

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

The Virginia Board for Asbestos, Lead, and Home Inspectors met on August 18, 2016, 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:

Sandra Baynes
Colleen Becker, Chair
Joseph T. France
James E. Haltigan
Rick Holtz
Brian Koepf

Gene E. Magruder
Reginald E. Marston, III
Kenneth Nash
Walter C. Nixon
Peter D. Palmer, Vice Chair

Board members Phillip Fincher, Erich J. Fritz, and Frederick Molter, IV were not present at the meeting.

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

Jay W. DeBoer, Director
Nick Christner, Deputy Director
Trisha L. Henshaw, Executive Director
Kristin M. Clay, Board Administrator
Tanya M. Pettus, Administrative Assistant

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

Ms. Becker, finding a quorum of the Board present, called the meeting to order at 9:05 a.m.

Call to Order

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

**Emergency
Evacuation
Procedures**

Mr. Magruder moved to approve the agenda as presented. Ms. Baynes seconded the motion which was unanimously approved by: Baynes, France, Haltigan, Koepf, Magruder, Marston, Nixon, and Palmer. Board members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

Approval of Agenda

Mr. Marston moved to approve the minutes of the May 17, 2016, Board meeting, and the July 27, 2016, Home Inspector Licensing Implementation Committee Meeting. Mr. Magruder seconded the

**Approval of
Minutes**

motion which was unanimously approved by: Baynes, France, Haltigan, Koepf, Magruder, Marston, Nixon, and Palmer. Board members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

Ms. Henshaw introduced Board Member Joe T. France, who will serve as the analytical laboratory representative.

Introduction of New Board Member

Ms. Henshaw opened the floor for public comment. There were no members of the public present to address the Board regarding matters unrelated to application or disciplinary files.

Public Comment Period

In the matter of **File Number 2016-02335, Pacific Technologies, Inc.**, the Board members reviewed the application file, which consisted of the exhibits, transcript, and the Presiding Officer's summary and recommendation.

File Number 2016-02335, Pacific Technologies, Inc.

Mr. Joel Lytle, President of Pacific Technologies, Inc. addressed the Board. Mr. Lytle accepted full responsibility for the matter and asked that the Board approve the asbestos contractor license application for Pacific Technologies, Inc.

Mr. Magruder moved to accept the summary and recommendation of the Presiding Officer and approve Pacific Technologies, Inc.'s application for an asbestos contractor license. Mr. Nixon seconded the motion which was unanimously approved by: Baynes, France, Haltigan, Koepf, Magruder, Marston, Nixon, and Palmer. Board members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

Mr. Nixon, Mr. Nash, and Mr. Haltigan recused themselves from the meeting for the discussions and deliberations regarding File Numbers 2016-00980, 2016-00983, and 2016-00984. Mr. Palmer advised the Board that he knew the respondent in the three files, but stated he would not recuse himself as the nature of his relationship with the respondent would not prevent him from making a fair, objective, and impartial decision in the matter.

Recusal of Board Members

Prior to presenting File Number 2016-00980, Ms. Henshaw presented the Board with a written request from the respondent's counsel for the Board to continue the review of File Numbers 2016-

File Number 2016-00980, Melissa Sue Hart

00980, 2016-00983, and 2016-00984 until the conclusion of any related criminal proceedings. After discussion, Ms. Baynes moved to proceed with the review of the files and not grant a continuance. Mr. Magruder seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

In the matter of **File Number 2016-00980, Melissa Sue Hart**, the Board members reviewed the record which consisted of the Report of Findings, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. After discussion, Mr. Palmer moved to accept the Presiding Officer's recommendation for Count 1, and find Ms. Hart in violation of Board Regulation 18 VAC 15-20-430.A. Mr. Magruder seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations. Mr. Magruder then moved to accept the recommendation of the Presiding officer and impose a monetary penalty of \$125.00 for Count 1. Mr. Palmer seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

