



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

MINUTES
of
BOARD MEETING
Held on January 15, 2015
[Approved: February 19, 2015]

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 November 20, 2014
3. Renewal Dockets #1, #2, #3, #4, and #5
4. List of Action Items for LSP Board
5. Draft Letter to Legislators re: Conflict of Interest Regulations 309 CMR 4.04
6. Public Records Request Letter, dated December 18, 2014
7. Response Letter to Public Records Request, dated January 13, 2015

1. **Call to Order:** Benjamin Ericson called the meeting to order at approximately 1:38 p.m. Also present were David Austin, John Guswa, Debra Listernick, James Smith, Gail Batchelder, Robert Rein, Farooq Siddique, and Kathleen Campbell. 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), Michael Flynn of the LSPA Regulations Committee, Rebecca Woolley of MassDEP CERO, and William Kenney.
2. **Announcements:** Mr. Ericson reported that DEP is seeing a smooth transition to a new Commissioner who has a very long history with the Agency. He also stated that there are enough individuals remaining at the Executive Office of Energy and Environmental Affairs (EEA) through the transition who are familiar with the LSP Board and its work, that the Board will remain a known entity to EEA. Mr. Ericson commented that it would be nice to have Mr. Austin and Ms. Listernick's re-appointments confirmed. Mr. Austin reported that he had contacted the Secretary of State's Office and received confirmation of his re-appointment. He said he would give the name of his contact to Ms. Listernick so she could do the same. Ms. Cole-Roby added that the Secretary of State's Office is not going through a transition, so they should be able to resolve the issue quickly.

3. **Agenda:** The Board members agreed to follow the draft agenda.
4. **Minutes of Meeting Held on November 20, 2014:** The members present reviewed the draft minutes of the meeting of the Board held on November 20, 2014. Mr. Rein identified a typographical error. **A motion was made and seconded to approve the November 20, 2014 minutes as amended. The motion passed unanimously.**
5. **Regulations Committee:** Mr. Ericson reported that the Application Review Committee had not met this month. Ms. Coles-Roby indicated that she would assist in getting all the subcommittees going again prior to the next Board Meeting, and it is her hope to have a packet together for 2016. Ms. Campbell provided an update on the Continuing Education Committee. She reported that she had recruited help from the LSPA’s Regulation and Education Committees, and currently has 3 full time and 1 part-time volunteers. A conference call was held to review the draft matrix, and each volunteer was assigned a separate section to focus on. Ms. Campbell reported that by mid-February they should have draft language in redline strikeout format available for review. She reported that they have discussed the possibility of moving to a paperless process, with the creation of a database for course providers to be able to submit Course Approval Requests online. This would entail creating a standardized form into which all required information would have to be entered in order for it to be accepted. They also discussed online course approvals and attendance tracking, with the possibility of LSPs being able to log into a course credit database which would track credits earned. Ms. Campbell stated that another conference call is scheduled for the end of the month and that she is still accepting comments on the draft matrix. Ms. Coles-Roby requested that Ms. Campbell include her and Ms. Williamson in future meetings.
6. **A-B. Decisions Regarding Licensing of Applicants:** The staff presented the following Application Docket:

ID #	Applicant Name/Company Name	ARP #	REC.
3798	William Kenney/Prime Engineering, Inc.	261	A
3659	Katherine Dilawari/Haley & Aldrich, Inc.	261	A

ID #	Applicant Name/Company Name	ARP #	REC.
6928	Matthew Oliveira/TRC	265	A

Mr. Ericson asked the ARPs to briefly describe the reasons for their recommendations. Dr. Guswa reported that he was on both of the panels, and that each of the three applicants documented different, but very relevant, experience. Mr. Kenney had worked on gasoline and fuel oil spills and his project descriptions indicated in-depth experience. Ms. Dilawari has experience in geotechnical work in urban redevelopment projects, and has worked on projects from the initial identification of a release through remedial response actions during the development process. Mr. Oliveira had good traditional MCP project experience dealing with a variety of contaminants. Ms. Campbell added that she liked that his supervisors served as his

references and the applicant’s wording of project responsibilities was proactive. He demonstrated that he was making important decisions with the LSP-of-Record and was in a position long enough to show a transition from a supportive role to a decision-making role. Dr. Batchelder raised a concern that Ms. Dilawari may not have had three years of relevant professional experience within the last 5 years. Dr. Guswa confirmed that she had. **A motion was made and seconded to accept the recommendation from Application Review Panel #261 that William Kenney and Katherine Dilawari be approved and that they be found eligible to take the exam. The motion was approved unanimously. A motion was made and seconded to accept the recommendation from Application Review Panel #265 that Matthew Oliveira be approved and that he be found eligible to take the exam. The motion was approved unanimously.**

