



COMMONWEALTH OF MASSACHUSETTS
**Board of Registration
of
Hazardous Waste Site Cleanup Professionals**

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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on October 16, 2014

Approved on November 20, 2014

Prepared by: Lynn P. Read

Meeting Location: Northeast Regional Office
Massachusetts Department of Environmental Protection (MassDEP)
205B Lowell Street
Wilmington, MA

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting on September 11, 2014
3. Active Case List
4. Letter dated September 18, 2014, requesting reconsideration of dismissal of Complaint No. 13C-03
5. Draft response to letter from State Senator Rush, State Representatives Scaccia and Coppinger, and Boston City Councilor O'Malley.

1. Call to Order: Kirk Franklin called the meeting to order at approximately 1:45 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, Benjamin Ericson, John Guswa, Debra Listernick, Robert Rein, and Farooq Siddique. The Committee member absent was James Smith. Staff members present were Beverly Coles-Roby, Lori Williamson, and Lynn Read. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA); Wesley Stimpson of WES Associates; Dominic Galluzzo, the Complainant in Complaint No. 13C-03, and with him was Sarah McKnight.

2. Minutes of Meeting Held on October 16, 2014: One change was made to the draft minutes of the meeting held on October 16, 2014. Mr. Austin added that he stated, "It doesn't take a degree in chemistry to take a PID reading." **A motion was made and seconded to approve the October 16, 2014 minutes as amended.**

3. Old Business

Status of Complaint Review Teams & