

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND
REGULATION BEFORE THE SOIL CLASSIFIERS ADVISORY
COUNCIL

(COPY)

BOARD MEETING

Tuesday, March 20, 2012
10:00 a.m. - 10:49 a.m.

The South Carolina Soil Classifiers Advisory Council board meeting was taken at the Synergy Office Park, Kingstree Building, Room 204, 110 Centerview Drive, Columbia, South Carolina, on the 20th day of March, 2012 before Reba C. Hayes, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

BOARD MEMBERS:

Dennis D. DeFrancesco, Chairman
Randall K. Fowler
David L. Hargett
Bill Smith

ADVISING THE BOARD:

Sara McCartha, Esquire

Also Present:

Jan Simpson, Administrator
Sherri Moorer

INDEX

	<u>PAGE</u>
CALL TO ORDER:	
Mr. Chairman	4
<u>STATEMENT OF PUBLIC NOTICE:</u>	
Mr. Chairman	4
<u>INTRODUCTION OF BOARD MEMBERS:</u>	
Mr. Chairman	4
<u>APPROVAL OF SEPTEMBER 20, 2011 MEETING MINUTES:</u>	
Mr. Chairman	5
Motion by Mr. Hargett	5
Second by Mr. Fowler	5
<u>REVISIONS TO AGENDA:</u>	
Mr. Chairman	5
<u>UNFINISHED BUSINESS:</u>	
Ms. Moorer	6
<u>ADMINISTRATOR'S REPORT:</u>	
Ms. Moorer	11
Motion by Mr. Hargett	25
Second by Mr. Fowler	25

PUBLIC COMMENT:

Mr. Melin	27
Mr. Fincham	28

ADJOURNMENT:

Motion by Mr. Hargett	42
Second by Mr. Fowler	42
Certificate	43

EXHIBITS

(No exhibits were marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act, the Practice Act and Regulations of the Board.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CALL TO ORDER:

MR. CHAIRMAN: We'll call to order now.

STATEMENT OF PUBLIC NOTICE:

MR. CHAIRMAN: Public notice has been properly posted in all the appropriate locations about this meeting in compliance with the Freedom of Information Act.

INTRODUCTION OF BOARD MEMBERS:

MR. CHAIRMAN: My name is Dennis DeFrancesco. I'm the Chairman of the Soil Classifiers Council. If the other Board members want to introduce themselves also?

MR. FOWLER: Randy Fowler.

MR. HARGETT: Dave Hargett.

MR. CHAIRMAN: And if the other folks here will also introduce themselves?

MR. STUCKEY: Ben Stuckey.

MR. FINCHAM: Chris Fincham From DHEC.

MR. MELIN: Steve Melin From Mountain Soils.

MS. SIMPSON: Jan Simpson, Board Administrator.

MS. MOORER: Sherri Moorer, program assistant.

MS. MCCARTHA: And I'm Sara McCartha and I'm advice counsel to this board.

MR. CHAIRMAN: Thank you, folks.

APPROVAL OF SEPTEMBER 20, 2011 MEETING MINUTES

1 AND NOVEMBER 23, 2011 CONFERENCE CALL MINUTES:

2 **MR. CHAIRMAN:** Have the other members looked at the
3 meeting minutes from the September 20th
4 meeting, 2011, and November 23rd, 2011? I want
5 to quickly mention that Dr. Bill Smith could
6 not attend today because of a prior engagement.
7 He did respond via email to tell us about that.

8 **MR. HARGETT:** Mr. Chair, do you want a motion to
9 accept the minutes?

10 **MR. CHAIRMAN:** If you agree with them, yes.

11 **MR. HARGETT:** So move.

12 **MR. FOWLER:** Second.

13 **MR. CHAIRMAN:** All in favor say aye?

14 (Ayes are heard)

15 **MR. CHAIRMAN:** The motion carries so the minutes of
16 the two previous meetings are adopted.

17 REVISIONS TO AGENDA:

18 **MR. CHAIRMAN:** Are there any revisions to today's
19 agenda from the members? We have no
20 application hearings, Sherri; is that correct?

21 **MS. MOORER:** That is right. We have no
22 applications, no applications pending either.

23 **MR. CHAIRMAN:** Okay. And nothing disciplinary to be
24 heard today?

25 **MS. MOORER:** No, we have no investigations. I spoke

1 with Todd Bond and Christa Bell. We have no
2 current investigations and we have no cases in
3 the Office of General Counsel, so we are
4 rolling along very well right now.

5 **MR. CHAIRMAN:** Very good.

6 **UNFINISHED BUSINESS:**

7 **MR. CHAIRMAN:** We have some unfinished business
8 about Council -- the Council appointment
9 process. Sherri, do you want to address part
10 of that?

11 **MS. MOORER:** I had hoped to have an update for you
12 on getting our new Board member appointed.
13 Unfortunately we are going through another
14 change of leadership here at LLR. We have a
15 new director who has not been confirmed yet.
16 I do not anticipate that we will have a new
17 member appointed until her confirmation hearing
18 is held. I don't know when that is scheduled
19 for, but we do have several applications. I
20 know that we have one opening on Council. We
21 had, I believe, three applications who were
22 eligible, so I do plan on following up with
23 that as soon as the appointment process is
24 done. We have Randy Fowler's term is supposed
25 to expire on June 30th, so I believe, Mr.