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

7. **License Renewal Applications:**

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

Renewal Docket #1

Renewal Date: January 30, 2015

New Renewal Date: January 30, 2018

Has completed all requirements for renewal:

	LSP #	First	Middle	Last
1	7680	Christopher	P	Parent
2	3598	Julianna	B	Connolly

Renewal Docket #2

Renewal Date: October 30, 2014

New Renewal Date: October 30, 2017

Completed requirements within 90-day extension:

	LSP #	First	Middle	Last
1	6493	Peter	J	DeChaves
2	2516	Eric	G	Nelson

Renewal Docket #3

Old Renewal Date: January 30, 2014

New Renewal Date: January 30, 2017

License expired on January 30, 2014 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	1286	Paul	D	Steinberg
2	9882	Steven	W	Rumba

Renewal Docket #4

Old Renewal Date: April 30, 2014

New Renewal Date: January 30, 2017

License expired on April 30, 2014, 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	1404	Stewart	A	Mountain

Renewal Docket #5

Old Renewal Date: July 30, 2014

New Renewal Date: January 30, 2017

License expired on July 30, 2014, 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	1976	Hayden	S	Solomon
2	4058	Alton	Day	Stone
3	9635	Robert	M	Cataldo
4	8614	Todd	E	Piskovitz

Motions were made and seconded to renew the licenses of the LSPs on Renewal Dockets #1, #2, #3, #4, and #5 for the three-year periods ending on the dates indicated. The motions were approved unanimously.

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. The following Board members were assigned to Application Review Panel # 266: Mr. Siddique, Ms. Listernick, and Mr. Smith.

B. Appeals Status Report: No appeals were received this month.

Ms. Coles-Roby reported that she had been contacted by a former LSP whose license had been revoked for a period of 5 years as a result of disciplinary action. The individual requested information on how to go about being reinstated, and whether s/he would need to submit a full application again. Ms. Coles-Roby reported that the Final Order states that the individual shall not reapply for a license for a period of five years, and a re-application shall involve the submittal of a new licensure application. She informed the Board that the individual will be eligible to reapply in mid-February 2015. Ms. Coles-Roby posed the question to the Board of whether the individual is required to submit a full application or the short version. She stated that the regulations governing reinstatement, 309 CMR 7.14(1) do not specify which form the application should take. Dr. Batchelder stated that historically, individuals in this situation have been required to reapply using the long version. She stated that if a transcript was already on file, and the Board could agree, maybe that requirement could be waived, but the Board would want new references and updated documentation of experience. Ms. Coles-Roby advised that the Board should cite a regulation that states what must be done to reapply. Dr. Batchelder stated that the Order would specify the requirements. Mr. Ericson stated that both the Order and the regulations require reapplication but the question is what form it should take; the long or the short version. He stated that it sounds like the practice has been to require the long version. Ms. Listernick stated that the regulations do indicate the specific circumstances in which the short form applies and are limited to applicants who failed the exam. Mr. Austin stated that if the individual has not been an LSP in five years, the Board would want to review a new full application. Dr. Batchelder added that in the past, some LSPs whose licenses have been revoked had an issue reapplying because of the required expectation that they will comply with the regulations. Ms. Coles-Roby indicated that she will notify the individual that he/she must submit a full application.

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
2349	January 30, 2014	Inactive	Howell	Deborah
9099	January 30, 2016	Inactive	Egan	David
9921	September 1, 2016	Inactive	DelMarco	David

D. Total Number of Active LSPs. As reported in the Agenda, the total number of Active LSPs was 543 as of January 7, 2015.

9. Examinations:

A. Dates of Next Exam: To be determined.

B. Exam Committee: Ms. Coles-Roby reported that the committee is continuing to make progress. She said that she received notice yesterday that the psychometrician has

signed his contract, and he has sent dates that he is available to meet. Because he is in Utah, the meeting logistics need to be worked out. Dr. Batchelder reported that she and Chris Borges are reviewing all the questions for completeness and grammatical errors, and are approximately a third of the way done. They will likely need two more two-hour sessions to complete the task. Ms. Coles-Roby reported that Ms. Listernick is working on the acronyms list and the references list still need to be completed. She stated that she would draft an agenda with the psychometrician for a February meeting and is still expecting that the exam will be ready for late May/early June 2015.

