

**VIRGINIA BOARD FOR
ASBESTOS, LEAD, AND HOME INSPECTORS
MEETING MINUTES**

The Virginia Board for Asbestos, Lead, and Home Inspectors met on February 6, 2014, at the offices of the Department of Professional and Occupational Regulation (DPOR), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 3, Richmond, Virginia 23233.

The following members of the Board were present:

Colleen Becker, Vice-Chair
Susanne Blevins
Keith Cronan, Chair
Dolores Daniels
Rick Holtz

Reginald Marston, III
Frederick Molter, IV
Walter Nixon
D. Todd Vander Pol

Board members Phillip Fincher, Brian Koepf, Kenneth Nash, and Peter Palmer were not present at the meeting.

The following staff members were present for part or all of the meeting:

Nick Christner, Acting Director
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Trisha L. Henshaw, Executive Director
Thomas K. Perry, Board Administrator
Samantha Vrscak, Legal Analyst
Betty C. Jones, Administrative Assistant

Elizabeth Peay from the Office of the Attorney General was present.

Mr. Cronan, finding a quorum of the Board present, called the meeting to order at 9:01 a.m.

Call to Order

Ms. Henshaw advised the Board of the emergency evacuation procedures.

**Emergency
Evacuation
Procedures**

Mr. Vander Pol moved to approve the revised agenda. Ms. Becker seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to lead-based paint renovation, repair, and painting (RRP) until the effective date of the regulations.

Approval of Agenda

Ms. Henshaw welcomed and introduced the newest Board member,

Introduction of New

Mr. Frederick Molter, IV, who was appointed to serve as an asbestos contractor representative. She also announced that Nick Christner is serving as Acting Director.

Board Member and Staff

Ms. Becker moved that the Board approve the minutes of the November 14, 2013, Board meeting. Mr. Vander Pol seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to RRP until the effective date of the regulations.

Approval of Minutes

Mr. Cronan opened the floor for public comment. No members of the public present requested to speak.

Public Comment Period

In the matter of **File Number 2013-01730, Lead Abatement Consulting & Training Systems, Inc.**, the Board members reviewed the Consent Order as seen and agreed to by Lead Abatement Consulting & Training Systems, Inc. Mr. Vander Pol moved to accept the Consent Order which cites the following violations of the Board's regulations: 18 VAC 15-30-820.A.3 (Count 1); 18 VAC 15-30-820.A.4 (Count 2); and 18 VAC 15-30-820.A.2 (Count 3). For these violations, Lead Abatement Consulting & Training Systems, Inc., agrees to the following monetary penalties: \$150.00 monetary penalty for the violation contained in Count 1; \$150.00 monetary penalty for the violation contained in Count 2; \$150.00 monetary penalty for the violation contained in Count 3; and \$150.00 in Board costs, for a total monetary penalty of \$600.00.

File Number 2013-01730, Lead Abatement Consulting & Training Systems, Inc.

In addition, Lead Abatement Consulting & Training Systems, Inc. agrees to provide to the Board, within thirty (30) days of the date of acceptance of this Order, the following:

1. Its Virginia-specific course material for the Board's review and approval;
2. Its written procedures for Virginia licensing candidates for the Board's review and approval; and
3. An amended copy of a training certificate, used for Virginia only, that indicates the training was in accordance with the Board's requirements.

Mr. Nixon seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to RRP until the effective date of the regulations.

In the matter of **File Number 2014-01884, Joseph Burgess**, the Board members reviewed the application file, which consisted of the exhibits, transcript, and the Presiding Officer's Summary and Recommendation. Ms. Becker moved to accept the summary and recommendation of the Presiding Officer and approve Mr. Burgess' asbestos worker application. Mr. Vander Pol seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to RRP until the effective date of the regulations.

File Number 2014-01884, Joseph Burgess

Ms. Henshaw gave an update on the current status of the regulatory review processes for the Board's regulatory packages.

Update on Regulatory Review Processes

The proposed fee amendments to the Asbestos Licensing Regulations has completed executive branch review. The public comment period ended January 31, 2014. A public hearing was held on December 2, 2013.

The proposed fee amendments to the Lead-Based Paint Activities Regulations has completed executive branch review. The public comment period ends February 14, 2014. A public hearing was held on December 18, 2013.

