



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

MINUTES
of
BOARD MEETING
Held on November 19, 2015
[Approved: January 21, 2016]

Meeting Location: Massachusetts Department of Environmental Protection
Central Regional Office
8 New Bond Street
Worcester, MA 01606

Prepared by: L. Williamson

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting held on October 15, 2015
3. Renewal Dockets #1, #2, #3, #4 and #5
4. List of Action Items for LSP Board
5. LSPA Letter in Opposition to H.695, September 29, 2015
6. Email from Matthew Hackman regarding Alabama Board of Licensure for Professional Engineers and Land Surveyors newsletter, October 24, 2015
7. Executive Order 562 Regulation Review Checklist

1. **Call to Order:** Benjamin Ericson called the meeting to order at approximately 1:58 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, John Guswa, Debra Listernick, Robert Rein, Farooq Siddique, and James Smith. Board member Kirk Franklin was absent. 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 Rebecca Woolley of MassDEP.
2. **Announcements:** No announcements were made.
3. **Agenda:** Ms. Coles-Roby requested that a discussion on Matthew Hackman's email be added to the Agenda. The Board members agreed to add the topic to the Agenda under "Other Business".
4. **Minutes of Meeting Held on October 15, 2015:** The members present reviewed the draft minutes of the meeting of the Board held on October 15, 2015. **A motion was**

made and seconded to approve the October 15, 2015 minutes as amended. The motion passed unanimously, with Mr. Smith and Dr. Guswa abstaining.

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

| ID # | Applicant Name/Company Name | ARP # | REC. |
|------|---------------------------------------|-------|------|
| 4608 | Daniel Batchelor/Axiom Partners, Inc. | 263 | A |

Mr. Ericson asked the ARP to briefly describe the reasons for their recommendation. Ms. Coles-Roby informed the Board that this was a re-application from an individual whose application had been previously denied. Mr. Rein reported that Mr. Batchelor now has one more year of relevant professional experience than he had the first time he applied. Mr. Rein also stated that this application contained an additional reference from an individual who Mr. Batchelor currently works with. Ms. Listernick reported that Mr. Batchelor's original application was denied because the panel felt his projects were not substantial enough; however, the current application details further decision-making experience that was obtained during the additional time. She stated that the applicant now meets the relevant professional experience requirement. **A motion was made and seconded to accept the recommendation from Application Review Panel #263 that the application submitted by Daniel Batchelor be approved and that he be found eligible to take the exam. 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 | 2031 | David | A | Wright |
| 2 | 7505 | Michael | S | Gitten |
| 3 | 9180 | Daniel | M | Lanier |
| 4 | 2332 | Wesley | E | Stimpson |
| 5 | 5319 | Mark | D | Casey |
| 6 | 8107 | Lawrence | | Feldman |
| 7 | 9383 | Douglas | M | Lindsay |
| 8 | 7413 | Peter | M | King |

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| | LSP # | First | Middle | Last |
|----|--------------|--------------|---------------|-------------|
| 9 | 9273 | Nelson | | Walter |
| 10 | 2974 | Glenn | A | Carlson |
| 11 | 8396 | Frank | | Calandra |
| 12 | 6331 | John | C | Swallow |
| 13 | 4574 | Craig | A | Sasse |
| 14 | 2715 | Ronald | E | Myrick Jr. |
| 15 | 7249 | Michael | J | Girioni |
| 16 | 3911 | David | T | Montplaisir |
| 17 | 6230 | Patrick | P | King |

Renewal Docket #2

Renewal Date: July 30, 2014

New Renewal Date: October 30, 2018

License expired on July 30, 2014 for lack of credits.

Individual was granted a waiver to extend 1-year deadline to October 30, 2015.

Has completed renewal requirements and is now eligible for active status:

| | LSP # | First | Middle | Last |
|---|--------------|--------------|---------------|-------------|
| 1 | 8059 | William | F | Simons |

Renewal Docket #3

Renewal Date: July 30, 2015

New Renewal Date: July 30, 2018

Completed requirements within 90-day extension:

| | LSP # | First | Middle | Last |
|---|--------------|--------------|---------------|-------------|
| 1 | 6297 | Eric | M | Axelrod |
| 2 | 6581 | James | R | Ash |

Renewal Docket #4

Renewal Date: October 30, 2015

New Renewal Date: January 28, 2016

Have requested a 90-day extension:

| | LSP # | First | Middle | Last |
|---|--------------|--------------|---------------|-------------|
| 1 | 4900 | Christopher | D | Glod |
| 2 | 8740 | Richard | B | Learned |

Renewal Docket #5

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 | 4948 | Matthew | T | Madden |

Motions were made and seconded to renew the licenses of the LSPs on Renewal Dockets #1, #2, #3, and #5 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 #3 a 90-day extension. The motion was approved unanimously.

