

**VIRGINIA BOARD FOR
WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE
SEWAGE SYSTEM PROFESSIONALS**

MINUTES OF MEETING

The Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals met on January 16, 2014, at the offices of the Department of Professional and Occupational Regulation (DPOR), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, Virginia 23233.

The following members of the Board were present:

John Aulbach, II, Vice Chair
Barry T. Dunkley
Thomas Fore
D. Perry Greene (arrived 9:03 a.m.)
Kristen Lentz
E. Brooke Philpy
Gary Schafran
D. Wayne Staples
Ronald Thomas

Board members Kornell Davis, Jr. and Michelle Ann Magrino were not present at the meeting.

DPOR staff present for all or part of the meeting included:

Nick Christner, Acting Director
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Jeff Waite, Budget and Financial Services Manager
Trisha L. Henshaw, Executive Director
Kristin Clay, Board Administrator
Samantha Vrscak, Legal Analyst
Betty C. Jones, Administrative Assistant

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

Finding a quorum of the Board present and in the absence of Mr. Davis, Board Chair, Mr. Aulbach, Vice Chair, 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. Staples moved to approve the revised agenda. Mr. Dunkley seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Lentz, Philpy, Schafran, Staples, and Thomas.

**Approval of
Agenda**

Ms. Henshaw welcomed and introduced the newest Board member, Mr. Thomas Fore, who was appointed to serve as a waterworks operator representative. She also introduced Nick Christner, Acting Director; Kristin Clay, the Board Administrator for the Board; Susan Salomon, licensing specialist; and Ashley Colwell, a contract licensing specialist for the Board.

**Introduction of
New Board
Member and New
Staff**

Mr. Greene arrived at 9:03 a.m.

**Arrival of Board
Member**

Mr. Staples moved that the Board approve the minutes of the October 10, 2013, Board meeting. Ms. Lentz seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

**Approval of
Minutes**

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

**Public Comment
Period**

In the matter of **File Number 2013-01107, Stephen Earl McKim**, the Board members reviewed the Consent Order as seen and agreed to by Stephen Earl McKim. Mr. McKim was not present. Ms. Henshaw provided a letter from Angela Campbell with McCandlish Lillard asking the Board to accept and adopt both Consent Orders. The Consent Order cites the following violation of the Board's regulations: 18 VAC 160-20-140.3 (Count 1). For this violation, Mr. McKim agrees to pay the following monetary penalties: \$500.00 for the violation contained in Count 1; and \$150.00 in Board costs, for a total monetary penalty of \$650.00.

**File Number 2013-
01107, Stephen
Earl McKim**

In the matter of **File Number 2013-01108, Stephen Earl McKim**, the Board members reviewed the Consent Order as seen and agreed to by Stephen Earl McKim. Mr. McKim was not present. Ms. Henshaw provided a letter from Angela Campbell with McCandlish Lillard asking the Board to accept and adopt both Consent Orders. The Consent Order cites the following violation of the Board's regulations: 18 VAC 160-20-140.3 (Count 1). For this violation, Mr. McKim agrees to pay the following monetary penalties: \$500.00 for the violation contained in Count 1; and \$150.00 in Board costs, for a total monetary penalty of \$650.00. Mr. Dunkley moved to approve the Consent Orders for File Number 2013-01107 and File Number 2013-01108. Mr. Fore seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

**File Number 2013-
01108, Stephen
Earl McKim**

In the matter of **File Number 2014-00763, Devin L. Williams**, the Board members reviewed the record which consisted of the application file, transcript, and exhibits from the Informal Fact-

**File Number 2014-
00763, Devin L.
Williams**

Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Williams was present and addressed the Board. He indicated he agrees with the recommendation as he is a different person, has earned his degree, and passed the examination. Mr. Staples moved to accept the recommendation of the Presiding Officer and approve Mr. Williams' application for a Class 3 waterworks operator license. Mr. Dunkley seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

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

**Update on
Regulatory Review
Processes**

The standard regulatory process action amending the definitions related to supervision and entry requirements for installers has completed executive branch review. A 60-day public comment period began December 18, 2013 and ends February 14, 2014. A public hearing was held on December 18, 2013.