The proposed fee amendments to the Certified Home Inspector Regulations has completed executive branch review. The public comment period ended January 17, 2014. A public hearing was held on December 2, 2013.

The proposed amendments to the Asbestos Licensing Regulations, Lead-Based Paint Activities Regulations, and the Certified Home Inspector Regulations made pursuant to the Governor's Regulatory Reform Initiative have completed executive branch review. The public comment period ends March 14, 2014. A public hearing will be held on February 27, 2014.

The final Lead-Based Paint Activities Regulations (Lead Renewal Change) are currently undergoing review by the Governor's office.

The Certified Home Inspector Regulations to remove the requirement that initial training courses have to be taken in a classroom setting have completed executive branch review. The public comment period ends March 14, 2014. A public hearing will be held on February 27, 2014.

At the November 14, 2013, Board meeting, Ms. Henshaw provided an update on the process to eliminate the fee cap for the third party lead examination in order to set examination fees pursuant to a properly negotiated and executed contract in accordance with the Virginia Public Procurement Act.

**Lead-Based Paint
Activities
Regulations
(Remove Exam Fee
Cap)
Adopt Proposed
Regulations**

An amendment to the Lead-Based Paint Activities Regulations to remove the exam fee cap originally filed as a fast-track action was refiled using the standard process. The public comment period ended November 20, 2013. No comments were received.

After discussion, Ms. Becker made a motion to adopt the text and to authorize staff to file the regulations as proposed for executive branch review. Mr. Nixon seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to RRP until the effective date of the regulations.

Mr. Perry provided a handout summarizing the asbestos and lead training course audits that have been conducted. Three courses are also currently scheduled for audit.

**Asbestos and Lead
Training Course
Audits**

Ms. Henshaw provided an overview of legislation that has been proposed to date for consideration during the 2014 Virginia General Assembly session as it pertains to the Board's programs. Ms. Henshaw explained that all Board and industry-related legislation is monitored by the Board and Department staff. While staff may provide technical information, data, and statistics regarding legislative proposals, Ms. Henshaw reminded the Board members that neither staff nor the Board has a position on a particular bill until such time as the Governor issues a position. Currently, staff is following House Bill 179 (which has been continued to 2015) and Senate Bill 299.

Legislative Update

Mr. Perry provided an update concerning the certified home inspectors continuing professional education (CPE) audit. As authorized by the Board at its May 2, 2013 meeting, an audit was conducted on October 1, 2013 of 22 randomly selected Certified Home Inspectors whose certificates expired between April 30, 2013 and September 30, 2013. This equated to 25 percent of the certificates expiring during this six-month period. As of February 4, 2014, the first home inspector CPE audit resulted in 100% compliance.

Update on Certified Home Inspector CPE Audits

On April 1, 2014, an audit will be conducted of 21 randomly selected Certified Home Inspectors whose certificates expire between October 31, 2013 and March 31, 2014. This number equates to 25 percent of the certificates expiring during this six-month period.

Ms. Henshaw discussed the Board policy adopted on August 23, 2011 regarding the acceptance of online/distance learning courses for initial home inspector certification. Ms. Henshaw indicated that she has received several inquiries regarding the policy and, specifically, how it can be in place given that the previous fast-track action was not successful due to objections received from the public. Ms. Henshaw questioned whether this policy should remain in place, or be suspended until the regulatory action has been completed.

Discussion of Board Policy Regarding Acceptance of Online/Distance Learning Courses for Initial Entry

Mr. Marston made a motion to suspend the policy and Mr. Nixon seconded the motion. Members voting to suspend the policy were Blevins, Marston, and Nixon. Members voting in opposition to the motion were Cronan, Daniels, Molter, and Vander Pol. The motion failed, therefore, the policy remains in effect.

The Board was provided with a memorandum from Mr. Perry requesting Board guidance on discipline specific refresher training for lead inspector license. Regulation 18 VAC 15-30-52 E.5 requires an applicant for risk assessor licensure to submit proof of completion of an initial lead risk assessor training course and an initial lead inspector training course. Regulation 18 VAC 15-30-166 A.1 requires licensees seeking to maintain an individual license to satisfactorily complete a refresher training program.

