



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

MINUTES
of
BOARD MEETING
Held on October 15, 2015
[Approved: November 19, 2015]

Meeting Location: Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Prepared by: L. Williamson

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on August 13, 2015
3. Renewal Dockets #1, #2, #3 and #4
4. List of Action Items for LSP Board
5. Petition for Waiver, dated August 24, 2015, from applicant requesting to take exam outside the two-year eligibility period
6. Public Records Request Letter, dated August 28, 2015
7. "Instructions for Limited Application for Re-Examination" guide
8. Executive Order 562 and Regulation Review Checklist
9. House Bill No. 695

1. **Call to Order:** Benjamin Ericson called the meeting to order at approximately 2:22 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, Debra Listernick, Robert Rein, and Farooq Siddique. Board members absent were Kirk Franklin, John Guswa and James Smith. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA), Wesley Stimpson of WES Associates, and Lawrence Feldman of GZA GeoEnvironmental, Inc.
2. **Announcements:** No announcements were made.
3. **Agenda:** Ms. Coles-Roby requested that a discussion on Limited Applications be added to the Agenda. The Board members agreed to add the topic to the Agenda under "Other Licensing Related Matters".
4. **Minutes of Meeting Held on August 13, 2015:** The members present reviewed the draft minutes of the meeting of the Board held on August 13, 2015. **A motion was made and seconded to approve the August 13, 2015 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.
9010	Stephen Fallon/Environmental Compliance Services, Inc.	275	T

Mr. Ericson asked the ARP to briefly describe the reasons for their recommendation. Ms. Coles-Roby reported that the ARP recommended that Mr. Fallon’s application be tabled until additional information is received. Specifically, the panel is requesting either a more detailed description, in terms of decision-making experience, for Projects 1, 2, and 5 or new projects in place of these. The panel indicated that the applicant had a great deal of experience as a risk assessor and knowledge of the MCP, however they did not feel that the application reflected project management experience. **A motion was made and seconded to accept the recommendation from Application Review Panel #275 that the application submitted by Stephen Fallon be tabled until additional information is submitted. The motion was approved unanimously.**

C. **Application Committee:** No report was made.

6. **License Renewal Applications:**

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

Renewal Docket #1
Renewal Date: October 30, 2015
New Renewal Date: October 30, 2018
 Has completed all requirements for renewal:

	LSP #	First	Middle	Last
1	6829	James	T	Adamik
2	7100	James	R	Bossange
3	5456	Nancy	E	Milkey
4	6173	George	G	Lingenfelter
5	9753	Tracey	A	Costa
6	9244	Paul	F	Gabriel
7	5269	David	L	Chaffin
8	6048	Gregg	W	McBride
9	4409	James	H	Zigmont

Renewal Docket #2
Renewal Date: April 30, 2015

New Renewal Date: October 30, 2018

License expired on April 30, 2015 for lack of credits. Individual has completed renewal requirements within 1-year deadline and is now eligible for active status:

	LSP #	First	Middle	Last
1	3978	Scott	E	VanderSea

Renewal Docket #3

Renewal Date: July 30, 2015

New Renewal Date: July 30, 2018

Has completed all requirements for renewal:

	LSP #	First	Middle	Last
1	8513	Amy	E	Walkey

Renewal Docket #4

Renewal Date: July 30, 2015

New Renewal Date: July 30, 2018

Completed requirements within 90-day extension:

	LSP #	First	Middle	Last
1	3210	Christen	M	Sardano
2	9020	Neil	R	Schofield

Motions were made and seconded to renew the licenses of the LSPs on Renewal Dockets #1, #2, #3 and #4 for the three-year periods ending on the dates indicated. The motions were approved unanimously.

B. Other Renewal-related Matters. The staff reported that 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 # 263: Ms. Listernick, Mr. Rein, and Mr. Siddique.

