



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

MINUTES
of
BOARD MEETING
Held on August 17, 2016
[Approved: September 21, 2016]

Meeting Location: Massachusetts Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

Prepared by: L. Williamson

List of Documents Used at the Meeting:

1. Agenda
 2. Draft Minutes of Meeting held on June 16, 2016
 3. Renewal Dockets #1, #2, #3 and #4
 4. List of Action Items for LSP Board
 5. Email from applicant re: July 13, 2016 Exam Results
 6. Draft Continuing Education regulation revisions
1. **Call to Order:** Maria Pinaud called the meeting to order at approximately 2:15 p.m. Also present were Gail Batchelder, Kathleen Campbell, Debra Listernick, Robert Rein, Farooq Siddique, and James Smith. Board members absent were David Austin, Kirk Franklin, and John Guswa. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA), Wesley Stimpson (LSP) of WES Associates, and Michael Penzo (LSP).
 2. **Announcements:** Ms. Pinaud informed the Board that a hiring freeze is currently in effect for Massachusetts state agencies. Ms. Coles-Roby stated that she is hopeful that a waiver will be issued for the General Counsel position so it can still be filled.
 3. **Agenda:** Ms. Coles-Roby requested that an email from the applicant regarding the July 13, 2016 exam be added to the Agenda, as well as a telephone conversation she had with the New Jersey LSRP Board's new Executive Director.
 4. **Minutes of Meeting Held on June 16, 2016:** The members present reviewed the draft minutes of the meeting of the Board held on June 16, 2016. **A motion was made and seconded to approve the June 16, 2016 minutes as written. The motion passed unanimously.**

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

ID #	Applicant Name/Company Name	ARP #	REC.
2570	Stuart S. Manley/GHD Services, Inc.	281	A
3412	Bryan J. Massa/Lightship Engineering	281	D

Ms. Pinaud asked the ARP to briefly describe the reasons for their recommendations. Ms. Coles-Roby reported that Mr. Manley was a reapplication due to expired eligibility. She stated that the panel members concurred that his current application continued to demonstrate the required relevant professional experience. The panel recommended that Mr. Manley’s application be approved. Ms. Coles-Roby stated that the panel recommended that Mr. Massa’s application be denied because of a deficiency in principal decision making experience. The panel determined the applicant met the total professional experience requirement of eight years, but failed to meet the relevant professional experience requirement. The panel also noted that the applicant did not provide a college transcript. **A motion was made and seconded to accept the recommendation from Application Review Panel #281 that the application submitted by Mr. Manley be approved and that he be found eligible to take the exam, and the application submitted by Mr. Massa be denied. The motion was approved unanimously.**

6. **License Renewal Applications:** The staff presented the following License Renewal Dockets:

Renewal Docket #1
Renewal Date: July 30, 2016
New Renewal Date: July 30, 2019
 Has completed all requirements for renewal:

	LSP #	First	Middle	Last
1	3206	Jeffrey	P	Lambert
2	1548	James	T	Curtis
3	7236	Steven	T	Fleming
4	2893	Andrea	D	Stiller
5	9810	Patrick	D	Corcoran
6	6260	Peter	P	Burnell
7	5888	James	J	Soukup
8	4437	James		Parker
9	2961	Brian	J	Miller
10	2832	John	L	Cuddihee
11	3194	Elliot	B	Jacobs

Minutes of LSP Board Meeting, August 17, 2016

	LSP #	First	Middle	Last
12	9687	Virginia	A	Irvine
13	3835	Jerry	J	Tolosko
14	5022	Robert	A	Francis
15	2304	Edward	G	Kontos, III
16	3606	Michael	A	Penzo
17	4396	Brian	J	Horan
18	4284	Bruce	C	Ross
19	6161	Patricia	M	Pinto
20	4513	Marilyn	M	Wade
21	6501	Richard	E	Warren
22	5995	Allen	G	Wyman
23	4828	Deidre	R	Winterburn
24	5323	James	B	Matz

Renewal Docket #2

Renewal Date: July 30, 2016

New Renewal Date: October 28, 2016

Have requested a 90-day extension:

	LSP #	First	Middle	Last
1	7496	Valerie	A	Miller
2	2261	Richard	J	Hughto
3	8848	Jedd	S	Steinglass
4	3494	Theresa	A	Miller-Kleiner
5	6645	Katherine	A	Fogarty
6	3373	Timothy	J	Snay
7	9458	Rachel	B	Leary