1 Fowler, what we would need to know is are you
2 interested in continuing to serve, because I
3 would like to approach her with all of the
4 appointments. And that's not something that
5 you need to answer today, but just consider
6 between now and June 30th, if you want to stay
7 on or if you'd like to be replaced so I can
8 speak to her about how to follow up on that.

9 **MR. CHAIRMAN:** We would hope that the director would
10 at least collaborate with the Council on
11 choosing any Board members.

12 **MS. MOORER:** I will ask about that because I would
13 like for it to be an interactive process, since
14 we're still relatively new here and you know a
15 lot of the individuals who are replying. You
16 know a bit about their history. I would like
17 for it to be a collaborative process where you
18 work together to get the appointments made, and
19 I believe we could work that out.

20 **MR. CHAIRMAN:** Very good.

21 **MR. STUCKEY:** Was there a formal application
22 process?

23 **MS. MOORER:** It was semi-formal, I believe is what I
24 would call it. An e-mail went out, I believe,
25 in November of 2011 to notify our membership

1 that there was an opening on Council and that
2 we would like to get resumes from people who
3 are interested in serving. We had -- I
4 believe we had five replied but only three of
5 the five were in-state, eligible to serve on
6 Council. And my plan is to leave that
7 application process for Council seats open all
8 the time, so if anybody at any point in time --
9 kind of like we did before. If you decide
10 you're interested in serving, send me a letter
11 of interest and a resume and the next time we
12 have an opening come up, your name's going to
13 be on the list for that. I would like to keep
14 that open all the time, because sometimes it
15 just slips up on us. These terms expire on
16 June 30th. People get busy, they forget. I'd
17 like to leave it open constantly. That's my
18 plan.

19 **MR. STUCKEY:** I just don't remember seeing that e-
20 mail.

21 **MS. MOORER:** It was -- was it late October or early
22 November?

23 **MR. CHAIRMAN:** I'm not sure when but --

24 **MS. MOORER:** Do you recall?

25 **MR. CHAIRMAN:** -- it went out to the full

1 membership.

2 **MS. MOORER:** It was the last quarter of 2011. Now,
3 IRC members can't serve on Council, but we do
4 -- we did send something out. We do try to
5 keep the communication open. I will probably
6 put something in our summer newsletter about it
7 too, because that's when we would probably get
8 to the point of appointing a new Council
9 member, but I would like to put an article. We
10 usually do a newsletter in the summer. I'd
11 like to put something in there to let people
12 know if you're interested in serving, here's
13 what you need to do.

14 **MR. CHAIRMAN:** Comments from the Board?

15 **MR. FOWLER:** Is there a definitive answer on the
16 out-of-state issue?

17 **MS. MOORER:** The definitive answer was the person
18 needed to be in South Carolina to serve on the
19 Advisory Council.

20 **MR. FOWLER:** As a resident of South Carolina?

21 **MS. MOORER:** As a resident of South Carolina.

22 **MR. CHAIRMAN:** Now, is that a LLR policy or -- I
23 mean, where does that come from?

24 **MS. SIMPSON:** It's a political reality.

25 **MR. CHAIRMAN:** Well, how so though, Jan? We're

1 looking for the best members for the Board here
2 and we had what we thought was an excellent
3 choice, just what we needed on the Board. We
4 think that should trump any other factors based
5 on the best -- what's best for the profession.

6 **MS. SIMPSON:** I understand your concern and the
7 limitations that you have with so few aggregate
8 number of members. With the other boards that
9 I have, they're appointed by the Governor. The
10 Governor is likely never going to appoint
11 somebody that doesn't live in South Carolina
12 because they are voting members. The director
13 here works for the Governor. I would think
14 that would transfer down to her selection here.
15 I don't -- I've been doing this 20-something
16 years. I've never heard of a Board member
17 coming from out of state who wasn't a resident
18 of South Carolina.

19 **MS. McCARTHA:** I'll just interject because I'm going
20 through all the Boards' appointment processes
21 right now due to the redistricting of our
22 entire state for Congressional purposes. This
23 is the only Board that's appointed by LLR, so
24 you are unique. Not only are you a unique
25 board, you're in a unique situation. You are

1 -- like I said, you're the only one that's
2 appointed by the director and while we are
3 going through a transition, I know that Holly
4 has made it clear to me that she plans to have
5 -- with every board she plans to meet with
6 y'all and hear your concerns. So I think that
7 she would be open to listening to any dialogue
8 regarding your concerns, but Jan's point is
9 valid. It is a South Carolina LLR and, you
10 know, South Carolina, South Carolina. But I
11 certainly think that, you know, she has an
12 open-door policy and I certainly think she'd be
13 willing to listen to any concerns you have
14 regarding this process.

15 **MR. CHAIRMAN:** Okay. That's fair. We'll see what
16 happens there, I guess.