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

C. Internal Audit Expired Licenses: Ms. Coles-Roby reported that in the spring of this year, the Board staff began reviewing the files of LSPs who no longer hold a valid license. She reported that this project came about as a result of clarifying the LSP Status terminology in the Board’s online searchable database. Ms. Coles-Roby stated that as a result of the audit, approximately twenty-six people were identified as being listed as “Active” in the database, but did not have a valid license because they failed to pay annual fees, submit a license renewal application, received a 90-day extension but failed to submit the supplemental documentation, etc. All twenty-six individuals were notified by certified letter that their license is no longer valid. Of those, approximately seven individuals’ licenses expired greater than one year ago, and they have been advised that they must reapply. Ms. Coles-Roby reported that a few mistakes were made internally with respect to fees not being properly processed, and those cases have now been corrected. Mr. Austin questioned whether these individuals are able to file in eDEP. Ms. Coles-Roby stated that the Board staff has provided the eDEP group with the names of those individuals who no longer hold a valid license.

Ms. Coles-Roby reported that she is advising those individuals that must reapply for a license to submit a limited application. In the past, individuals who submit a limited application were not required to resubmit their transcript or provide new references. Ms. Coles-Roby requested that the Board members review the current “Instructions for Limited Application for Re-Examination” guide to determine if any changes should be made to the document. Ms. Listernick remarked that the guide appears to be specific to those individuals who have failed to pass the exam within two years. Dr. Batchelder questioned whether the guide could be modified to encompass both those who have not passed the exam and those who need to reapply for their license. She also asked the members if they felt the Board should require new references be provided. Mr. Siddique said that the guide states that two professional references, that are familiar with the applicants work conducted within the past five years, are required. Ms. Listernick stated that most individuals who don’t pass the exam are likely to reapply shortly after their two year window has lapsed. In this case, the references submitted with the original application are likely less than five years old. However, if the individual held a license and it has since expired, it is likely that the original application was filed greater than five years ago. Dr. Batchelder stated that if the references are older than five years, the Board should require two new ones be submitted. Mr. Siddique stated that applicants should also provide two additional projects. Dr. Batchelder added that those two projects must demonstrate relevant professional experience within the last five years.

The Board members agreed that the existing guide should be modified so that it applies to both those individuals who are reapplying for approval to take the exam and those that who are reapplying for a license.

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
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9099	January 30, 2016	Inactive	Egan	David
2349	January 20, 2016	Inactive	Howell	Deborah
7613	November 21, 2016	Inactive	Warren	Robert

D. Total Number of Active LSPs: As reported in the Agenda, the total number of Active LSPs was 543 as of October 6, 2015.

8. Examinations:

A. Dates of Next Exam: Ms. Coles-Roby stated that the Board has already met its statutory mandate to offer the exam at least once per year. She reported that the next exam will likely be offered in December; however, if it is not ready by that time, it will be offered in January. The Board staff is planning to host two sessions, with a total of twelve slots available. Ms. Coles-Roby indicated that there are less than twelve individuals in the queue for the next offering. She reported that after this next offering, the Board will return to the normal schedule of May/June and November/December.

B. Exam Committee Report: Ms. Coles-Roby stated that she has a meeting scheduled with John Fitzgerald (MassDEP) next week to begin pulling together a second exam. Once this is done, the Exam Committee will be reconvened.

Ms. Coles-Roby reported that several individuals have conducted exam reviews and have submitted challenges. She stated that an issue has been identified with two of these exam challenges. Two individuals who took the exam on the first day came in to review/challenge those questions that were answered incorrectly. These two individuals were inadvertently provided with the wrong set of questions. This occurred because the IT person who compiled the incorrect questions for the test-taker to review during their session forgot that those that took the exam on the first day had a different question order than those that took it on subsequent days. The order was different because one of the scenario questions did not get moved to the appropriate location for those who took the exam on the first day, and therefore, the questions in Section II of their exam were in a different order than those that took the exam during the subsequent offerings after it was moved to the appropriate location. The questions the two individuals were provided with did not reflect the appropriate sequence of Section II of the exam they took, but rather that of all the subsequent offerings. To confirm the issue pertained only to the challenges and not the actual scoring of the exams, the Board staff manually re-scored all the exams for all the offerings. The staff determined that all the scores were accurate and the issue pertained to the challenges only. Ms. Coles-Roby stated that both individuals will be contacted to schedule a second exam review.

Ms. Coles-Roby reported that she is trying to schedule a meeting with the IT group to discuss the exam software and issues encountered during the July offering. She informed the Board that the exam software is no longer under contract, and updates are no longer being provided. She stated that this has been the case for approximately four years. Ms. Coles-Roby reported that three individuals who came in for exam reviews

stated that they selected an answer that is different than what the software indicated they chose. She stated that because it is a point and click exam, there is no way to measure keystrokes and confirm the responses. Two of the three individuals, however, were those that received the wrong questions for their review, which is likely the source of the discrepancy. Mr. Siddique stated that problems could arise if the software is old and the operating system is new. Ms. Coles-Roby stated she will discuss it with the IT Group. Mr. Siddique stated that this was a very important issue and requested that the software update be added to the Action Items List.

Mr. Stimpson asked Ms. Coles-Roby if she had received authorization to fund the psychometrician for work on the second exam. Ms. Coles-Roby stated that there is no money left in the original budget and she is trying to get an additional \$3,500. Mr. Stimpson asked if the next exam was dependant on obtaining this funding. Dr. Batchelder stated that in the past, the Board has asked MassDEP for discretionary funds. Ms. Coles-Roby stated that she would look into this. The Board agreed that the psychometrician should be contacted to inquire what would be needed in order to complete the second exam.

- C. Petition for Waiver:** The members discussed a written request dated August 24, 2015, for an extension of the two-year period in which an approved applicant may take the LSP licensing examination. The Board noted the applicant had taken the exam twice, and had the opportunity to take it three times during the two-year period. **A motion was made and seconded to deny the request. The motion passed unanimously.**

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. McLane Environmental, LLC: *Rapid Design and Analysis of Groundwater Remediation Systems* (7 Technical credits, date and location to be determined).

Committee Recommendation: **Table and request a more detailed course description which includes how it is applicable to MA LSPs and additional information on the software**

- b. Environmental Business Council of New England: *EBC Program on PCB Management: Managing PCB Impacted Building Materials* (3.5 Technical credits, September 29, 2015, Boston, MA).

Committee Recommendation: **Deny because the course subject matter is outside of the scope of the MCP**

- c. GZA GeoEnvironmental, Inc: *Distal Glaciodeltaic Controls on Groundwater Flow and Contaminant Migration* (6 Technical credits, October 9, 2015, Bloomfield, CT).
Committee Recommendation: **Approve**
- d. Environmental Business Council of New England: *EBC Site Remediation Program: MassDEP Interim Policy on the Re-Use of Soils for Large Reclamation Projects* (2.5 Technical credits, September 25, 2015, Boston, MA).
Committee Recommendation: **Approve**
- e. GeoPractical: *Introduction to Measuring and Interpreting Fluxes Between Groundwater and Surface Water* (8 Technical credits, April 22, 2016, Amherst, MA)
Committee Recommendation: **Table and request additional information on travel time between locations**
- f. Environmental Business Council of New England: *EBC Site Remediation Program: Brownfields Massachusetts Update* (3 Technical credits, October 20, 2015, Boston, MA)
Committee Recommendation: **Table and request additional information on presentations and presenters**
- g. American Institute of Professional Geologists: *New England Aquifers: Elusive and Complex* (4 Technical credits, December 9, 2015, Marlborough, MA and December 16, 2015, Glastonbury, CT)
Committee Recommendation: **Approve for 2 Technical credits, with the stipulation that LSPs must attend the entire 4 hour course to receive the 2 credits.**
- h. LSPA: Ethical Dilemmas: *Black Lines or Shades of Gray?* (1 Technical credit, November 12, 2015, Westborough, MA)
Committee Recommendation: **Approve**

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

- 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, Fees:** Ms. Coles-Roby stated that the Board is badly in need of staff. She reported that the part-time Program Coordinator is working only minimal hours and the Board needs a full-time Program Coordinator, a General Counsel, and an Assistant General

Counsel. Mr. Ericson stated that the Commissioner is hoping to be able to post an Assistant General Counsel position, but it will depend on the next round of funding.