Renewal Docket #3

Renewal Date: July 30, 2015

New Renewal Date: July 30, 2019

License expired on July 30, 2015, 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	3335	Robert	I	Patten

Renewal Docket #4

Renewal Date: April 30, 2016

New Renewal Date: April 30, 2019

Completed requirements within 90-day extension:

	LSP #	First	Middle	Last
1	3560	Michael	P	Flynn
2	4354	Christopher	E	Gill
3	1259	James	K	Sullivan

Motions were made and seconded to renew the licenses of the LSPs on Renewal Dockets #1, #3, and #4 for the three-year periods ending on the dates indicated. The motions were approved unanimously.

A motion was made and seconded to grant the LSPs on Renewal Docket #2 a 90-day extension. The motion was approved unanimously.

7. Other Licensing - Related Matters:

A. Application No. 279 C. Paradis: Ms. Coles-Roby reported that Mr. Paradis' application had been denied by the Board at the April 21, 2016 meeting due to insufficient relevant professional experience (RPE), and a denial letter was issued to him on May 24, 2016. She had informed the Board at the June 16, 2016 meeting that Mr. Paradis submitted a letter indicating his intention to appeal the decision. At the June meeting the Board members decided it would be beneficial for the full Board to review Mr. Paradis' application for further discussion at the August meeting. Ms. Coles-Roby stated the ARP felt the applicant's references did not support that he had the required number of years of experience as a principal decision-maker. She stated that the panel indicated that a large portion of Mr. Paradis' experience consisted of being a field team leader and managing data. She stated the panel agreed the applicant had less than the required five years of relevant professional experience. Ms. Listernick reported that the denial letter that was issued to Mr. Paradis states that the applicant had four years of RPE and that his references indicate only one year of RPE. Mr. Siddique noted that the panel members did not have the opportunity to review the letter before it was issued and it would be beneficial to have the ARP members review denial letters in the future. Ms. Listernick reported that one of the applicant's references states that, during the last year or two, the applicant took on more complex sites and managed more of the decision-making process for the LSPs. Ms. Listernick and Mr. Siddique explained that although the applicant was claiming RPE for the entire four years of being in that position, the reference only confirms one to two years. They explained that the description of duties and responsibilities provided by the applicant for his most recent position did indicate a more principal decision-making role than was indicated in

his other job position. They informed the Board that the panel had agreed to award the applicant four years of RPE for his most recent position, but that, in their opinion, he had not demonstrate the five years of RPE as required by the regulations. Mr. Rein stated he reviewed Mr. Paradis' application and he agrees with the panel's conclusion and thought that awarding four years of RPE was being generous. Ms. Pinaud stated that she also agreed with the ARP's recommendation and felt the application was deficient. Mr. Smith stated that the applicant seems to have a lot of experience in the field, and shouldn't be docked for that work. Dr. Batchelder stated that it seems that the applicant was conducting task management in the field as opposed to principal decision making. She indicated that field work had always been considered by the Board to be task management. The Board also discussed the potential inconsistency in determination of RPE amongst the members and noted that the issue of RPE clarification has been on the Action Items list for some time. Ms. Coles-Roby stated she will set up a meeting with Ms. Pinaud, Dr. Batchelder and herself to begin working on the issue. The Board also agreed that denial letters should be reviewed by ARP members before being issued.

Dr. Batchelder stated that Mr. Paradis has the right to appeal the Board's denial and to clarify what he wrote in his application. She stated that he may not, however, supply brand new information. Mr. Smith suggested the applicant be informed that the full Board agreed with the initial decision of denial and that he has the right to come in for a hearing; or has the option to re-apply. Ms. Coles-Roby asked the Board if they were going to allow Mr. Paradis to bring anything else with him to the hearing. Ms. Pinaud stated, and all members agreed, that the Board will not accept any new material, but Mr. Paradis may provide clarification of the information presented in his application. **A motion was made and seconded to uphold the ARP's decision to deny the application. The motion passed unanimously.**

- B. New Panel Assignments and Scheduling:** The following Board members were assigned to Application Review Panel # 282: Ms. Pinaud, Mr. Rein, and Mr. Smith.
- C. Appeals Status Report:** None.
- D. Expired LSP Licenses - Failure to Pay Annual Fees:** Ms. Coles-Roby stated that certified letters were issued on July 12, 2016 to five LSPs who did not pay their annual fees informing them that their license has been revoked in accordance with 309 CMR 2.09. She stated these LSPs include James Barrett (#6054), Mark Worthington (#8316), Dennis Tuttle (#3133), Russell Fitzpatrick (#1927), and Michael Conway (#1148). Ms. Coles-Roby reported that annual fee invoices were issued in December 2015 and were due by March 1, 2016. Certified letters were issued on March 10, 2016 and April 12, 2016 warning the LSPs that their license would be revoked if payment was not received by July 10, 2016.

Ms. Rundle stated that many LSPs are expected to retire over the next several years. She stated that some LSPs would like it if the Board had a category for retired licenses, similar to Professional Engineers. Ms. Rundle indicated that some LSPs would like to

have some way of showing they were an LSP, but are no longer practicing. The Board discussed the implications of such a status. Dr. Batchelder stated that retired LSPs would have to be cut off from submitting DEP documents and offering opinions. Ms. Coles-Roby stated that regulatory changes would need to occur.

E. 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
7613	July 22, 2015	Inactive	Warren	Robert
9921	September 1, 2014	Inactive	DelMarco	David
9451	February 12, 2016	Inactive	Zirbel	Martha
8501	January 22, 2015	Inactive	Taliadouros	Kleo

F. Total Number of Active LSPs: As reported in the Agenda, the total number of Active LSPs was 531 as of August 9, 2016.

8. Examinations:

A. Exam Report - July 2016: Ms. Coles-Roby stated that the exam was offered on July 13 and July 20, 2016. She reported that ten people took the exam, and three passed. She stated that the cut score indicated a passing score of 77.6%, or 124 questions. Mr. Stimpson asked how many of the ten who took it in July were first-time takers. Ms. Coles-Roby indicated that all had taken the exam before, some numerous times, including one individual who has taken it five times. Ms. Coles-Roby stated that the individual who was granted an extension at the June meeting to extend his eligibility to sit for the July offering did sit for the exam, but did not pass. Ms. Coles-Roby reported that MassDEP's servers were shut down for several days beginning on July 18th due to viruses, and because of this, the staff was forced to offer the paper exam to the July 20th takers. She stated all were notified ahead of time that the electronic version would not be available and the paper exams would be administered. All the paper exams were manually graded by a staff member and then double checked by a second staff member.

B. Exam Challenges: Ms. Coles-Roby stated that two individuals who took the July 2016 exam have come in for reviews, one of which submitted challenges. She reported that the one set of challenges has been sent to John Fitzgerald (MassDEP) for his review and recommendations, and will be forwarded to the Exam Challenge Committee once complete. Ms. Coles-Roby stated that she has several more exam reviews scheduled in the next few weeks.

C. Exam Challenge Inquiry: Ms. Coles-Roby stated that she received a request from an individual who took the exam in July 2015, and successfully challenged one question. She stated the individual has asked that the question which was allowed be disclosed to him. Ms. Coles-Roby stated she told him that she could not provide him with a copy of the question, and he then asked if she could tell him the subject matter of the question. Ms. Coles-Roby asked the Board how they would like her to respond to the request.

The Board members agreed that Ms. Coles-Roby should inform the individual that neither the question nor the subject matter can be disclosed.

D. Email from Applicant Regarding July 13, 2016 Exam: Ms. Coles-Roby stated that she received an email from one of the individuals who took the July 13th exam. The individual states in his email that he felt the July 2016 was more difficult than the July 2015 exam, and is requesting that the exam be offered again before the end of the year. Ms. Coles-Roby stated that this individual sat for the July 2015 exam and the July 2016 exam, and has exam challenges pending. Dr. Batchelder asked if this individual would pass the exam if all his challenges were approved. Ms. Coles-Roby confirmed he would meet the passing score if all his challenges were approved. Ms. Listernick asked why the exam would not be offered again in December. Ms. Coles-Roby responded that the third exam needs to be completed and it is not administratively feasible for the staff to have another offering this year. She stated that the exam has already been offered in April and July. Mr. Stimpson asked which version of the exam was offered in April 2016. Ms. Coles-Roby stated that the old version of the exam was offered one last time in July of 2014, the new exam (100.1) was offered in July 2015 and again in April 2016 to first time takers only, and the second exam (100.2) was offered in July 2016. She stated that the third exam (100.3) needs to be created. Dr. Batchelder stated that the Board is not obligated to offer the exam more than once per year. Ms. Listernick stated that the Board has not discussed not offering the exam in December. Ms. Coles-Roby stated that the staff has other obligations, including a trial for one of the disciplinary cases and hiring an attorney, and it is not feasible to pull the third exam together and have another offering by the end of the year. The Board members discussed the process for creating the third exam. Mr. Stimpson asked if there were extra questions available that had not been used on the first or second exam. Ms. Coles-Roby responded that there were some new questions available. Dr. Batchelder stated that even though the third exam is a hybrid of the first two, the Committee still needs to go through all the questions to check for duplications and to make sure one question does not give away the answer to another. Mr. Smith asked if the intention was to get back to biannual offerings in 2017. Ms. Coles-Roby said yes. Dr. Batchelder asked when this particular individual's eligibility expired. Ms. Coles-Roby responded his eligibility expires in April 2017. The Board members asked Ms. Coles-Roby to contact the individual and suggest he wait to hear the outcome of his pending challenges.