17 **ADMINISTRATOR'S REPORT:**

18 **MS. MOORER:** It looks like the next thing on the
19 agenda, we've already done the reports for
20 Investigations and the Office of General
21 Counsel, so I'm just going to jump into the
22 report that I have for y'all and most of it is
23 updates. Our statute changes on the exemptions
24 were ratified on January 26th, so we got that
25 language cleaned up in the law that -- it was

1 just left out when we did our last changes in
2 2010. It is passed, it's been ratified, so we
3 have that taken care of now. That's a good
4 thing. Our law is pretty much in order for
5 right now. Our regulations, we have two things
6 in the State House. The first are the new
7 regulations to go with the new law. I checked
8 the website yesterday and it doesn't look like
9 they have updated this front page, but the
10 House did vote to let them time out on May 9th
11 of 2012. Now, what that means is they have no
12 objections. Most of the time this is what they
13 do with regulations. They just allow them to
14 time out, and when they time out they pass.
15 What will happen is they will have to be
16 published in the State Register as final
17 regulations, probably in June, and then they
18 will become official. At that point I plan on
19 putting out a special edition newsletter about
20 the new regulations and changes in that. I
21 think the only change we really have in the new
22 regulations are continuing education and I'm
23 going to put out a newsletter. We usually have
24 a summer newsletter anyway. That will be the
25 main part of that newsletter, are the new

1 regulations. So hopefully -- I don't know if
2 the Senate will take them up or not. If they
3 do we'll go to the meetings. I'll ask if any
4 of you are available to be there, to be there
5 to answer any potential questions they may
6 have. I will certainly do my best to be there
7 if I don't have a schedule conflict. But
8 hopefully these will go ahead and time out on
9 May 9th and then we'll have regulations come
10 June, and we'll have our transition done
11 finally.

12 **MR. FOWLER:** We're done now with the House. It's
13 going to time them out. But the Senate? When
14 will you know what their stance is?

15 **MS. MOORER:** I am watching the State House calendar
16 to see if it shows up on their agendas and when
17 they schedule that for subcommittee. My guess
18 -- they want them to look at these regulations
19 at least one time before they time out. One of
20 the House members mentioned at one of the last
21 meetings I went to, the Legislature just felt
22 like too many regulations were timing out
23 without anybody looking at them, and they want
24 them to be looked at at least once so they
25 would know what's happening. I anticipate the

1 Senate will probably at least take it up in
2 subcommittee. They may pass it on to committee
3 and vote to let it time out. We hope that they
4 will. You never can tell what they're going to
5 say, because I've been in a lot of these
6 meetings and I would think they're going to
7 have a question about this or about that and
8 they hit me out of left field with something I
9 had not even thought was questionable. They've
10 been asking about fees a lot lately. I believe
11 they have been told to ask about fees, just to
12 look at those, keep an eye on them. And we
13 addressed the concerns from the House about the
14 fees fairly well back in January, February.
15 They seemed satisfied with our answer, so the
16 House has voted to let it time out. The House
17 is pretty much done with them so I'm keeping an
18 eye on the Senate now for this. The other
19 thing in the State House is the repeal of our
20 old regulations, and that's what we had the
21 conference call on the day before Thanksgiving,
22 just to get the old ones out to prevent
23 confusion. There have not been any meetings on
24 that. It was on the agenda for a couple of
25 meetings in the past couple of weeks, but they

1 didn't have a quorum. The repeal of the old
2 regulations are scheduled to time out on June
3 the 6th. That is cutting it a bit closer than
4 I like, because the Session ends on June 7th,
5 but I don't anticipate problems with a repeal,
6 so hopefully that will also time out. I think
7 my biggest concern is confusion between the old
8 and the new. I just don't want anybody over at
9 the State House getting confused between the
10 two. That's my main concern here.

11 **MR. CHAIRMAN:** Sherri, on the new regs, if they time
12 out on May the 6th, whatever that date is, are
13 they in effect on that date?

14 **MS. MOORER:** They will probably go into effect on --

15 **MS. SIMPSON:** When they publish in the State
16 Register. That possibly is the end of May, but
17 probably June.

18 **MR. CHAIRMAN:** Okay.

19 **MS. McCARTHA:** June is what I keep hearing. Yes.

20 **MS. MOORER:** I believe it looks like things for the
21 State Register have to go in by the first
22 Friday of the month, and May 6th, that's after
23 the first Friday.

24 **MS. SIMPSON:** I think it's May 9th.

25 **MS. MOORER:** Or May 9th. That's right. It's May

1 9th.

2 **MS. SIMPSON:** Whatever the last Friday in June is.

3 **MS. MOORER:** They would probably publish on June
4 29th, and that's the day they would be
5 effective. But that is actually a good thing,
6 because that gives us a month to get that
7 newsletter out, get the website updated, get
8 the word out to everybody and say, here are the
9 new regulations, make yourself familiar with
10 them. And then they can call and ask any
11 questions that they have and I can kind of
12 guide them through that process well in advance
13 of them going into effect. So that extra time
14 is actually a good thing.

15 **MR. HARGETT:** So the old regs are in effect until
16 they're replaced by them?

17 **MS. MOORER:** They're in effect. We've been using
18 them as a point of reference, because they
19 don't exactly match up with our new law, but we
20 have been using them as a point of reference
21 since then.

22 **MR. CHAIRMAN:** And now, Sherri, do you want to -- I
23 guess your financial report?

24 **MS. MOORER:** Basic report. Just wanted to let you
25 know I ran the reports. We have 50 active

1 licensees right now in South Carolina. We have
2 approved two people since our last meeting.
3 One of those I believe we actually went over at
4 the last meeting and the other was one that
5 went out here recently. He got all of his
6 information in and he was licensed. We have no
7 pending applications. They tend to go in
8 spells, so you just never know. I'll get two
9 or three in at one time and get those through
10 the system, and then I won't get another
11 application for a month or two. But we're open
12 to them all the time. We have no soil
13 classifiers in training. We have not had one
14 for about two years now. Most people don't go
15 through that in-training program anymore. They
16 just wait until they meet the full
17 qualifications and apply for licensure, and
18 that's okay too. That's one way to do it. Our
19 finance reports, I've distributed those to the
20 Council members and those go all the way back
21 to September, but we have a cover page with
22 just the general report and then we have the
23 month-by-month expense report and I believe
24 that these go through February of 2012. And it
25 looks like our final cash balance as of

1 February 28th was \$18,548.14. So we'll keep an
2 eye on that. A lot of that came from renewals
3 last year, so we'll keep an eye on that. We're
4 just -- I believe this came up in the Senate
5 subcommittee meeting. We're just watching the
6 finances right now to see how well we're doing,
7 since we went to bi-annual license renewals
8 because we're only getting that money every two
9 years. We're keeping an eye on that so that is
10 all that I have for my report. If anybody else
11 has information they would like to share, Board
12 member reports or anything the Council needs to
13 discuss or hear or consider.