The proposed amendment made pursuant to the Governor's Regulatory Reform Initiative has completed executive branch review. A 60-day public comment period began January 13, 2014 and ends March 14, 2014. A public hearing is scheduled for February 27, 2014.

Ms. Henshaw provided an overview as well as a handout of the upcoming 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 during the upcoming General Assembly Session 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 253, House Bill 409, and House Bill 674.

**Discuss 2014
Legislative Session**

The Board was provided with a memorandum from Ms. Henshaw requesting Board guidance related to related-science degrees as a qualification for entry for waterworks and wastewater works operator licensing. Section 18 VAC 160-20-90.C of the Board's Regulations includes provisions for a Class 3, 2, and 1 applicant to qualify for licensure with a combination of education and experience. One education option is "a bachelor's or master's degree with a major in engineering, engineering technology, or *in a related physical, biological, environmental, or chemical*

**Discuss Related
Science Degrees
Pursuant to 18
VAC 160-20-90 for
Waterworks and
Wastewater Works
Operator Licensing**

science...[emphasis added].” In order to ensure consistency in the application of the regulations and clarity to applicants, staff requests the Board provide more specific guidance as to what constitutes a “related physical, biological, environmental, or chemical science” degree.

Board staff has conducted research on other states’ licensure requirements for wastewater and waterworks operators, as well as consulted with subject matter experts in Virginia, and recommends adoption of a policy that provides for a set minimum number of credit hours in math and science. In conducting research on this matter, staff recommends that a degree program that is in or related to a physical, biological, environmental, or chemical science that includes a minimum of 35 credit hours in science and math shall be acceptable towards meeting the applicable requirements for licensure pursuant to 18 VAC 160-20-90. Applicants for licensure pursuant to this provision shall supply official transcripts for each masters’ and/or bachelors’ degree program that is being submitted for consideration in order for staff to evaluate whether the degree program is related and to calculate the credit hours completed in math and science.

After discussion, Mr. Fore made a motion for the Board to adopt a guidance document to ensure consistency in the application of the regulations and guidance to staff and applicants as to what constitutes a “related physical, biological, environmental, or chemical science” degree, Board advised that a minimum of 40 semester credit hours in science and math is acceptable towards meeting the applicable requirements for licensure pursuant to 18 VAC 160-20-90.C. Applicants for licensure pursuant to this provision shall supply official transcripts for each degree program that is being submitted for consideration.

Board staff may request additional information as needed in order to ensure compliance with this policy. Should Board staff be unable to satisfactorily determine whether the credit hours comply with this policy, the application will not be approved. The applicant may request an informal fact-finding conference pursuant to the Administrative Process Act (Chapter 40 of Title 2.2 of the Code of Virginia) in order for the Board to consider the submitted documentation in the event that the supporting documentation is not sufficient or a determination cannot be reasonably made by staff based on the information submitted. Mr. Staples seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

Ms. Clay provided an update of the Waterworks Operators 2013 **Update on CPE**

continuing professional education (CPE) audit. As of December 18, 2013, the regulant population for waterworks operators totaled 2,175. Of the 109 regulants (five percent of the 2,175 regulant population) were randomly selected. Individuals licensed less than two years as of February 28, 2011 were manually excluded. On December 18, 2013, staff sent out initial letters and CPE audit form were mailed to individuals selected for audit. The due date of CPE audit forms and required documentation is January 31, 2014. As of December 31, 2013, the responses received as of close of business were: seven of the total received, two passed, and five were incomplete. Those regulants who provided incomplete CPE audit forms or documentation have received a notice requesting additional information and/or clarification. Staff will be sending a follow-up letter on February 7, 2014, with a deadline of March 14, 2014, to all regulants who have failed to respond.