9. Continuing Education Committee Report:

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

- a. MassDEP: *MCP Audit/Enforcement 2016-Case Studies* (4 DEP Regulatory credits, November 15, 2016 and December 1, 2016, Boxborough, MA).
Committee Recommendation: **Approve**

- b. MassDEP: Vapor Intrusion Assessment and Mitigation in Massachusetts: Status of Sites, Findings from the Field, and Guidance for Practitioners (4 DEP Regulatory credits, October 17, 2016, Amherst, MA).
Committee Recommendation: **Approve**
- c. EPOC: Sonic Drilling Overview and Field Demonstration (4 Technical credits, October 2016, Durham, CT).
Committee Recommendation: **Approve**
- d. AEHS Foundation: 32nd Annual International Conference on Soils, Sediments, Water, & Energy (1 Technical credits per hour for workshops and ½ credit per hour for platform presentation portion, October 17-20, 2016, Amherst, MA).
Committee Recommendation: **Approve**
- e. NEWMOA: Monitored Natural Attenuation: Appropriate Tool or Easy Way Out? (5.5 Technical credits, September 27, 2016, Chelmsford, MA and September 28, 2016, Danielson, CT).
Committee Recommendation: **Approve**

Course Re-approval Request:

- f. ECS: A Licensed Site Professional's Guide for Understanding and Navigating Through the Regulatory and Technical Challenges of an Underground Storage Tank (UST) Release in Massachusetts (4 Technical credits, October 5, 2016, Westborough, MA)(Previously approved as Course No. 1543).
Committee Recommendation: **Re-approve as Course No. 1543a**

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

C. Other Business: None.

- 10. **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.
- 11. **Personnel, Budget, and Fees:** Ms. Coles-Roby stated that, although a hiring freeze is in place, they are working on a waiver for the General Counsel position, and expect to conduct interviews in September.
- 12. **Status of Board Member Replacements by Governor:** Ms. Coles-Roby reported that she forwarded the names of two candidates to the Commissioner's office back in June. She stated that it is her understanding that the Commissioner was in support of the recommendations and the candidates' packages are going on to EEA and then to the

Governor's office. Ms. Coles-Roby stated that Carlo Basile is the contact person for the Governor's office of Boards and Commissions. Ms. Listernick asked if, once the recommendations go to the Governor's office, do we have to just wait to hear back. She stated that her concern was that this particular slot has been open for three years, and waiting for the Governor's office review is typically the longest part of the process. She stated that the process is a mystery to her and she doesn't understand why candidates are just now going up. Ms. Listernick stated that the Board has a number of people whose term has passed, and she is concerned that if it is going to take three years to find replacements, the recruiting process should be started now. Ms. Coles-Roby stated that she reports on the status at every Board meeting and she has managed to get a number of appointments and re-appointments done very quickly since becoming Executive Director. She stated that part of the delay related to the transition of governors. Ms. Pinaud stated that it does take time to vet the candidates. Dr. Batchelder stated that Board members typically serve until a replacement is chosen. Mr. Smith stated that Board members are not required to do so. Mr. Rein stated that he thinks the issue pertains solely to this particular position because his appointment occurred very quickly. Ms. Listernick stated that interested candidates are also allowed to apply online at the Boards and Commissions website; however, it doesn't seem to her that that's the way the process works. Ms. Campbell stated that she applied to be considered for the Board through the website. Dr. Batchelder stated that she heard one of the initial candidates for the slot withdrew. Ms. Coles-Roby stated that two candidates withdrew and one was rejected. Ms. Listernick stated that she has never heard this and just wanted some information on the process. Ms. Pinaud stated that the process takes time because candidates have to be vetted all the way up the chain. Ms. Listernick stated that she wanted some transparency in the process. She stated people have asked her why the position has been open for three years, and she doesn't know the reason. Ms. Coles-Roby stated she doesn't feel comfortable reporting on candidates who have been rejected. Ms. Listernick stated that moving forward, whatever information can be provided to the Board would be appreciated. Ms. Rundle stated that the LSPA would be happy assist the Board in advertising any vacancies. The Board members discussed the importance of making sure the Board does not have too many vacancies at one time.