14 **MR. CHAIRMAN:** Jan, do you have any reports or any
15 comments you want to make?

16 **MS. SIMPSON:** I don't. I'm just delighted to have
17 Sherri as the point person and we're glad to
18 have Sara McCartha as our new attorney for the
19 Council.

20 **MR. CHAIRMAN:** Welcome to Sara.

21 **MS. McCARTHA:** Thank you.

22 **MR. CHAIRMAN:** I agree with the comments about
23 Sherri. She really is very organized. We
24 appreciate all her hard work for the
25 Classifiers Board.

1 **MS. SIMPSON:** Absolutely.

2 **MR. CHAIRMAN:** She takes care of us very, very well.

3 **MS. MOORER:** Well, thank you.

4 **MR. CHAIRMAN:** We appreciate all her hard work. Any
5 reports from the Board members, anything you
6 fellows want to say?

7 **MR. FOWLER:** I have nothing to report.

8 **MR. CHAIRMAN:** Any public comments from anybody in
9 the public here?

10 **MR. STUCKEY:** I've got a question. I'd like some
11 information on this LLR report that recommended
12 doing away with our Classifiers.

13 **MR. CHAIRMAN:** Ben, that hit us broadside also. We
14 heard about it through a third party. We
15 didn't know -- we weren't in contact with the
16 director before that came out, even after it
17 came out. We got that on our own.

18 **MR. STUCKEY:** Is there anything we need to be doing?

19 **MR. CHAIRMAN:** Well, we wrote a reply to the
20 director.

21 **MR. HARGETT:** I assume that's in the -- in our
22 public record?

23 **MR. CHAIRMAN:** I don't think so, Dave. How would it
24 -- we sent it to the director and she replied,
25 but it would be --

1 **MS. SIMPSON:** What was the reply?

2 **MR. CHAIRMAN:** From the director? I have it with me
3 if you want to see it. It's a short, little
4 reply. There's not -- I didn't think it was
5 very adequate in my personal opinion.

6 **MS. SIMPSON:** From what I remember and what I know,
7 is that the law requires the director to
8 provide annually an update to the Governor on
9 everything at LLR. So she takes a position
10 sometimes as she did in this case and it's her
11 recommendation. Doesn't mean that will happen.
12 It just means she's saying, you know, this
13 could happen and this is my thoughts on this.
14 She is as you know gone now to DHEC, so I'm
15 assuming that Holly Pisarik, who has taken her
16 place, if she's confirmed by the Legislature,
17 will either use that as a guide or maybe do her
18 own assessment. And I don't -- I have not
19 talked to her about it. She's, of course, not
20 confirmed yet but I think it's nothing more
21 than a report which could get legs and take
22 off, but she was doing it as required by the
23 law. I think it was sent without any copies to
24 the Boards until a little bit later.

25 **MR. CHAIRMAN:** Correct. We never got one

1 officially.

2 **MR. FOWLER:** We did have a -- a lengthy response
3 where many of the points that we felt weren't
4 addressed about our affect on public health and
5 those kind of things. So we did respond to it.
6 I assume this letter is public record.

7 **MR. CHAIRMAN:** Well, if we sent it to a --

8 **MR. STUCKEY:** I've seen what the LLR report was from
9 all the agencies.

10 **MR. HARGETT:** But you haven't seen our response?

11 **MR. STUCKEY:** I have not seen your response.

12 **MR. HARGETT:** I'd recommend that we make that
13 available and maybe even include it in the
14 newsletter as an appendix. I mean, it is a
15 public record because we sent it to a public
16 official and her response is a public record.
17 I see no reason it's privileged.

18 **MS. McCARTHA:** If somebody were to request it under
19 the Freedom of Information Act, they'd get hold
20 of it. That's what it boils down to.

21 **MR. HARGETT:** We did it in our -- we responded to
22 the director's report in our public capacity,
23 so I recommend we make that readily available.

24 **MS. MOORER:** I would recommend not doing a
25 newsletter article, but just having it

1 available. If anybody contacts us, we will
2 provide that to them. I don't know that I
3 would make it extremely widespread. We don't
4 want people to panic and think we're under a
5 threat. If it was just a recommendation and
6 you replied to that recommendation --

7 **MR. CHAIRMAN:** Well --

8 **MS. MOORER:** -- but if people have concerns I think
9 we can make it available and, you know, you can
10 send it to me or I can refer them to you,
11 however you want to do it. I don't think I'd
12 do a newsletter article, but I would have it
13 available and if anybody contacts us, I can
14 say, well, we can send you the reply that we
15 sent and that we got back just to let you know.

