

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

The Virginia Board for Asbestos, Lead, and Home Inspectors met on August 7, 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
Suzanne Blevins
Keith Cronan, Chair
Dolores Daniels
Phillip Fincher

Rick Holtz
Brian Koepf
Reginald Marston, III
Frederick Molter, IV
D. Todd Vander Pol

Board members Kenneth Nash, Walter Nixon, and Peter Palmer were not present at the meeting.

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

Jay W. DeBoer, Director
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Trisha L. Henshaw, Executive Director
Thomas K. Perry, Board Administrator
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 9:06 a.m.

Call to Order

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

**Emergency
Evacuation
Procedures**

Ms. Becker moved to approve the revised agenda. Mr. Vander Pol seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Fincher, Koepf, Marston, Molter, 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. Becker moved that the Board approve the minutes of the May 1, 2014, Board meeting. Mr. Vander Pol seconded the motion

**Approval of
Minutes**

which was unanimously approved by: Blevins, Cronan, Daniels, Fincher, Koepf, Marston, Molter, 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. Cronan opened the floor for public comment. No members of the public present requested to speak.

**Public Comment
Period**

Mr. Cronan transferred the Chair to Ms. Becker and recused himself from the meeting. Mr. Fincher also recused himself from the meeting.

**Transfer of Chair
and Recusals**

In the matter of **File Number 2012-01966, Chelsea Environmental Corporation** (“Chelsea”), the Board members reviewed the record of the Informal Fact-Finding Conference (“IFF”), which consisted of the investigative file, transcript and exhibits, and the Summary of the Informal Fact-Finding Conference, as well as the recommendation of the presiding officer. Ms. Susan Martin, Witness, was present and addressed the Board. Ms. Martin described the detrimental consequences to her home and family since the work on her home took place. She indicated that the Board should revoke Chelsea’s and Mr. Potter’s licenses.

**File Number 2012-
01966, Chelsea
Environmental
Corporation**

Mr. Thomas Nesbitt, attorney for Chelsea Environmental Corporation and Paul Potter, was present and addressed the Board. Mr. Potter was present but did not address the Board. Mr. Nesbitt indicated that the Summary of the Informal Fact-Finding and recommendation of the presiding Board member are not appropriate. Mr. Nesbitt requested the Board dismiss this case and find no violation.

Mr. Phil Dawson, Witness, was present and addressed the Board. Mr. Dawson reiterated his professional opinion regarding the presence of pre-existing asbestos contaminated materials in the yard.

After discussion, Mr. Vander Pol moved to accept the Summary of the Informal Fact-Finding Conference as to the facts, which cites the following violation of the Board’s regulations: 18 VAC 15-20-450.A.4 (Count 1). Mr. Marston seconded the motion which was unanimously approved by: Blevins, Daniels, Koepf, Marston, Molter, 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. Vander Pol moved to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference as to the sanctions and impose the following:

- Count 1: \$2,500.00, for a total monetary penalty of \$2,500.00, and revocation.

Mr. Marston seconded the motion which was unanimously approved by: Blevins, Daniels, Koepf, Marston, Molter, 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. Cronan recused himself from the meeting and was not present during the discussions or votes due to a personal interest in this matter. Mr. Fincher recused himself from the meeting and was not present during the discussions or votes due to a personal interest in this matter.

In the matter of **File Number 2014-00189, Paul T. Potter**, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and the Summary of the Informal Fact-Finding Conference, as well as the recommendation of the presiding officer. Mr. Thomas Nesbitt, attorney for Chelsea Environmental Corporation and Paul Potter, was present and addressed the Board. Mr. Potter was present but did not address the Board. Mr. Nesbitt indicated that the Summary of the Informal Fact-Finding and recommendation of the presiding Board member are not appropriate. Mr. Nesbitt requested the Board dismiss this case and find no violation.

File Number 2014-00189, Paul T. Potter

Ms. Susan Martin, Witness, stated that her earlier comments applied to both Chelsea Environmental Corporation and Paul Potter.

After discussion, Mr. Vander Pol moved to accept the Summary of the Informal Fact-Finding Conference as to the facts, which cites the following violation of the Board's regulations: 18 VAC 15-20-450.A.4 (Count 1). Mr. Marston seconded the motion which was unanimously approved by: Blevins, Daniels, Koepf, Marston, Molter, 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. Marston moved to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference as to the sanctions and impose the following:

- Count 1: \$1,500.00, for a total monetary penalty of \$1,500.00, and suspension of license for the violation of Count 1 until such time as Mr. Potter presents evidence acceptable to the Board that he has attended and successfully completed an EPA/AHERA or Board-approved accredited Initial 40-hour Asbestos Supervisor Training Course.

