

RI Department of Environmental Management

OWTS Designer Licensing Review Panel

Minutes of Open Session of October 17, 2008

This meeting of the OWTS Designer Licensing Review Panel was conducted at 235 Promenade Street, in Conference Room 280C.

Members of the Panel Present:

Scott Moorehead, Chairman

Jim Tavares

David Burnham

Al DiOrio

Dan Cotta

Members Absent:

None

Others present:

Russ Chateaufneuf, Chief, DEM Groundwater & Wetlands Protection

Brian Moore, DEM OWTS Program

Brian Sullivan, DEM OWTS Program

Lisa McGreavy, DEM Groundwater and Wetlands Protection

The meeting was called to order at 9:40 A.M.

Minutes of the March 21, 2008 Meeting Open Session

D. Burnham made a motion to accept the minutes of the Open Session portion of the March 21, 2008 meeting with no revisions. A. DiOrio seconded the motion. D. Burnham, A. DiOrio, J. Tavares, and S. Moorehead voted in favor of the motion. D. Cotta abstained. The motion passes.

R. Chateauneuf: As a follow up to a discussion from the last meeting relative to making new forms available on the website, staff was able to resolve the issue with purchasing and the forms were posted soon after the March meeting. Staff is considering posting the revised “pink sheet” form on the website as well. Staff is also proposing a number of improvements to the regulations and as resources allow, these proposed revisions will be added to those being made to reflect changes related to the cesspool phase out legislation. Draft revised rules will eventually be distributed to stakeholders for review and input.

Continuation of discussion on the request to grant continuing education credits for participation on the OWTS Designer Review Panel:

Following a discussion on the topic, R. Chateauneuf agreed to contact the department’s legal counsel to request a review of whether the department can award members of this panel continuing education credit for attending/participating on the panel.

Class I Designers, Innovative/Alternative OWTS Designs & Advertising Practices:

The panel raised an issue relative to the practice of Class I designers advertising services, such as work on Innovative/Alternative OWTS designs, for which they are not directly licensed to provide. The designer should in this case state in the advertisement that the work would be done by a subcontractor and include the name of the subcontractor(s) involved. Discussion ensued on potential conflict of interest and legal consequences of false advertising. R. Chateauneuf advised that while the department would have concerns with the practice and the issue would need to be addressed, the practice is not illegal under the current OWTS regulations. All were in agreement that the issue would be best addressed to the State Board of Registration for Professional Engineers and/or Land Surveyors Board. These boards are better positioned to evaluate advertisement practices and whether a particular entity or business that advertises its services is doing so properly. The panel opted to ask the PE Board for an advisory opinion and not issue a complaint at this time. If the department receives an advisory opinion from the PE Board, it will be distributed to designers via the department's listserve.

Class I designers can now do repair designs on conventional systems and the department is looking into whether a Class I designer, with added training and qualifications, should be allowed to design Innovative/alternative systems repairs in the future.

Legislation crafted by others to allow the practice by creating a separate license class did not pass the state legislature however a lot of discussion was spurred in the process. At a recent TRC meeting, members raised several concerns however there was general consensus that the department should work towards developing their own revisions to the regulations to allow the practice on a designer –by-designer basis. The direction would be to allow Class I designers to design systems using specified A/E technologies only after the designer has received sufficient training from URI and can show competency. DEM staff is working to refine the proposed revisions and the department will go through the public outreach, stakeholder and rule making process. The concept is being vetted through the TRC as they are the advisory group involved with technology approvals and issues of proper design, installation, operation, and training.

S. Moorehead expressed strong opposition to the initiative of allowing Class I designers to work on A/E systems for several reasons including the high level of expertise and training necessary to design the systems.

B. Moore also expressed opposition to the initiative as a cost saving measure if that is what is intended, i.e. lower the cost through allowing more designers to do the work. From an environmental protective position, the concern is that it would result in the least trained designers working on the most complicated designs in the

most sensitive areas of the state.

D. Burnham noted that it is still unclear who is behind the initiative as it was not the installers as installers did not take a position either way. An important concern involves responsibility and oversight and the need for the department to undergo audits and compliance checks. The issue of who can design what is not clear, not being enforced by the PE or PLS boards and is resulting in turf battles.

At 11:02 A.M., in open call, S. Moorehead announced that the meeting would proceed in Executive Session pursuant to R.I.G.L. 42-46-5 (a) 4, for discussion of conduct of specific designers. D. Burnham made a motion to enter into Executive session. A. DiOrio seconded the motion. S. Moorehead, D. Burnham, J. Tavares, D. Cotta and A. DiOrio voted in favor of conducting business in Executive Session. The motion passes.

Continuation of Open Session

The open meeting was reconvened at 11:45 A. M.

D. Burnham made a motion to reaffirm votes taken in Executive Session and seal the minutes of the Executive Session. D. Cotta seconded the motion. D. Burnham, D. Cotta, J. Tavares, A. DiOrio, and Scott Moorehead voted in favor of the motion. The motion

passes.

Votes taken while in Executive Session:

D. Burnham made a motion to accept the Minutes of the Closed Session portion of the March 21, 2008 meeting with revisions. A. DiOrio seconded the motion. D. Burnham, J. Tavares, S. Moorehead, and A. DiOrio voted in favor of the motion. D. Cotta abstained. The motion passes.

S. Moorehead made a motion that following the review of correspondence and plans that were submitted to the department relative to the complaint filed by Ms. Joann DeLong, Beech Avenue, Warwick #0335-1051 against OWTS Licensed Designer Richard Cohen, the panel determined that no violation of the current regulations occurred in regards to the performance of Mr. Cohen. A. DiOrio seconded the motion. S. Moorehead, A. DiOrio, D. Burnham, J. Tavares, and D. Cotta voted in favor of the motion. The motion passes.

D. Burnham made a motion to seal the minutes of the Executive Session, adjourn the Executive Session, and reconvene the Open Session. D. Cotta seconded the motion. D. Burnham, D. Cotta, J. Tavares, S. Moorehead, and A. DiOrio voted in favor of the motion. The motion passes.

Panel member Reappointments:

All panel members reaffirmed their willingness to serve on the panel for another two-year term.

Next Meeting:

The next meeting of the panel is tentatively scheduled for Friday, February 20, 2009 [Meeting was subsequently rescheduled to April 24, 2009] from 9:30 AM to 12:00 PM in Conference Room 280C in the DEM Office of Water Resources.

D. Burnham made a motion to adjourn. A. DiOrio seconded the motion. D. Burnham, A. DiOrio, J. Tavares, D. Cotta, and S. Moorehead voted in favor of the motion. The motion passes.

The meeting adjourned at 11:52 A.M.