**Audit for
Waterworks
Operators**

Ms. Henshaw provided a report from Virginia Department of Health Stakeholder Advisory Committee on Safety and Health in Facilitating a Transition (SHIFT). Between July and November of 2013, Virginia Department of Health convened a stakeholder group of 25 individuals representing nine interest groups to make recommendations for the future on its onsite septic program. DPOR staff attended as resources. The SHIFT process was planned through a collaborative effort involving the Virginia Department of Health (VDH); the University of Virginia's Institute for Environmental Negotiation (IEN), which served as the independent facilitator; and a six-person planning team representing diverse stakeholder interests.

**Report from VDH
Stakeholder
Advisory
Committee on
Safety and Health
in Facilitating a
Transition (SHIFT)**

The SHIFT process ultimately resulted in a report that included seven consensus recommendations, and a number of other recommendations that did not receive full consensus.

Mr. Dwayne Roadcap, with VDH, addressed the Board regarding the SHIFT process and report. Mr. Roadcap shared that VDH is working on a number of changes as a result of the discussions during the SHIFT meetings.

The Board recessed for a break at 9:40 a.m. and reconvened at 9:49 a.m.

Break

Mr. Aulbach discussed the new VDH program regarding veterans. Mr. Aulbach introduced Captain William Bryson to the Board. Captain Bryson thanked the Board for inviting him and giving him the opportunity to support the veterans. Captain Bryson provided a presentation from Quartermasters' School regarding military experience and training as it applies to waterworks operators.

**New VDH Program
for Veterans**

Mr. Mark Anderson, with VDH, addressed the Board. He thanked the Board members for considering this initiative to facilitate transition of veterans in the water and wastewater civilian industry.

Ms. Henshaw shared with the Board that staff recently met with Mr. Aulbach, Mr. Anderson, and representatives of the Quartermaster School, including William Quimbayoglen. Ms. Henshaw indicated that the information provided by Mr. Quimbayoglen and the other representatives will greatly benefit staff when processing applications containing military experience. In addition to providing specific information regarding the appropriate forms to request from applicants to document military training and experience, they also offered themselves as resources to Board staff when questions arise. Ms. Henshaw indicated that she appreciated the opportunity for the Board and Department to be a part of an initiative to improve the application process to assist applicants who are active duty or inactive military personnel.

Ms. Henshaw provided an update on the application process for examination candidates.

**Update on
Application Process
for Examination
Candidates**

At the October 10, 2013 Board meeting, Ms. Henshaw provided background information on a proposed change to the WWWOSSP application review process to have staff review applications for examination instead of PSI.

After considering comments and concerns received from applicants regarding the review process and reviewing the exam process for other license programs within DPOR, Ms. Henshaw proposed changing the review process as follows:

- Board staff will receive and review applications for exam.
- If approved, Board staff will send an approval letter to the applicant and have a mechanism for notifying the exam vendor of the approval.
- If not approved, Board staff will advise the applicant of any deficiencies. The applicant will have one year from date of receipt of the application to provide the additional information needed to make the application complete.
- Once the applicant passes the exam, the vendor will notify DPOR and the license will be issued.

Effective January 2, 2014, Ms. Henshaw implemented the new

streamlined procedures which will affect the application and examination process for individuals seeking licensure by the Board.

This change is being monitored to ensure that it meets the goals of providing greater customer service to applicants, reduces confusion as to the point of contact at any given time in the process, and increases efficiency and accuracy in processing.

Ms. Henshaw indicated there is a great response so far. Ms. Henshaw stated that one benefit of this change is reduction of exam fees from \$94 to \$80. A notice regarding the changes is available on the Board's website and was distributed to a number of interested parties and industry groups. Ms. Henshaw also expressed her appreciation to Mr. Christner and former Director Mr. Dixon for supporting Board staff in implementing the change to the review process.

Ms. Henshaw provided the Board a copy of the quarterly examination statistics report for informational purposes. Ms. Henshaw inquired to PSI regarding the schedule for review of the exams and will provide an update at the next Board meeting.