Memo on Discipline Specific Refresher Training for Lead Inspector License

Upon recommendation from staff and after discussion, Mr. Nixon made a motion to adopt a guidance document stating that applicants

for a lead inspector license may meet the training requirements of 18 VAC 15-30-52.E.4 of the Virginia Lead-Based Paint Activities Regulations by: i.) completion of a board-approved lead inspector initial training course and board-approved lead inspector refresher training course(s), as applicable; or ii.) completion of both a board-approved initial lead inspector training course and a board-approved initial lead risk assessor training course; completion of current board-approved lead risk assessor refresher training course(s); and a current board-approved lead inspector refresher training course, provided all other entry requirements for licensure have been met. For renewal of a lead inspector license, all requirements for renewal, including successful completion of a board-approved inspector refresher training course, are required. Ms. Becker seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to RRP until the effective date of the regulations.

The following resolution was presented for consideration by the Board and read by Mr. Cronan.

**Consideration of
Resolutions for
Service**

Resolution for

D. Bowen Hyatt

WHEREAS, **D. Bowen Hyatt** did faithfully and diligently serve as a member of the Virginia Board for Asbestos, Lead, and Home Inspectors from 2005 to 2013;

WHEREAS, **D. Bowen Hyatt** did devote generously of his time, talent and leadership to the Board;

WHEREAS, **D. Bowen Hyatt** did endeavor at all times to render decisions with fairness and good judgment in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Board for Asbestos, Lead, and Home Inspectors wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth.

NOW, THEREFORE, BE IT RESOLVED, by the Virginia

Board for Asbestos, Lead, and Home Inspectors this sixth day of February 2014, that **D. Bowen Hyatt** be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Ms. Becker made a motion to adopt the resolution. Mr. Marston seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to RRP until the effective date of the regulations.

The following resolution was presented for consideration by the Board and read by Mr. Cronan.

Resolution for

GORDON N. DIXON

WHEREAS, **Gordon N. Dixon**, did faithfully and diligently serve the Virginia Board for Asbestos, Lead, and Home Inspectors from 2010 to 2014 as the Director of the Department of Professional and Occupational Regulation; and

WHEREAS, **Gordon N. Dixon**, did devote generously of his time, talent and leadership to the Board; and

WHEREAS, **Gordon N. Dixon**, did endeavor at all times to render assistance and advice to the Board with fairness and good judgment in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Board for Asbestos, Lead, and Home Inspectors wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth.

NOW, THEREFORE, BE IT RESOLVED, by the Virginia Board for Asbestos, Lead, and Home Inspectors this sixth day

of February 2014, that **Gordon N. Dixon**, be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Mr. Vander Pol made a motion to adopt the resolution. Ms. Daniels seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Marston, Molter, Nixon, and Vander Pol. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to RRP until the effective date of the regulations.

The Board recessed for a break at 10:01 a.m. and reconvened at 10:17 a.m.

Break

Ms. Henshaw asked Mr. Christner to discuss recent conversations between DPOR staff and the Environmental Protection Agency (EPA) regarding concerns that DPOR is not conducting sufficient lead abatement enforcement activities. Mr. Christner stated that staff provides an annual state authorization report to EPA to maintain the state's authorization to operate the lead-based paint activities program. DPOR's enforcement activities are complaint-driven. EPA has expressed its frustration that DPOR has reported no disciplinary action in recent years. While the Department of Labor and Industry receives notifications of lead abatement projects, very few such notices are received as few projects meet the federal definition of "abatement". Mr. Christner stated that investigators have consulted with various local building officials to discuss methods for identifying lead abatement or lead renovation activities. Staff has learned that this information is not collected by the local building officials. Staff continues reviewing these issues and concerns expressed by EPA. EPA is requesting an in-person meeting with DPOR, Virginia Department of Health (VDH), and Department of Labor and Industry (DOLI), the three agencies administering the lead program in Virginia. The Governor's office has been informed of the discussions between DPOR and EPA. Mr. Christner indicated he would keep the Board apprised of the situation.

**Report to Board
Regarding EPA
Lead Abatement
Issues**

At the November 14, 2013, Board meeting, Ms. Henshaw indicated

Lead-Based Paint

that staff is conducting a comprehensive review of the proposed text of the Lead-Based Paint Renovation, Repair, and Painting Regulations in order to ensure that the regulations are accurate, enforceable, and minimize regulatory burdens. Ms. Henshaw stated there were no comments received during the public comment period on the proposed Lead-Based Paint Renovation, Repair, and Painting Regulations. A public hearing was held on September 24, 2013.