- C. Exam Challenge:** Ms. Coles-Roby reported that the subcommittee addressing exam challenges needs to meet to determine the status of each challenge. Dr. Guswa requested that Ms. Coles-Roby determine how exams labeled A, B, or C correspond to the exam number. Ms. Coles-Roby indicated she would follow up with Chris Borges on why exams were assigned a letter designation. She stated that John Fitzgerald had provided a response to Exam Challenge #8229, which she forwarded to Dr. Guswa and Mr. Siddique for review. Dr. Guswa accepted two of the challenged responses and Mr. Siddique denied all of them. Ms. Coles-Roby stated that the protocol is that the challenge goes to the Board when there is disagreement among the committee. Dr. Guswa stated that he and Mr. Siddique had responded without reviewing the statistics of how the question has historically been answered and may change their opinions after reviewing this information. He suggested that they review the information and put their opinions in writing, as Mr. Fitzgerald does, and then submit them to the Board for review. Dr. Batchelder stated that the questions cannot be discussed by the Board at a public meeting in order to keep the questions confidential. She suggested that the challenge be presented to the Exam Committee during a non-public meeting. **The Board decided that if Dr. Guswa and Mr. Siddique cannot come to an agreement after reviewing the historic statistics, the Exam Committee will review the challenge.** Ms. Coles-Roby suggested that the Board should also start thinking about what to do with those applicants whose eligibility to take the exam has lapsed since the time the last exam was offered. She stated that an exam is typically offered in late November/early December, but was not offered in 2014 because the new exam was being drafted. Dr. Batchelder stated that originally, the exam was only offered once per year, and the change to twice per year occurred well into the program. Mr. Ericson stated that by regulation, the exam does not have to be offered more than once per year, but by practice, people have come to expect it. Ms. Campbell stated that the applicants were notified well in advance that the May/June 2014 offering would be the last until the new exam was ready. Ms. Coles-Roby reported that she had made phone calls to approved applicants and a notice was posted on the Board's website. Ms. Coles-Roby indicated that she had been contacted by an individual who had only taken the exam only once and their window has now expired. Dr. Guswa stated that he believed that sufficient warning had been provided. Ms. Rundle asked for clarification on whether an applicant's two year window commenced on the date the Board approves the application. The Board members confirmed that is the correct start date.

10. 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. Battelle: *Eighth International Conference on Remediation and Management of Contaminated Sediments* (0.5 Technical credit per hour attendance at technical program and 1 Technical credit per hour attendance at short courses, January 12-15, 2015, New Orleans, LA).
Committee Recommendation: **Approve**

- b. LSPA: *LSPs and Lawyers: Working Together on MCP projects* (1 Technical credit, January 22, 2015, Springfield, MA and February 12, 2015, Westborough, MA).
Committee Recommendation: **Approve**

- c. LSPA: *Six Months Later: What the 2014 MCP Amendments Mean for Remediation* (1 Regulatory credit, January 13, 2015, Westborough, MA).
Committee Recommendation: **Approve**

- d. EPOC: *Understanding ProUCL and Use of the 95% UCL to Demonstrate Compliance with RSR Criteria* (6 Technical credits, January 28, 2015, Berlin, CT).
Committee Recommendation: **Approve**

- e. MassDEP: *Geothermal/GSHP Application Opportunities under the MCP- A Component or Repurposing of Greener Cleanup Remedies* (3 DEP Regulatory credits and 5 Technical credits, March 2015, location to be determined).
Committee Recommendation: **Approve**

- f. LSPA: *Practical Applications of Petroleum Hydrocarbon Chemistry* (8 Technical credits, Spring 2015, location to be determined).
Committee Recommendation: **Approve**

- g. EPOC: *Conceptual Site Modeling and the Data Quality Objectives Approach to Site Characterization* (8 Technical credits, March 5, 2015, Berlin, CT).
Committee Recommendation: **Approve**

Course Approval Request by LSP:

