the community as a whole.

9. **Examinations:**

- A. **Dates of Next Exam:** Ms. Coles-Roby reported that the dates for the next administration of the exam have not yet been selected, but will be in late May or early June, 2014.
- B. **Exam Challenges:** Ms. Coles-Roby reported that there is one new challenge from the last round of exams administered in November and December 2013. Members noted that some applicants who have challenges pending might need to take the new exam.
- C. **Exam Subcommittee:** Ms. Coles-Roby reported that the subcommittee's next meeting is January 22, 2014.

10. **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: American Institute of Professional Geologists
Course Title: *Introduction to GIS for Environmental Applications*
Credits Requested: 8 Technical Credits
Committee Recommendation: **Approve**

Sponsor: Directional Technologies, Inc.
Course Title: *Horizontal Remediation Wells for Improved Site Cleanup*
Credits Requested: 8 Technical Credits
Committee Recommendation: **Approve**

Sponsor: MassDEP
Course Title: *Enforcement Under Chapter 21E*
Credits Requested: 1 Regulatory Credit
Committee Recommendation: **Approve**

Sponsor: RAM Group of Gannett Fleming
Course Title: *Evaluation of Indoor Inhalation Pathways*
Credits Requested: 16 Technical Credits
Committee Recommendation: **Approve, subject to sending date, time, location**

Sponsor: RAM Group of Gannett Fleming
Course Title: *Application of Risk Assessment*
Credits Requested: 16 Technical Credits
Committee Recommendation: **Approve, subject to sending date, time, location**

Sponsor: RAM Group of Gannett Fleming
Course Title: *Contaminant Fate and Transport Process and Modeling*
Credits Requested: 16 Technical Credits
Committee Recommendation: **Approve, subject to sending date, time, location**

Sponsor: LSP Association

Course Title: *Professionalism & Professional Ethics for LSPs and LEPs*

Credits Requested: 8 Technical Credits, approved as Course No. 1125

Committee Recommendation:

Sponsor: LSP Association

Course Title: *Study of Indoor Air Background Levels of VOCs and Air-Phase Petroleum Hydrocarbons in Office Buildings and Schools*

Credits Requested: 1 Technical Credit

Committee Recommendation: **Approve**

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

Other Business: None.

11. **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.
12. **Personnel, Budget, and Fees:** Ms. Coles-Roby reported that the staff finished sending invoices for the annual fee to all 563 licensees.

In regard to filling the Investigator position, Ms. Coles-Roby said she received instruction from the Executive Office of Energy & Environmental Affairs (EOEEA) on a Thursday that she must provide four candidates to EOEEA by the following Monday, which was why the Board was not involved in selecting the final candidates. She said the staff conducted two interviews of each candidate, using questions that were approved by MassDEP; the staff also reviewed writing samples and checked two or three references per candidate, and jointly ranked the four candidates. She said the top candidate had ten years of regulatory and policy-making experience in G. L. c. 21E, worked in Audits and Risk Reduction, and has a degree in, and currently holds a position in, Environmental Science; the second-ranked candidate is an experienced LSP, and has a degree in, and currently holds a position in, Environmental Science; the third-ranked candidate holds a degree in Environmental Science and has several years of experience; and the fourth-ranked candidate has a degree in Environmental Geoscience, and is currently a health and safety contractor for the U.S. Mr. Ericson apologized for not bringing information about the candidates to the Board before submitting it to EOEEA, but said MassDEP informed him with no warning that the candidates' files must be submitted to EOEEA or else they must be re-posted and the selection process would start over. He said that top candidates are extremely good, with great experience. Ms. Coles-Roby said that EOEEA told her they would either choose the top candidate or tell her why they had not chosen the top candidate.

13. **Public Records, Open Meeting Law Requests:** Ms. Coles-Roby said she is continuing to assemble documents to respond to requests under the Public Records Law and the Open

Meeting Law, and there was one more complaint to the Attorney General and one more to the Secretary of State. Mr. Ericson said that for minutes of Executive Sessions that the Board has decided can be released, the Board's obligation is to provide them to a requestor, but there is no obligation to post them on the Board's website. Ms. Coles-Roby and Mr. Ericson said the minutes were produced without redactions.

14. Other Business

LSPA News Topic: Ms. Rundle suggested the LSPA could publish profiles of each Board member. She also suggested the Board could publish updates about its work on the exam, the current number of LSPs, revising the regulations, a wrap-up of 2013 and upcoming projects in 2014.

Action Items List. Ms. Coles-Roby distributed a chart of Old Business action items. Board members said the chart is great. Ms. Coles-Roby stated that most of the Old Business can be placed on the Agenda for the following meeting.

16. Future Meetings: The Board's next meeting will be February 26, 2014, at the Central Regional Office of MassDEP, and other meetings are planned as follows:

- March 20, 2014 – Western Region
- April 17, 2014 – MassDEP Boston
- May 15, 2014 – Northeast Region
- June 19, 2014 – Southeast Region

17. Adjournment: By unanimous vote, the Board meeting was adjourned at approximately 4:29 p.m.