B. Other Renewal-related Matters: Ms. Coles-Roby reported that it has come to the staff's attention that many LSPs are mailing their License Renewal Applications a day or two before their expiration date. She stated that the Application first goes to the lockbox, then to the revenue department, and then finally to the Board; a process which can take up to two weeks. If the staff has not received the Application by the expiration date, the LSP becomes "locked out" of eDEP and cannot file anything. Ms. Coles-Roby reported that the Board is receiving many calls from LSPs who are trying to submit a document in eDEP and can't because the staff hasn't received their Application. Ms. Listernick suggested posting a notice on the Board's website advising LSPs that their Renewal Application should be mailed at least two weeks before the expiration date. Ms. Coles-Roby stated that the staff is also working on compiling an email list in order to send out an email blast to all LSPs. Ms. Listernick suggested that a note also be added to the cover page of the Application. She stated that the cover page currently states the deadline for filing a complete renewal package is the 30th, and makes no mention of allowing for extra time. The Board agreed that a notice should be posted on the website that Applications should be mailed at least two weeks prior to the expiration date. The Board members also agreed that they do not need to review the draft notice before the staff posts it on the website.

7. Other Licensing-Related Matters:

A. New Panel Assignments and Scheduling: Ms. Coles-Roby reported that no new license applications had been received this month.

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

C. Internal Audit Expired Licenses: No report was made.

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 |
|------------|---------------------|----------------|-----------|------------|
| 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 November 10, 2015.

8. Examinations:

A. Dates of Next Exam: Ms. Coles-Roby reported that the next exam will likely be offered late December/early January.

B. Exam Committee: Ms. Coles-Roby stated that the exam committee has a meeting scheduled for the afternoon of December 2, 2015. She reported that John Fitzgerald (MassDEP) has been working on pulling together the second exam, and that the psychometrician has sent some of the needed documents at no charge. Ms. Coles-Roby reported that the committee does not have enough questions to create a third exam. Ms. Listernick stated that she was under the impression that the third exam was simply a hybrid of the first and second exams. Ms. Coles-Roby responded that past practice has been such, but the issue will be discussed further at the upcoming exam committee meeting. Mr. Austin asked if the current number of individuals in the queue includes those who have submitted exam challenges. Ms. Coles-Roby confirmed that it did. Mr. Austin asked if the challenges would be resolved before the next offering. Ms. Coles-Roby stated that because of the issue with two of the challenges, they have not been sent to the committee yet. One of the individuals has been in to redo his challenge, but the other has not. She reported that it is just a matter of getting them typed up and to Mr. Fitzgerald, and then to the committee. She stated that she has explained to the challengers that the process takes time.

9. Continuing Education Committee Report:

A-B. Report on Course and Conference Approval Requests. Dr. Guswa 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: **Approve**

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- b. Environmental Business Council of New England: *EBC Site Remediation Program: Brownfields Massachusetts Update* (3 Technical credits, October 20, 2015, Boston, MA).
Committee Recommendation: **Approve**
- c. GeoPractical: *Introduction to Measuring and Interpreting Fluxes Between Groundwater and Surface Water* (8 Technical credits, April 22, 2016, Amherst, MA).
Committee Recommendation: **Approve**
- d. Remediation Workshop.com: *Remediation Workshop* (4 Technical credits, November 4, 2015, Waltham, MA).
Committee Recommendation: **Approve**
- e. LSPA: *GW-1 Challenges* (1 Technical credit, January 14, 2016, Westborough, MA)
Committee Recommendation: **Approve**
- f. ECS/NISTM: *Legal Challenges Affecting the Role of the Licensed Site Professional and Licensed Environmental Professional at Massachusetts and Connecticut Underground Storage Tank (UST) Sites* (2 Technical credits, December 3, 2015, Worcester, MA).
Committee Recommendation: **Approve**
- g. ECS/NISTM: *A Licensed Site Professionals Guide for Understanding and Applying the EPA's Office of Underground Storage Tanks (UST) Federal Rule Changes in Massachusetts* (1 Technical credit, December 3, 2015, Worcester, MA).
Committee Recommendation: **Deny because subject matter is outside of the scope of the MCP**
- h. LSPA: *Update on the Board of Registration of Hazardous Waste Site Cleanup Professionals* (1.5 DEP Regulatory credits, February 9, 2016, Westborough, MA).
Committee Recommendation: **Approve**
- i. LSPA: *Method 3 Ecological Risk Assessment* (4 Technical credits, winter-spring 2016, 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.