16 **MR. HARGETT:** I'd like for that to be very fluid so
17 people don't have to go through a formal FOI
18 process. I mean, it's -- our response is in
19 the course of ordinary business and there's
20 nothing related to any litigation or anything,
21 and this licensing program is not the only one
22 addressed in the director's report. Geology
23 program. That's actually how I got wind of it,
24 was through the Geology Board and so there were
25 several other programs.

1 **MS. McCARTHA:** Let me just interject the way Sherri
2 suggested doing it is completely fine. There
3 doesn't have to be a formal FOIA request. You
4 don't have to go through that process. If
5 somebody were to call her and ask for it, she
6 would not need to check with legal or anything
7 else. She would be able to send it straight on
8 out that day, via email, via whatever. There
9 doesn't have to be a formal request that goes
10 with it.

11 **MS. MOORER:** And if Council even wants to make a
12 formal motion to make that available upon
13 request, you can do that and then we'd have it
14 on the record that you have given your blessing
15 on this report being available upon request.
16 And all they've got to do is call or e-mail me
17 and I can get it to them that day.

18 **MS. SIMPSON:** What about putting something on the
19 website that just notes the action, the report
20 from the director and the Board's reaction? It
21 doesn't have to be posted there. The issue can
22 be there and it can say please contact the
23 Board for more information.

24 **MR. HARGETT:** I think that's an excellent
25 suggestion.

1 **MS. SIMPSON:** And then we're not just --

2 **MR. CHAIRMAN:** And I would characterize the
3 director's report as a non-binding report to
4 the Governor as an ordinary part of her duties
5 and we responded in our capacity in an effort
6 to elucidate what we're about. And so in an
7 afterthought that if people want the detailed
8 with all that transaction, they can request
9 that.

10 **MS. SIMPSON:** Would that be okay to put somewhere on
11 the website and tell people --

12 **MS. McCARTHA:** I don't see any problem with it.

13 **MS. MOORER:** I would put it on there very generally
14 that this report was put out, Council responded
15 and in very general terms what -- how you
16 responded and then if you would like additional
17 information or a copy of it, please contact
18 Sherri Moorer.

19 **MR. CHAIRMAN:** Chris, do you have any comments?

20 **MR. FINCHAM:** Just a question. It's my
21 understanding that if they want to get rid of
22 the Board, they would have to go through the
23 House and the Senate to get that approval, and
24 the Governor too; right?

25 **MS. MOORER:** It would have to go through a sunset

1 review to get rid of it. That --

2 **MR. CHAIRMAN:** So it's much more involved than the
3 Governor just, you know, dropping the hammer.

4 **MS. MOORER:** It would be a big process. It would be
5 a huge process. I mean, we'd be over there in
6 meetings and hearings and --

7 **MR. FOWLER:** Well, that's the approach we took is,
8 let's respond and clear up some things we think
9 need to be said about our program.

10 **MR. HARGETT:** And get it in the record.

11 **MR. FOWLER:** Get it in the record. If something
12 happens we're going to know.

13 **MR. HARGETT:** So the crisis is under control.

14 **MR. STUCKEY:** Well, I mean, I was just curious. It
15 hit me pretty hard since we've been --

16 **MR. CHAIRMAN:** Do I hear a motion?

17 **MR. HARGETT:** I move that we report as discussed to
18 the licensees.

19 **MR. FOWLER:** Second.

20 **MR. CHAIRMAN:** All in favor say aye?

21 **(Ayes are heard)**

22 **MR. CHAIRMAN:** The motion carries. I have a hard
23 copy of our reply to the director and her reply
24 to us. Should I submit those for the meeting
25 here, or should I just e-mail you an electronic

1 copy?

2 **MS. MOORER:** E-mail me an electronic copy of that
3 because that is the way I would distribute it.

4 **MR. CHAIRMAN:** So you'll get three things from me:
5 The director's initial letter, her report --

6 **MS. MOORER:** The initial letter.

7 **MR. CHAIRMAN:** -- our response --

8 **MS. MOORER:** Your response to her and then her
9 response back to you.

10 **MR. CHAIRMAN:** Correct. I'll send you three things.

11 **MS. MOORER:** And I'll put a very brief summary of
12 that on the website, that this report was
13 issued, Council responded and if you would like
14 a copy of the correspondence to please contact
15 me and I'll be glad to send that to you.

16 **MR. CHAIRMAN:** Very good. Very good.

17 **MR. FINCHAM:** Sherri, could you send me a copy of
18 that when you get it too please?

19 **MS. MOORER:** Be glad to.

20 **MR. FINCHAM:** Thank you.

21 **MR. STUCKEY:** Me too.

22 **MS. MOORER:** We already have two requests.

23 **PUBLIC COMMENTS:**

24 **MR. CHAIRMAN:** Any other public comments? I want to
25 thank Steve for coming today from Waynesville,

1 North Carolina, all the way down here. He's
2 come down before to our meetings when we were
3 meeting at the forest service, he and his co-
4 worker.

5 **MR. MELIN:** I want to stay part of everything down
6 here.

7 **MR. CHAIRMAN:** Yeah. Glad you came, Steve.

8 **MR. MELIN:** If there's anything that -- I mean, I
9 don't know if 6156, if there's any proposed
10 revision with those or any technical committees
11 as well. One of the things I know that we're
12 kind of working on in North Carolina as well is
13 promoting re-used, reclaimed water. Some of
14 the beneficial uses, you know, we're getting
15 with the subsurface, you know, with the
16 applications as well. Trying to see if there's
17 any, you know, possible promotion we can do for
18 South Carolina as well.