**Renovation, Repair,
and Painting
Regulations**

Ms. Henshaw provided the Board with a copy of the recommended changes and clarifications to the Lead-Based Paint Renovation, Repair, and Painting Regulations prepared by staff. A copy of the Code of Federal Regulations was distributed to the Board members.

The Board members began reviewing the draft changes to the proposed text. The Board discussed the suggested revisions and made additional changes to the draft text.

The Board recessed for lunch from 11:53 a.m. to 12:21 p.m.

Lunch

Ms. Henshaw discussed a concern that was identified during the review of the draft regulations. Specifically, the provisions in the draft regulations allow a person without a renovator license to perform renovations pursuant to Chapter 5 of Title 54.1 of the Code of Virginia, so long as he has been trained by, and is under the supervision of, a licensed renovator. In addition, the draft proposed regulations allow renovation activities to occur without the licensed renovator onsite so long as the licensed renovator is accessible by telephone and no more than two hours from the work site. This provision is consistent with Part 745 of the Code of Federal Regulations. However, the Code of Virginia does not explicitly provide an exemption from licensure for those that are performing renovation under the supervision of a licensed renovator.

**Re-Adopt Proposed
Lead-Based Paint
Renovation, Repair,
and Painting
Regulations**

Ms. Henshaw directed the Board members to § 54.1-500 of the Code of Virginia, which provides the definitions of the following terms:

“Renovation” means the modification of any existing structure or portion thereof, for compensation, that results in the disturbance of painted surfaces, unless that activity is performed as a part of a lead abatement. As used in this definition, “compensation” shall include the receipt of (i) pay for work performed, such as that paid to contractors and

subcontractors; (ii) wages, including but not limited to those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (iii) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

“Renovator” means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

In addition, § 54.1-503.D of the Code of Virginia states:

It shall be unlawful for any person who does not possess a license as a renovation contractor to perform renovation. It shall be unlawful for any person who does not possess a renovator’s license to perform or direct others to perform renovation. It shall be unlawful for any person who does not possess a dust sampling technician’s license to perform dust clearance sampling.

There is no specific exemption in § 54.1-512 of the Code of Virginia that indicates an unlicensed individual working under the supervision of a licensed renovator is exempt from licensure.

Finally, §54.1-500.8 of the Code of Virginia states that the Board shall:

Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the (i) approval of accredited renovation training programs, (ii) licensure of individuals and firms to engage in renovation, and (iii) establishment of standards for performing renovation consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency (EPA) regulations. Such regulations of the Board shall be consistent with the EPA Lead Renovation, Repair, and Painting Program final rule.

The Board discussed the draft proposed regulatory provisions that allow a licensed renovator to supervise the renovation activities of unlicensed individuals, as well as the provision that permits a licensed renovator to be no more than two hours from a renovation

project. Upon a question by the Board, Ms. Peay indicated that the Board is authorized to provide interpretation of statutes under its purview and did not indicate that maintaining the draft provisions, which are consistent with the Code of Federal Regulations, was improper. The Board agreed by consensus to keep the above-referenced provisions in the draft proposed regulations.

The Board continued its review of the proposed text of the Lead-Based Paint Renovation, Repair, and Painting Regulations. Some of the changes were of a grammatical nature and others to clarify sections of the regulations. After final review, Mr. Vander Pol made a motion to re-adopt as proposed the Lead-Based Paint Renovation, Repair, and Painting Regulations, as amended and to authorize staff, in consultation with the Board chair, to make any minor changes necessary to obtain the approval of the proposed regulations during the executive branch review process. Ms. Becker seconded the motion which was unanimously approved by: Becker, Blevins, Cronan, Daniels, Holtz, Marston, Molter, Nixon, and Vander Pol.

The following meeting dates have been scheduled:

- May 1, 2014
- August 7, 2014
- November 6, 2014

Future Meeting Dates

Mr. Cronan requested that the Board members complete their conflict of interest forms and travel vouchers.

Conflict of Interest Forms and Travel Vouchers

There being no further business, the meeting adjourned at 1:45 p.m.

Adjourn

Keith F. Cronan, Chair

Nick Christner, Acting Director