Dr. Guswa reported that the Committee reviewed a Request for Waiver from an LSP who arrived late to a two-hour course due to traffic issues. The LSP was requesting that partial credit be issued for the time he was present at the course. The Committee recommended that this Request for Waiver be denied. **A motion was made and seconded to accept the Continuing Education Committee's recommendation. The motion passed unanimously.**

Dr. Guswa reported that the Committee reviewed a request from AEHS Foundation to re-approve two workshops from the 2015 Soils Conference that ended before the expected time. Workshop #3 was expected to last 4 hours and was previously approved for 4 credits. Workshop #8 was expected to last 3 hours and was previously approved for 3 credits. The actual duration of Workshop #3 was 3 hours and 35 minutes and the actual duration of Workshop #8 was 2 hours and 40 minutes. The Committee recommended that Workshop #3 be re-approved for 3.5 Technical credits and that Workshop #8 be re-approved for 2.5 Technical credits. **A motion was made and seconded to accept the Continuing Education Committee's recommendations. The motion passed unanimously.**

C. LSP Board Disciplinary Proceedings Workshop: Dr. Guswa, Dr. Batchelder, and Ms. Coles-Roby volunteered to be the presenters for this course, which is scheduled to be offered on February 9, 2016.

D. 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 reported that there is still a budget shortfall and no new staff can be hired. She stated that this is concerning because the Board does not have a second attorney, and she will not be able to offer legal advice to the Board and prosecute cases at the same time. Ms. Coles-Roby stated that, specifically in case 08C-03, she is the prosecuting attorney, and it will eventually have to go before the Board. Mr. Ericson stated that if Ms. Coles-Roby is prosecuting a case there are also duties as Executive Director that she will not be able to get to. Dr. Batchelder asked if the Board could get a temporary counsel from somewhere else when that time comes. Mr. Ericson stated that there may be ways to borrow from MassDEP for a limited time if necessary.
12. **Status of Board Member Replacements by Governor:** Mr. Ericson stated that he and Ms. Coles-Roby recently updated the Commissioner on the open position and the individuals who had expressed interest. Mr. Rein stated that his term is up and he no longer holds a position with a manufacturing firm and, therefore, cannot seek reappointment. Mr. Ericson stated that Mr. Rein is allowed to continue until a replacement is identified. He stated that there is an open environmental slot and that they are working to get permanent Board members in every space.

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: Mr. Siddique remarked that the Exam software update task did not have a person assigned to it for follow-up. He stated that this issue is not going away and problems are going to arise every time the exam is given. Ms. Coles-Roby stated that the matter is not up to the Board, but rather MassDEP or EEA, depending on who is listed on the software contract. Mr. Austin stated that many people have taken the exam using the existing software, and no major issues have been encountered. Ms. Coles-Roby stated that at the worst, there have been some delays in starting the exam, but the IT person has been able to fix the issues relatively quickly, and the staff always has paper exams on hand as a backup. Mr. Siddique stated that the Board should spec out the project, and suggested that Chris Borges (MassDEP) be involved in the process. He stated that if it is small amount of money, it may be worth inquiring about obtaining the funding. Ms. Coles-Roby stated that she will take the lead on following up on the issue.

Mr. Ericson stated that “determine locations of the Board Meetings through June 2016” was on the Action Items List, and could be addressed now. The Board members discussed whether or not to hold the December meeting. The Board agreed to cancel the December meeting because it is a challenging month for people, and identified locations for the remaining meetings as follows:

- January 21, 2016: Southeast Regional Office
- February 18, 2016: Northeast Regional Office
- March 17, 2016: Boston Office
- April 21, 2016: Western Regional Office
- May 19, 2016: Central Regional Office
- June 16, 2016: Southeast Regional Office

C. Public Records Request: Ms. Coles-Roby stated that the Board had received a public records request from a private citizen who asked for any existing disciplinary records the Board may have for several LSPs. The LSP Board staff reviewed the files and found only one case. Ms. Coles-Roby reported that the file contained approximately 495 pages, and was sent to the requestor within ten days. She stated that none of the documents required redacting and the fee was waived. The LSP who was the subject of the case was notified.