19 **MR. CHAIRMAN:** Excellent. Thank you for offering.
20 Certainly use your expertise there. Sherri,
21 that's one of the aspects where in-state people
22 don't always have the best expertise. That was
23 -- we're looking for the best person for the
24 job on the Board, as my previous example, and
25 Steve is another example showing that North

1 Carolina is a little bit ahead of South
2 Carolina as far as some -- some items. On
3 wastewater disposal we can use their expertise
4 to put us in a better position.

5 **MR. MELIN:** Different ideas come from different
6 places. I mean, some can hit, some miss. Open
7 dialogue at least.

8 **MR. CHAIRMAN:** Chris, keep in mind if you have any -
9 - need any committees to --

10 **MR. FINCHAM:** Yeah.

11 **MR. CHAIRMAN:** -- for any technical issues on
12 something like that.

13 **MR. FINCHAM:** Some of that stuff may come back out
14 on the table here this year. We'll see.

15 **MS. SIMPSON:** Like what? Can you say?

16 **MR. FINCHAM:** A couple of things as far as just
17 getting the monitoring standard for monitoring
18 water tables in the soil and some other --
19 other things that may be coming up. It would
20 be good to have in place here this year. So
21 things have just been -- we've been needing and
22 wanting to do -- on the DHEC side that had kind
23 of got half-started years ago and now since the
24 610 standard is coming on the specialized, we
25 kind of -- no one has chosen that route yet,

1 but we made that route available but don't have
2 the standard quite there yet. So we need to
3 get that in place.

4 **MR. FOWLER:** Chris?

5 **MR. FINCHAM:** Yes.

6 **MR. FOWLER:** Could you share with the group that --
7 they may already know this -- the discussion
8 that we had last week that I didn't know the
9 situation when using Infiltrator. For example,
10 in a non-610 standard?

11 **MR. FINCHAM:** Uh-huh (affirmative response).

12 **MR. FOWLER:** Could you kind of give the group a
13 perspective on that?

14 **MR. FINCHAM:** Sure.

15 **MR. FOWLER:** They may not know that also.

16 **MR. FINCHAM:** I think it was a little over five
17 years ago -- I don't know the exact date. It
18 was Act 3939 and then there was another one.
19 I don't know if that was a House or the Senate,
20 whichever, accompanying bill. It was done for
21 alternative products to gravel and to iron slag
22 and tire chips and that type of thing. And it
23 wound up being EZ Flow and Infiltrator, were
24 the two big driving forces in that. Then
25 there's ADS Biodiffuser which looks very much

1 like the Infiltrator panels. And then there's
2 a couple of other ones in there that aren't
3 used all that much. And there is -- they had
4 some scientists come up with some information
5 saying that they're -- they could chop their
6 system down to two-thirds of what a gravel
7 system would be and that functions just as well
8 as the full-sized gravel. And I don't think
9 it's out of line to say DHEC is on record many
10 times, Leonard Gordon is on record many times
11 at those meetings saying we are completely
12 against this reduction, but it went through
13 anyway. But that is something that our people
14 in-house deal with every day that -- it's
15 generally if a client or an installer requests
16 to use that product, then that's when we go
17 ahead and design it. But there are, you know,
18 some very tight situations where that is the
19 only permit available and we have to offer
20 whatever permits are available to them, you
21 know, so they can have whatever choices they
22 want. And then they make their hopefully best
23 decision off that. But that -- it's getting to
24 the point now where gravel is hardly used at
25 all in almost any trench situation. It's

1 usually Infiltrator or EZ Flow and EZ Flow is
2 the little Styrofoam peanuts and if you -- you
3 probably see it going down the road on a big
4 truck. It's in these tubes, like, a hairnet
5 type of a tube and it's got Styrofoam peanuts
6 in it and then one of them has got a black
7 plastic pipe in the middle of it. And instead
8 of, you know, putting gravel in the trench and
9 putting a pipe in there and the water goes
10 through the pipe and in the gravel, they've got
11 these Styrofoam peanuts that they lay down
12 after they dig the trench and then that takes
13 the place of the gravel. And so --

14 **MR. MELIN:** Cheaper and less space.

15 **MS. SIMPSON:** Cheaper and easier to transport?

16 **MR. FINCHAM:** Well, it's easier to install but if
17 you look at the material compared to gravel at
18 the same footage, they don't compare. They're
19 more expensive. But the fact that they're so
20 much more easier to install. I thought I heard
21 at one point that they were something like --
22 something like 70% of systems are Infiltrator
23 systems that are out there and I mean, there's
24 -- I mean, literally a handful of gravel --
25 people that just refuse to do anything but

1 gravel anymore. And it's -- it's just, you
2 know, there's so much -- there's a lot more
3 labor involved with it.

4 **MR. CHAIRMAN:** So Infiltrator is more popular than
5 the EZ Flow?

6 **MR. FINCHAM:** Yeah. They seem to be. It's amazing.
7 It goes county by county. There are some
8 counties where they do a lot of EZ Flow and the
9 next county over, they do Infiltrator, and it's
10 more tied to the distributors in that area.
11 You know, whatever's got -- whatever's more
12 available is kind of what they go on.

13 **MR. HARGETT:** Right. Are you keeping performance
14 records of -- especially because of the sizing
15 advantage -- problems?