After discussion, Mr. Magruder moved to accept the Presiding Officer's recommendation for Count 2, and find Ms. Hart in violation of Board Regulation 18 VAC 15-20-410.A. Mr. Palmer seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations. Mr. Magruder then moved to accept the recommendation of the Presiding officer and impose a monetary penalty of \$125.00 and license revocation for Count 2. Mr. Palmer seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because,

by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

In the matter of **File Number 2016-00983, Melissa Sue Hart**, the Board members reviewed the record which consisted of the Report of Findings, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Palmer moved to accept the Presiding Officer's recommendation for Counts 1 and 2, and find Ms. Hart in violation of Board Regulation 18 VAC 15-20-430.A and Board Regulation 10 VAC 15-20-410.A, respectively. Mr. Koepf seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations. Mr. Palmer then moved to accept the recommendation of the Presiding officer and impose a monetary penalty of \$125.00 for Count 1, and a monetary penalty of \$125.00 and license revocation for Count 2. Mr. Magruder seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

File Number 2016-00983, Melissa Sue Hart

In the matter of **File Number 2016-00984, Melissa Sue Hart**, the Board members reviewed the record which consisted of the Report of Findings, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Magruder moved to accept the Presiding Officer's recommendation for Counts 1 and 2, and find Ms. Hart in violation of Board Regulation 18 VAC 15-20-430.A and Board Regulation 10 VAC 15-20-410.A, respectively. Mr. Koepf seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations. Mr. Magruder then moved to accept the recommendation of the Presiding officer and impose a monetary penalty of \$125.00 for Count 1, and a monetary penalty of \$125.00 and license revocation for Count 2. Mr. France seconded the motion which was unanimously approved by: Baynes, France,

File Number 2016-00984, Melissa Sue Hart

Koepf, Magruder, Marston, and Palmer. Board members Becker and Holtz were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

Mr. Nixon, Mr. Nash, and Mr. Haltigan returned to the meeting.

Return of Board Members

Mr. Haltigan recused himself from the meeting.

Recusal of Board Members

In the matter of **File Number 2016-00561, Environmental Trust Solutions, Inc.**, the Board members reviewed the record which consisted of the Report of Findings, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Nixon moved to accept the Presiding Officer's recommendation and find Environmental Trust, Inc. in violation of Board Regulation 18 VAC 15-20-410. Mr. Palmer seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, Nixon, and Palmer. Board members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations. Mr. Nixon then moved to accept the recommendation of the Presiding officer and impose a monetary penalty of \$500.00. Mr. Palmer seconded the motion which was unanimously approved by: Baynes, France, Koepf, Magruder, Marston, Nixon, and Palmer. Board members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

File Number 2016-00561, Environmental Trust Solutions, Inc.

Mr. Haltigan returned to the meeting.

Return of Board Member

Mr. Koepf recused himself from the meeting.

Recusal of Board Member

In the matter of **File Number 2016-00947, Paul Garth Hinz**, the Board members reviewed the Consent Order, which imposed a Board costs in the amount of \$150.00. In addition Mr. Hinz agrees to the voluntary surrender of his home inspector certificate. Mr. Marston moved to accept the terms of the Consent Order as presented. Mr. Magruder seconded the motion which was

Consent Order, File Number 2016-00947, Paul Garth Hinz

unanimously approved by: Baynes, France, Haltigan, Magruder, Marston, Nixon, and Palmer. Board members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

Mr. Koepf returned to the meeting.

Return of Board Member

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

Update on Regulatory Review Processes

The proposed Certified Home Inspector Regulations filed for executive branch review on November 20, 2015 have been withdrawn. This action has been replaced by the statutory licensing requirements for home inspectors to become effective July 1, 2017.

The proposed Lead-Based Paint Renovation, Repair, and Painting Program Regulations (Initial Promulgation) are currently undergoing review by the Governor's office. If approved, the regulations will be posted to the Virginia Register and a 60-day public comment period will commence, to include a public hearing.