Mr. Koepf seconded the motion which was unanimously approved by: Blevins, Daniels, Koepf, Marston, Molter, 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. Cronan recused himself from the meeting and was not present during the discussions or votes due to a personal interest in this matter. Mr. Fincher recused himself from the meeting and was not present during the discussions or votes due to a personal interest in this matter.

Mr. Cronan returned to the meeting and resumed the position of Chair. Mr. Fincher also returned to the meeting.

Transfer of Chair

In the matter of **File Number 2014-03580, Daniel Perez**, the Board members reviewed the record of the Informal Fact-Finding Conference which consisted of the application file, exhibits and transcript, and the Summary of the Informal Fact-Finding Conference. Mr. Perez was not present. Mr. Koepf moved to adopt the summary and recommendation of the hearing officer and approve Mr. Perez's application for an asbestos supervisor license. Mr. Fincher seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Fincher, Koepf, Marston, Molter, 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 2014-03580, Daniel Perez

In the matter of **File Number 2014-03119, Richard DeVall**, the

File Number 2014-

Board members reviewed the record of the Informal Fact-Finding Conference which consisted of the application file, exhibits and transcript, and the Summary of the Informal Fact-Finding Conference. Mr. DeVall was present and addressed the Board. Mr. DeVall acknowledged mistakes he made in the past and stated he has worked to rectify them. He asked the Board to accept the recommendation and grant his license.

03119, Richard DeVall

Mr. Vander Pol moved to adopt the summary and recommendation of the hearing officer and to approve Mr. DeVall's application for a lead abatement supervisor license subject to the following conditions:

1. DeVall shall be placed on probation for a period of one year; and
2. During the one year probationary period, DeVall is required to report any violations from any regulatory or government board or agency (federal/state/local) pertaining to any lead based projects to include but not limited to construction or supervision within thirty (30) days of any order or final agency decision.

Ms. Daniels seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Fincher, Koepf, Marston, Molter, 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. DeBoer introduced Ms. Laura Farley with the Virginia Association of Realtors, who is monitoring DPOR's regulatory procedures.

Introduce Member of Public

The Board recessed for a break at 10:20 a.m. and reconvened at 10:37 a.m.

Break

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, Lead-Based Paint Activities Regulations, and Certified Home Inspector Regulations are each in the final stage currently undergoing review by the Governor's office.

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 are each in the final stage currently undergoing review by the Governor's office.

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

The proposed amendment to the Certified Home Inspector Regulations removing the requirement that initial training courses have to be taken in a classroom setting are in the final stage currently undergoing review by the Governor's office.

The proposed amendment to the Lead-Based Paint Activities Regulations removing the exam fee cap is in the proposed stage currently undergoing review by the Governor's office.

The proposed Lead-Based Paint Renovation, Repair, and Painting Program Regulations (Initial Promulgation) have been re-filed and are in the proposed stage currently undergoing review by the Governor's office.

Ms. Henshaw asked the Board to consider filing a Fast-Track Regulatory Action to the Lead-Based Paint Activities Regulations in order to correct a typographical error ("asbestos" referenced in 18 VAC 15-30-163 instead of "lead"). Ms. Becker made a motion to authorize staff to proceed with filing the discussed change to the Lead-Based Paint Activities Regulations via the fast-track process; and to authorize staff to initiate a Notice of Intended Regulatory Action (NOIRA) if the fast-track process is rejected during the executive branch review. Mr. Vander Pol seconded the motion which was unanimously approved by: Blevins, Cronan, Daniels, Fincher, Koepf, Marston, Molter, 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.

Initiate Fast-Track Process for Lead-Based Paint Activities Regulations (To correctly identify accredited lead training programs).

The Board was provided with a memorandum from Mr. Perry requesting clarification of whether the minimum dollar amount of general liability insurance required for certified home inspectors is "per occurrence" or an "aggregate limit."

Memorandum Requesting Clarification of the Minimum Dollar

Subsection 9 of Regulation 18 VAC 15-40-30 states that “Applicants shall show evidence of having obtained general liability insurance with minimum limits of \$250,000.” Regulation 18 VAC 15-40-80.C requires the regulant at renewal to affirm that the insurance required by 18 VAC 15-40-30 continues to be in effect.

Amount of General Liability Insurance Required for Home Inspectors

After discussion, the Board agreed by consensus to discuss this at the next Board meeting after staff has researched the matter further.

Mr. Perry provided a revised handout summarizing the asbestos and lead training course audits that have been conducted since the Board’s last meeting. Two unannounced audits of training courses and three unannounced training provider audits were conducted.

Asbestos and Lead Training Course Audits

Mr. Perry provided an update concerning the certified home inspectors continuing professional education (CPE) audit. Based on previous guidance from the Board, an audit was conducted on April 1, 2014 of 21 randomly selected Certified Home Inspectors whose certificates expired between October 31, 2013 and March 31, 2014. This number equates to 25 percent of the certificates expiring during this six-month period. To date, responses have been received from 20 regulants, and 19 of these regulants have successfully completed the audit.