D. House Bill 695: Ms. Coles-Roby reported that the LSPA provided the Board with a copy of the letter they wrote opposing House Bill 695. She stated the proposed bill is still in committee, and no report has been filed yet. Dr. Guswa asked Ms. Rundle what the LSPA meant by the parenthetical statement on the last page of the letter. Ms. Rundle stated that the current process of going through OADR or DALA, results in a decision that doesn't stand with the Board. The Board can disagree with OADR or DALA's decision and disregard it. She stated that the LSPA is wondering what the

benefit is of having that step in the process at all. Why not get rid of that step and go directly to the judicial process? Ms. Coles-Roby stated that this is the process for all Boards of Registration. She stated that an LSP has the right to appeal, but if the agency itself can't put a stamp on it accepting or rejecting the decision, it usurps the authority of the Board. Ms. Rundle stated that if the LSP doesn't agree with the Board and OADR/DALA doesn't agree with the Board, the Board can still overrule it, so why bother with that part of the process. Mr. Ericson stated that somebody has to be the fact finder in cases where there is a dispute. He stated that OADR and DALA are experts at the process where evidence is gathered and put into a decision. Mr. Siddique stated that the OADR/DALA process often softens LSPs because of the amount of time and money it takes. Ms. Rundle stated that the LSPA has thought for many years about what would be a preferable process. She stated that some LSPs would prefer to go right to judicial process. Ms. Rundle reiterated that the LSPA does not support Bill 695, but does feel there might be a better process for gathering information and finding facts. Mr. Smith questioned how many of the Board's cases have gone through OADR/DALA, and of those how many did the Board accept the decision. Dr. Batchelder stated that many cases have gone through OADR/DALA, and in most the Board hasn't accepted the entire decision. She stated that if it results in a finding of fact, the Board is almost bound to accept it and, therefore, the Board usually agrees with those. Ms. Coles-Roby stated that OADR and DALA function as an independent judicial body that reviews evidence, hears witnesses, and makes judgments. She stated that the decision can be appealed to superior court by the LSP or the Board; however it has to fit within one of fourteen categories. Dr. Batchelder stated that the Board cannot opine on the credibility of witnesses, and that is why the OADR/DALA process is important. She stated that it is the basis for the facts that sets the record that goes to Superior Court. Mr. Stimpson stated that he never liked the fact that the full Board, who are the people making the decision on discipline, never hear from the LSP. Dr. Batchelder stated that in some cases the LSP has appeared before the Board. Ms. Coles-Roby stated that the LSP has the right to appear before the Board. Mr. Stimpson stated that it generally only occurs after the decision is made. Mr. Smith stated that he believes it is important for the LSP to remain anonymous because, otherwise, it introduces the potential for bias. Dr. Guswa stated that LSPA's letter appears to be saying that the LSPA agrees that the final decision should be taken away from the Board. Mr. Ericson stated that it is the Board who is accountable for the decision. Mr. Stimpson stated that many LSPs wonder why they should bother going through the process if it is not binding. Dr. Batchelder suggested that the Board research what the standard process is for the other licensed professions in Massachusetts. Mr. Ericson agreed that an examination of the process for other boards within Massachusetts would be good information to have to aid in future discussions of this issue.

- E. Regulations Committee Meetings:** Mr. Ericson stated that the Board is trying to get over the hump of the exam before getting back into the regulation revisions. Ms. Campbell stated that the continuing education subcommittee was having a conference call on Monday afternoon. She stated that it has been two years since the process began and she would love to make some progress. Mr. Austin stated that it would be beneficial to put together a schedule and milestones for what needs to be accomplished.

Ms. Coles-Roby stated that at the January meeting, she will provide an overview of the regulation process and what the Board needs to do, and will set a schedule. She informed the Board that there was a handout provided at today's meeting regarding Executive Order 562 that should be reviewed in preparation of the next meeting.

F. Newsletter: Ms. Coles-Roby reported that she had received an email from Matthew Hackman suggesting that the Board consider issuing a newsletter. Included in the email was a link to the latest edition of the newsletter of the Alabama Board of Licensure for Professional Engineers and Land Survey. Ms. Listernick suggested that other outreach options may be available such as writing an article for posting on the Board's website. Mr. Stimpson commented that the Alabama Board has a staff of ten and have online renewals. Ms. Campbell stated that they also do not approve courses. The Board members agreed that the suggestion is a good one; however, due to the limited staff it would be impossible at this time.

14. **Future Meetings:** The Board's next meeting will be on January 21, 2016, in the Southeast Regional Office of MassDEP in Lakeville.
15. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 3:28 p.m.