- h. Rutgers University Office of Continuing Professional Education:
Groundwater Flow in Fractured Bedrock (6 Technical credits, April 2, 2013,
New Brunswick, NJ).
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:** Discussion took place earlier in the day.
- 13. **Status of Board Member Replacements by Governor:** Ms. Coles-Roby reported that she and Mr. Ericson are moving forward with interviews for the open environmental seat. There are currently three candidates for this position. She stated that both DEP's Commissioner and the Secretary of EEA need to approve of the candidates before they can be submitted to the Governor's Office. Mr. Ericson stated that this position is the only open slot right now, but it would be great for people to continue to express interest in serving on the Board in case any positions open in the future.
- 14. **Other Business:**
 - A. **Legislative Matter:** Board members reviewed the draft letter and offered grammatical and formatting corrections.
 - B. **Action Items List:** Ms. Coles-Roby stated that Mr. Franklin's name was inadvertently left off the Action Items List with regard to the Legislative Matter letter, for which he was the original drafter.
 - C. **Public Records Request:** Ms. Coles-Roby stated that the Board had received a Public Records Request for documents pertaining to all complaints that have been dismissed by the Board to date. Ms. Coles-Roby stated that the requestor notified her that he would like to come into the office to review the files in person. She reported that there are 66 of such cases and an enormous amount of documents are associated with these files. Approximately 50 hours of the Board staff's time has already been expended to identify the cases, create a spreadsheet and compile the documents. Ms. Coles-Roby reported that she sent a letter to the requestor on January 13, 2015 asking if he is looking to obtain just the complaints or the complaints and the supporting documents. The letter also included the total cost incurred to date. The Board staff has compiled and printed all of the complaints, but will now need to go through all documents to

determine what information requires redaction. Ms. Coles-Roby also stated that the law requires that a letter be sent to each person named in the complaint informing them of the Request and notifying them that they must determine if they want their information released. Some of the individuals may want to consult with an attorney. Less than 10 of the 66 dismissed cases were submitted by MassDEP and the rest were filed by private parties. Dr. Guswa stated that he believed that the Request was legitimate and motivated by discussions among the LSPA's Loss Prevention Committee. Dr. Batchelder stated that there should be a redacted version of every complaint on file from previous Board meetings that are already of public records. Ms. Williamson stated that some of the complaints never went before the Board because they were dismissed by the LSP Board staff and, therefore, were not redacted. Dr. Guswa stated that the Board should respond to the letter notifying the requestor of the inconsistencies in the letter related to how much time is needed to comply with the request and the amount of money that would be charged for the completion of the task. Mr. Ericson stated that in past the fees have been waived. Ms. Coles-Roby stated that this requestor has made numerous Requests with hundreds of pages of documents, and the fees were previously waived. She stated that she doesn't see how we can waive the fees in this case when thousands of dollars have been spent. Mr. Guswa asked Ms. Rundle if this Request was made as part of an LSPA Committee task. Ms. Rundle responded that discussions have occurred about the subject matter, but she was surprised to see the Request in the packet. Ms. Coles-Roby stated that the Board staff is keeping track of their hours and the rates are based on the lowest paid employee capable of performing the task. Ms. Coles-Roby stated that she will have to do the legal review. Mr. Siddique stated that the requested information could be useful to LSPA's Loss Prevention Committee. Mr. Ericson stated that if that is the case, there are better ways of going about obtaining this information than through a Public Records Request. Ms. Coles-Roby stated that the requestor has previously filed complaints against the Board with the Secretary of State for not providing information in a timely manner. Dr. Guswa stated that if this Request was submitted on behalf of the LSPA, maybe the Board could contact them and ask if this is really how they want to proceed. Mr. Siddique stated that the Request was signed by an individual and the Board has requirements under the Public Records Request to respond to that individual. He stated that unless the requestor wants to withdraw his request after reviewing the response letter, the Board must move forward with it. Ms. Rundle asked if the requestor responds to the letter stating that he no longer wished to move forward with the Request, would that end the process. Ms. Coles-Roby stated that if he withdraws his Request it would terminate the process, but it would have to come from the requestor himself, not the LSPA. Dr. Guswa suggested that a letter be prepared that identifies the erroneous assumptions expressed in the Request with respect to time and fees, with an estimate of future costs, and a statement that the Board will not proceed further without approval due to escalating costs. Ms. Coles-Roby stated that she will wait ten days to see if she gets a response to the letter she sent on January 13th, and otherwise will then follow up with a letter that states that the Board will not proceed further without approval due to escalating costs. She also asked that Board members not contact the requestor individually to discuss this Public Records Request.

Minutes of LSP Board Meeting, January 15, 2015

15. **Future Meetings:** The Board's next meeting will be on February 19, 2015, in the Central Regional Office of MassDEP in Worcester. The Board members agreed to postpone meeting at the Western Regional Office until June 2015.
16. **Adjournment:** A motion was made and seconded to adjourn, and by unanimous vote, the Board meeting was adjourned at approximately 3:58 p.m.