12. **Status of Board Member Replacements by Governor:** Mr. Ericson reported that the Board hasn't received any new interest in the open slot. He stated that he and Ms. Coles-Roby had interviewed a few individuals several months back and they need to submit the package to the Governor's Office.

13. **Other Business:**

- A. **Legislative Matter:** Mr. Ericson stated that he had not yet spoken to Senator Rush and will continue his efforts to reach out.

- B. **Action Items List:** The Board members acknowledged the Action Items List.

- C. **Public Records Request:** Ms. Coles-Roby stated that the Board received a letter from Allen Wyman on August 28, 2015, withdrawing his public records request. She stated there are some discrepancies in the letter that should be noted. She reported that the letter states that the requested files could have easily been dragged and dropped into a folder and placed on a CD. Ms. Coles-Roby stated that this is not the case because many of the files were scanned in their entirety and saved as a single PDF. Many of these are hundreds of pages long. The requested documents do not exist as individual files, but would in fact have to be located within the single PDF, extracted, and saved as new files in order to drag and drop. Mr. Wyman's letter also states that he lost the LSPA grant because the records could not be obtained in a timely fashion. Ms. Coles-Roby stated that to the best of her knowledge that was not true. Ms. Rundle stated that Mr. Wyman was never awarded the grant. She reported that the grant committee had originally told Mr. Wyman that he could provide a summary of the information he obtained and submit it to the committee for consideration, however, he withdrew his request and no funds were ever exchanged. Ms. Listernick questioned whether there was something useful that could be gleaned from the work that the Board did on this request. Mr. Stimpson indicated that Mr. Wyman's proposal was to obtain the files to determine if there are lessons to be learned from those dismissed complaints, even if they are not necessarily professional responsibilities, but possibly business practices issues. Mr. Ericson stated that the Board should give some thought about what it would like to do with the files and how the information might be useful to the Board.

- D. **Executive Order 562:** Ms. Coles-Roby reported that Executive Order 562 was issued by Governor Baker in March 2015, requiring all state agencies to review their regulations. She stated that the Order is really not very different from the ideas the Board had in mind when it decided to undertake revising the regulations. She reported that the Governor is requesting that each agency complete a Regulation Review Checklist by March 2016. Dr. Batchelder questioned whether the form pertained to the regulation in its entirety, or if a separate form was required for each individual regulation. Mr. Ericson stated that MassDEP applied the form to each group of regulations, for example the MCP as a whole. Ms. Coles-Roby stated she will find out

which way it should be done, and noted that if one form could be completed for each of the nine sections of the Board's regulations, it would be manageable.

- E. House Bill 695:** Ms. Coles-Roby stated that House Bill 695, filed in January of 2015, would essentially allow anyone who is aggrieved by a determination of the Board, including application denials, dismissed complaints, denial of waivers, etc, to file an appeal. Ms. Rundle indicated that she had recently testified at the hearing on behalf of the LSPA in opposition to the bill. Ms. Coles-Roby stated that the Board was not called to testify, and she only became aware of the bill a couple of weeks ago. She stated that the bill would impose another set of procedures that would add further delay to the process and usurps the Board's authority. Ms. Coles-Roby stated that the proposed appeals board would be able to look at the case anew and could make findings contrary to the Board's, and no decision the Board ever makes would be final. Mr. Ericson stated that EEA has not seen this bill and EEA and the LSP Board would not be taking a position at this time. Mr. Ericson stated that he will be keeping an eye on it and will let the Board know if it moves any further.
- F. Regulations Committee Meetings:** Ms. Coles-Roby stated that she will be sending out notices to reconvene the subcommittees. Ms. Campbell stated that she is looking for Board member volunteers to assist the Continuing Education subcommittee to begin drafting proposed revisions.
14. **Future Meetings:** The Board's next meeting will be on November 19, 2015, in the Central Regional Office of MassDEP in Worcester.
15. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 4:02 p.m.