16 **MR. FINCHAM:** That was part of 3939, is that after
17 five years we start to gather information on
18 how well this is working. There has been a
19 couple -- it's been difficult to get that
20 information because DHEC is not directly
21 involved on all the repairs across the state
22 and we're relying on the installers. They're
23 supposed to be filling out a form saying, you
24 know, this is what the original system was;
25 this is what I put in and all that. There's a

1 lot of them that aren't doing it at all and
2 they actually -- I mean, that's part of their,
3 you know, certification, their license, to be
4 a licensed installer. When they do they're
5 supposed to be sending it in.

6 **MS. SIMPSON:** Who licenses them?

7 **MR. FINCHAM:** It's -- I think DHEC does. I mean,
8 we've got -- at least we've got a list of
9 licensed installers. Yeah. I'm certain that
10 we do. Yeah, because they send the checks in
11 to us. Yeah.

12 **MS. SIMPSON:** So if they're not doing what they're
13 supposed to do, is there an enforcement?

14 **MR. FINCHAM:** Yes, there is -- it's kind of a four
15 or five-step process, you know. A couple slaps
16 on the wrist-type of thing. But the thing is
17 how do you prove that they didn't do something,
18 because we're never involved on a lot of those
19 repairs to begin with. It's very difficult.

20 **MS. SIMPSON:** But they're supposed to submit
21 paperwork?

22 **MR. FINCHAM:** Yes.

23 **MS. SIMPSON:** And they're not submitting it?

24 **MR. FINCHAM:** Well, it's kind of obvious that
25 they're not because we know there's a lot of

1 repairs going on and we're not getting the
2 paperwork for it. You know, there's a lot of,
3 you know, kind of weekend jobs of that type of
4 thing and even if it's not weekend jobs, they
5 just, you know, slap it in and go down the
6 road. I think the public is getting more
7 involved.

8 **MR. MELIN:** Do the counties require repair permits
9 to be drawn?

10 **MR. FINCHAM:** No. No, there's only three counties
11 in South Carolina that do repair permits and
12 that's Lancaster, York and Chester counties and
13 they've never stopped doing repair permits.
14 And evidently -- I don't know -- 10 years ago,
15 something like that, they got really busy and
16 then they just decided they weren't going to do
17 repair permits anymore, which I think that --
18 I hope that's another thing that comes back in.

19 **MR. MELIN:** Other states have that too.

20 **MR. FINCHAM:** Yeah. It's in the regs and I think we
21 -- I think most people say we need to be doing
22 it, but --

23 **MR. MELIN:** It's for notification. I mean, if it
24 ever changes hands, the property owner has the
25 guy's documentation where systems are located -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. FINCHAM: Yeah.

MR. MELIN: -- and what's -- what's in the ground.

MR. FINCHAM: That's not -- that's not in the legislation at all or in the regs at all, but that would be a very good thing to have and that's what they did, you know, up in Ohio.

MR. HARGETT: Do you consider a system that's been repaired and not been properly documented to be compliant?

MR. FINCHAM: If it's not puking out on the surface of the ground, yes.

MR. HARGETT: No, but I'm saying in terms of its pedigree, it's documentation.

MR. FINCHAM: There is -- there is language in the regulation that in a repair situation, you do the best you can but you don't have to specifically meet all the regulations.

MR. HARGETT: Where I'm going is when there's a property transaction --

MR. FINCHAM: Uh-huh (affirmative response).

MR. HARGETT: -- the only -- one of the few mechanisms we have is the South Carolina Residential Property Disclosure Act --

MR. FINCHAM: Uh-huh (affirmative response).

1 **MR. HARGETT:** -- which requires if there's a defect
2 to a property, a heating system or a septic
3 system, it's got to be disclosed if the owner's
4 aware of it. So that's why I'm asking. If
5 it's not properly documented as a repair, it
6 might be considered a defect, especially if it
7 starts puking out the next week.

8 **MR. FINCHAM:** Right.

9 **MR. HARGETT:** There was a misleading representation.

10 **MR. FINCHAM:** Well, we wouldn't necessarily be
11 involved with that until it does start bleeding
12 out on the surface of the ground. Now, if it
13 runs across a property line, that's when, you
14 know, the sheriffs start to get involved and
15 they really get serious about that. But if
16 it's contained on their property and yes, it's
17 bleeding out basically as long as they're
18 showing some effort to try and fix the system,
19 then enforcement kind of says okay, you know,
20 we'll let them -- let them be. Within about a
21 month time or so, if they stop showing progress
22 then they start getting involved again, because
23 they don't want to -- we don't really want to
24 take -- we don't want to fine anybody to take
25 money out of their pocket that would have been

1 used to repair the system anyway, so --

2 **MR. HARGETT:** Buyer beware.

3 **MR. FINCHAM:** Very much so. The public seems to be
4 getting more involved -- or wanting DHEC more
5 involved on repair, you know, suggestions and
6 you learn a lot. I've learned a lot from doing
7 that. That's -- I -- that's probably the
8 funnest thing. Figuring out why it's not
9 working and what the situation is, because it
10 really helps you on the front end to make sure
11 you're doing it right on the front end when you
12 see what's not working and figure out what you
13 need to change on the front end to really get
14 going to make it done right.

15 **MR. MELIN:** Counties in North Carolina don't charge
16 for repair permits either to have the expertise
17 from the counties to go out. Same thing with
18 rules that we normally typically apply kind of
19 get thrown out the window and they do, you
20 know, find more strategic ways to come out and
21 make sure it's not going to surface or create
22 a, you know, health hazard. But to have it
23 documented as well, you know, just to get
24 everybody to identify what's in the ground and
25 where it's at.