13. Other Business:

- A. Action Items List:** Ms. Coles-Roby stated that she met with Victoria Phillips (MassDEP) on July 7, 2016 regarding the exam software. She reported that Ms. Phillips asked if the Board has money in its budget to pay for a software update. Ms. Coles-Roby stated that Ms. Phillips indicated that the exam could possibly be built in web form in SharePoint and this would terminate the need to contract with anyone. She reported that they discussed the issue of security, and that if SharePoint would not be absolutely secure, it would not be appropriate. Ms. Coles-Roby reported that Ms. Phillips is going to investigate what the state has available for examination software.
- B. 309 CMR 6.00 Design and Use of Licensed Site Professional's Seal:** Ms. Coles-Roby reported that this item was placed on the Agenda at the request of Dr. Guswa. The Board members agreed that this item should be postponed until next month's meeting when Dr. Guswa could be present for the discussion.

- C. 309 CMR 3.09 Continuing Education Regulations - Proposed Amendments:** Ms. Williamson suggested some edits to the draft document. Ms. Coles-Roby informed the Board that the draft regulations as a whole need to be put forward for public comment, not one section at a time. Ms. Pinaud asked if the process was for the Board to now move on to the next section of the regulations. Ms. Coles-Roby stated that the next section will be 309 CMR 7.00, and she and Ms. Listernick have a draft ready. Mr. Smith asked if it could be circulated for review prior to next month's meeting. Ms. Coles-Roby stated that the Board will finish with the draft Continuing Education regulations next meeting and then a redline strike out version of 309 CMR 7.00 will be circulated.
- D. House Bill 695 - An Act Establishing a Department of Environmental Protection Appeals Board:** Ms. Coles-Roby stated that she inquired about the status of House Bill 695, and was informed that the bill is not dead yet. She stated it can still come up during informal sessions, but it is doubtful that there will be any movement on the bill this session.
- E. House Bill 4188 - An Act Relative to State Oversight of Professional Licensing Boards:** Ms. Coles-Roby stated that had no success with a call to the Governor's office and is going to try the Attorney General's office next and will have a report for next month's meeting.
- F. New Jersey LSRP Board:** Ms. Coles-Roby stated that she had a telephone conversation with Janine McGregor, who has taken over as Executive Director of New Jersey's LSRP Board. Ms. McGregor informed Ms. Coles-Roby that their program was established in 2012 and they currently have approximately 630 LSRPs. She stated that they pick 10% of their LSRPs at random each year and audit their work. She stated this amounts to approximately 60 per year, or 5 per month. Ms. McGregor indicated that they offer the exam three times per year and had one hundred takers in 2015 and one hundred twenty in 2016. Ms. Coles-Roby stated that Ms. McGregor is interested in learning more about the Board's process for complaints and discipline and would like to set up a telephone conference with one of the Board members, possibly the Professional Conduct Committee chairperson. She stated that she sent Ms. McGregor the Board's regulations, the flowchart, and the Power Point presentation from the Board's recent disciplinary process workshop. The Board members agreed that a conference call should be set up. Mr. Smith asked if New Jersey's Board had a complaint process. Ms. Coles-Roby stated that they do, but it isn't as formalized as ours. She stated in New Jersey, the Board is the judge and if they audit an LSP and find a violation, the individual is tried before the Board. Ms. Coles-Roby stated that she would call Ms. McGregor and arrange a conference call.
- 14. Future Meetings:** The Board's next meeting will be on September 21, 2016, in the Boston Office of MassDEP.

15. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 4:10 p.m.