Update on Certified Home Inspector CPE Audits

Ms. Henshaw opened the floor for nominations of Chair and Vice Chair. Mr. Marston made a motion to nominate Ms. Becker as Chair. Mr. Vander Pol seconded the motion which was unanimously approved by: Becker, Blevins, Cronan, Daniels, Fincher, Holtz, Koepf, Marston, Molter, and Vander Pol. By acclamation, Ms. Becker was elected Chair.

Election of Officers

Mr. Vander Pol made a motion to nominate Mr. Palmer as Vice Chair. Mr. Cronan seconded the motion which was unanimously approved by: Becker, Blevins, Cronan, Daniels, Fincher, Holtz, Koepf, Marston, Molter, and Vander Pol. By acclamation, Mr. Palmer was elected Vice Chair.

The Board was provided with a memorandum and a copy of House Bill 179 from Ms. Henshaw discussing the Virginia Housing Commission’s Asbestos Sub Work Group. The Asbestos Sub Work Group of the Virginia Housing Commission met on July 7, 2014, to discuss possible solutions to address concerns raised

Discuss Virginia Housing Commission Asbestos Sub Work Group

during the 2014 General Assembly Session related to House Bill 179. Ms. Henshaw was asked to participate as a member of the Sub Work Group along with other stakeholders.

The Sub Work Group requested that the Board consider a regulatory amendment to incorporate provisions related to substantial identity of interest for asbestos and lead contractors. Ms. Henshaw requested that the Board consider whether it wishes to initiate a regulatory action to incorporate provisions related to substantial identity.

After discussion, the Board indicated that regulatory action to incorporate provisions related to substantial identity was unnecessary at this time. Asbestos and lead contractors must obtain licenses from the Board for Contractors prior to obtaining licenses from the Board. Therefore, an individual associated with a contractor that has a substantial identity of interest with another contractor that has been subject to discipline will have been vetted through the Board for Contractor's prior to being eligible for a license by this Board. The Board agreed by consensus that incorporating provisions relating to substantial identity would be duplicative and unnecessary, and delay licensure. Ms. Henshaw will provide a report to the Asbestos Sub Work Group at its next meeting.

The Board was provided with a memorandum from Mr. Perry requesting authorization for Board staff to review and approve applications with certain criminal convictions.

**Discuss Authorizing
Board Staff to
Review and
Approve
Applications with
Certain Criminal
Convictions**

The Board currently reviews any application for a license or certificate wherein the applicant has been convicted of any felony and/or any misdemeanor involving certain offenses. These applications are reviewed through an administrative process, i.e., informal fact finding conference, with the decision for approval or denial made by the Board. This process typically takes four to six months and results in additional costs to the Board. In addition, of 56 applicants with criminal convictions reviewed by the Board in the last five years, 55 were approved after Board review.

Asbestos Licensing Regulations

Reference 18VAC15-20-32 and 18VAC15-20-450

The Board reviews any felony and any misdemeanor involving lying,

cheating or stealing or any violation while engaged in environmental remediation activity that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

Lead-Based Paint Activities Regulations

Reference 18VAC15-30-52 and 18VAC15-30-810

The Board reviews any felony and any misdemeanor involving lying, cheating, or stealing, or of any violation while engaged in environmental remediation activity that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

Certified Home Inspector Regulations

Reference 18VAC15-40-30 and 18VAC15-40-190

The Board reviews any felony and any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety.

Mr. Vander Pol made a motion to amend and accept staff's recommendation and adopt a policy to authorize staff to approve, as appropriate, an application with specific criminal convictions wherein the applicant meets all other requirements for licensure or certification, as applicable. Specifically, staff is authorized to review and approve, as appropriate:

1. An applicant with one or more felony convictions more than five years old and not related to environmental remediation activities. This does not include convictions that resulted in incarceration where the release date is less than one year from the application date.
2. An applicant with one or more misdemeanor convictions all of which are more than five years old and not related to environmental remediation activities.

An application that includes criminal convictions that does not conform to this policy shall be reviewed pursuant to the applicable Board regulation and § 54.1-204 of the *Code of Virginia*.

After discussion, Ms. Becker seconded the motion which was approved by: Blevins, Cronan, Daniels, Fincher, Koepf, Marston,

and Vander Pol. Member voting in opposition to the motion was Mr. Molter. 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 meeting dates have been scheduled:

**Future Meeting
Dates**

- November 6, 2014
- February 5, 2015
- May 14, 2015
- August 6, 2015
- November 19, 2015

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

**Conflict of Interest
Forms and Travel
Vouchers**

Ms. Henshaw provided the Board with general guidance applicable to the review of application and disciplinary files.

There being no further business, the meeting adjourned at 11:56 a.m.

Adjourn

Keith F. Cronan, Chair

Jay W. DeBoer, Secretary