1 MR. FINCHAM: Yeah.

2 MR. CHAIRMAN: Chris, this five-year period for the
3 Infiltrator and EZ Flow, the test period,
4 that's over, isn't it?

5 MR. FINCHAM: Yes, it is.

6 MR. CHAIRMAN: It's been long more than five years
7 it's been allowed here.

8 MR. FINCHAM: Yeah. Yeah. And so we've been trying
9 -- we've been -- they've been compiling this
10 information but it's -- without them giving --
11 without the installers giving us the repair
12 forms, it's very -- we don't know what has
13 already failed and what's not. And if the
14 property owners haven't involved us in it, then
15 we don't know what's going on.

16 MR. CHAIRMAN: Well, can you make any kind of
17 initial report on the viability of these
18 systems? I mean, do you plan to do that?

19 MR. FINCHAM: I don't know. That would be Leonard's
20 decision to do that.

21 MR. HARGETT: Who's collecting the information,
22 Chris?

23 MR. FINCHAM: Well, the central office up where I'm
24 at, but I think Tee Thompson is kind of in
25 charge of that paperwork and trying to chase

1 things down and do what we can to kind of get
2 the installers involved in this.

3 **MR. HARGETT:** That's an area of interest but I
4 suppose technically not a part of our --

5 **MR. CHAIRMAN:** I don't think we can address this as
6 a Board or can we support this in any way that
7 DHEC would --

8 **MR. HARGETT:** It may be appropriate for you as Chair
9 to write a letter to Leonard and request that
10 they follow up on that.

11 **MR. CHAIRMAN:** And offer any technical expertise we
12 can certainly.

13 **MR. HARGETT:** It's a way for us to support DHEC.

14 **MR. FINCHAM:** I think that the companies themselves
15 are learning some lessons, because they wanted
16 to come back and change some things that they
17 had gotten through that legislation, and they
18 wanted us to do it in-house and we're not able
19 to do anything in-house. So -- but evidently
20 they didn't feel like they needed to go back on
21 their own legislation to the legislators.

22 **MR. HARGETT:** The only link that we have in terms of
23 our authority is the standards that we as soil
24 professionals use to interpret soil suitability
25 and loading rates. They're being compromised,

1 one might argue, by the 3939 allowance for a
2 higher loading rate and so we've kind of got a
3 link there. I'd say a letter from you, Dennis.

4 **MR. MELIN:** Twenty-year statistical data that, I
5 think, North Carolina has provided for each
6 type of system, you know, performance rate,
7 breakdown the coastal plain, the piedmont and
8 mountain. Problem with that too is each time
9 a site fails, is it tied into there's
10 installation considerations with each system.
11 I mean, just the fact that a lot of times a lot
12 of these systems get put in after the home and
13 you have the water shut off at the house.
14 There's -- it gets to be, you know, pretty
15 intricate on actually how system performance
16 can be judged.

17 **MR. FINCHAM:** That's kind of the smoky part of it,
18 is there's so many different things that
19 contribute to why a septic system fails.
20 Usually there's not just one thing to look at.
21 There's several things that really may go wrong
22 and make them fail, so to really point and say,
23 you know, well, come on now. If you've been in
24 the business long enough, you kind of
25 understand well, you know, yes, this

1 contributed but this wouldn't make this big of
2 a deal, but to sit down in court or something
3 like that and say yeah, this is it, it's very
4 difficult. And I think everybody pretty much
5 knows that.

6 **MR. FOWLER:** Have you seen a decrease in the
7 pretreatment?

8 **MR. FINCHAM:** A decrease?

9 **MR. FOWLER:** Because of the cost differences of
10 using something like Infiltrator or EZ Flow?

11 **MR. FINCHAM:** Oh, I think that if you're just
12 looking at cost-wise, if they can get a permit,
13 I mean the 610 standard is never used. I mean,
14 very rarely, very rarely. And you know, there
15 are some times that we have to permit things
16 that we may feel a little bit uncomfortable
17 about because, you know, this shortened system
18 is the only one that'll squeak in here. But if
19 we don't offer them the permit that is
20 available through the regulation or the
21 statutes that are available to us, then we are
22 not doing our due diligence. So it's a hot-
23 button issue.

24 **MR. CHAIRMAN:** Are things overall picking up for
25 DHEC with permits? Have you noticed an uptick

1 in the number of --

2 **MR. FINCHAM:** Yeah. Yeah. I've heard that we're
3 kind of idling back up to half-speed of what we
4 were, you know, several years ago and even that
5 is kind of spotty. I think that, you know,
6 Charleston and, you know, the bigger areas,
7 they're -- they're doing some things.

8 **MR. CHAIRMAN:** That's good to hear. Any comments
9 from anybody in the room? If not our next
10 meeting is September 25th at ten o'clock in
11 this room. Do I hear a motion to adjourn?

12 **MR. HARGETT:** So move.

13 **MR. FOWLER:** Second.

14 **MR. CHAIRMAN:** We're adjourned. Thank you for
15 coming, folks.

16 **(There being nothing further, the meeting concluded**
17 **at 10:49 a.m.)**

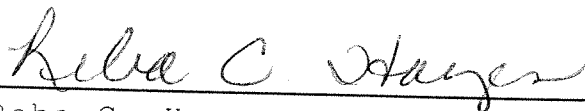
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify that the within Board Meeting consisting of Forty-Two (42) pages, is a true and correct transcript of the testimony given; said board meeting was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on March 26, 2012.



Reba C. Hayes
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: June 21, 2012