Ms. Henshaw advised the Board that draft regulatory amendments creating home inspector licensure requirements are being developed by the Home Inspector Licensing Implementation Committee to be presented to the Board for approval. Ms. Henshaw advised the Board that subjects being discussed by the Committee include:

Report from Home Inspector Licensing Implementation Committee

- Experience requirements;
- Conviction disclosure;
- Condensing the renewal/reinstatement process; and
- Insurance

Ms. Henshaw advised the Board of an amendment to the Administrative Process Act granting the right to counsel in rule-making proceedings, requiring an amendment to the language in Board Regulation 18VAC160-11-50. Ms. Henshaw advised that because this is a statutory change, the amendment may be made through the fast-track process. Mr. Magruder moved to authorize staff to move forward with the fast-track process in order to make the necessary amendment to the regulation. Mr. Nixon seconded the motion which was unanimously approved by: Baynes, France, Haltigan, Koepf, Magruder, Marston, Nixon, and Palmer. Board

Consider Fast-Track Regulatory Action to Amend Public Participation Guidelines

members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

Ms. Henshaw provided an update of the asbestos course audits that have been conducted since the Board's last meeting. Ms. Henshaw advised that due to the absence of a Board Administrator, non-mandatory audits are currently not being completed. Ms. Henshaw advised that the agency is currently recruiting to fill the Board Administrator position, and audits will proceed when the position is filled.

**Asbestos and Lead
Training Course
Audits**

Board members considered the following resolutions for former staff members:

**Consideration of
Resolution for
Service**

Thomas K. Perry

WHEREAS, **Thomas Perry**, did faithfully and diligently serve the Department of Professional and Occupational Regulation from 1993 to 2016;

WHEREAS, **Thomas Perry**, did devote generously of his time, talent and leadership to the Virginia Board for Asbestos, Lead, and Home Inspectors;

WHEREAS, **Thomas Perry**, did endeavor at all times to render decisions with fairness and good judgement 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 eighteenth day of August 2016, that **Thomas Perry** 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.

Mark Courtney

WHEREAS, **Mark Courtney**, did faithfully and diligently serve the Department of Professional and Occupational Regulation from 1991 to 2016;
WHEREAS, **Mark Courtney**, did devote generously of his time, talent and leadership to the Virginia Board for Asbestos, Lead, and Home Inspectors;
WHEREAS, **Mark Courtney**, did endeavor at all times to render decisions with fairness and good judgement 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 eighteenth day of August 2016, that **Mark Courtney** 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. Palmer moved to adopt the resolutions as presented. Mr. Marston seconded the motion which was unanimously approved by: Baynes, France, Haltigan, Koepf, Magruder, Marston, Nixon, and Palmer. Board members Becker, Holtz, and Nash were present but did not vote because, by statute, they are ineligible to vote on matters unrelated to renovation, repair, and painting (RRP) until the effective date of the regulations.

Ms. Henshaw advised the Board that the Department of Labor and Industry (DOLI) requested clarity on requirements for demolitions of structures in which asbestos containing caulking is present. DOLI currently requires a licensed asbestos supervisor to be onsite at such demolitions, but it is not clear whether a licensed asbestos abatement contractor is required to remove the caulking when the caulking is non-friable. After lengthy discussion, the Board agreed by consensus that all asbestos containing material, including non-friable material, must be removed before structure demolition by a licensed asbestos abatement contractor, with the exception of roofing, flooring, and siding materials that are non-friable and will not become friable.

Other Business

The following meeting dates have been scheduled:

**Future Meeting
Dates**

- November 15, 2016
- February 9, 2017
- May 18, 2017
- August 17, 2017
- November 9, 2017

Ms. Henshaw 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 10:21 a.m.

Adjourn

Colleen Becker, Chair

Jay W. DeBoer, Secretary