**Quarterly
Examination
Statistics Report**

The following resolutions were presented for consideration by the Board.

**Consideration of
Resolutions for
Service**

**Resolution for
FRANK L. DAVIS, JR.**

WHEREAS, **Frank L. Davis, Jr.** did faithfully and diligently serve as a member of the Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals from 2005 to 2013;

WHEREAS, **Frank L. Davis, Jr.** did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Frank L. Davis, Jr.** 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 Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals 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 Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals this sixteenth day of January 2014, that **Frank L. Davis, Jr.**, 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.

Resolution for
GORDON N. DIXON

WHEREAS, **Gordon N. Dixon** did faithfully and diligently serve the Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals 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 Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals 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 Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals this sixteenth day of January 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. Fore made a motion to adopt the resolutions. Mr. Philpy seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

Ms. Henshaw provided the Board a handout with the Board's current financial position which indicates that, based on current revenues and expenses, the Board will face a deficiency if an adjustment is not made.

**Consider NOIRA
for Fee Adjustment**

Ms. Henshaw asked the Board to consider filing a Notice of Intended Regulatory Action (NOIRA) to adjust the current fees. This is necessary due to the Board's current financial position. Ms. Henshaw advised that a NOIRA for the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals must be authorized by the Board if it wishes to initiate the regulatory review process. A motion was made by Mr. Fore to authorize staff to file a Notice of Intended Regulatory Action (NOIRA) for the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals to adjust fees for all regulations affected. Mr. Dunkley seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

The Board discussed the Education and Training Committee membership. The Board agreed by consensus that Mr. Staples serve as Chair of the Committee and Mr. Fore be added as a member.

**Discussion of
Education and
Training
Committee
Membership**

The Board was provided with a memorandum from Ms. Clay requesting Board guidance for continuing professional education (CPE). Staff received several inquiries from individuals who were selected for the 2013 Waterworks Operator CPE Audit, regarding the need to complete CPE's when the individual upgrades the class of his license prior to renewal. Staff is concerned that in cases of continual renewals and upgrades, licensees will not complete any CPE for extended periods of time and/or that staff will improperly apply said regulation when conducting audits as the regulation is silent in reference to the applicability of the CPE requirements when the license class changes. Alternatively, passing an examination could indicate that an individual has been exposed to the subject areas necessary for CPE-the exam content areas.

**CPE Request for
Guidance**

Mr. Mark Anderson, with VDH, addressed the Board. He indicated

he was involved in the development of the CPE requirements and the historical context matches what the staff is currently doing.

After discussion, the Board agreed by consensus that individuals who progressively upgrade their license during a licensing cycle are not subject to completing CPE's as the course work completed to upgrade their license contains content which is covered by the examination.

Ms. Henshaw discussed misdemeanor convictions pursuant to 18 VAC 160-20-76 H and I and 18 VAC 160-20-140.2 of the regulations. Ms. Henshaw is requesting Board guidance on handling certain misdemeanor convictions. After discussion, Mr. Staples made a motion to adopt a guidance document authorizing staff to approve an application wherein the applicant meets all other requirements for licensure but has a misdemeanor conviction that occurred more than ten (10) years from the date of application, regardless of the nature of the conviction, and has no other subsequent convictions. Such applicant shall *not* be subject to the provisions of §54.1-204 of the Code of Virginia and will be processed administratively by staff. Mr. Greene seconded the motion which was unanimously approved by: Aulbach, Dunkley, Fore, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

**Discussion of
Misdemeanor
Convictions
Pursuant to
Regulations**

Ms. Henshaw provided an update on an appeal of a disciplinary case previously decided by the Board.

Other Business

The following meeting dates have been scheduled:

**Future Meeting
Dates**

- Thursday, April 10, 2014
- Thursday, July 24, 2014
- Thursday, October 16, 2014

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

**Conflict of Interest
Forms and Travel
Vouchers**

There being no further business, the meeting was adjourned at 10:51 a.m.

Adjourn

Kornell R. Davis, Jr., Chair

Nick Christner, Acting Director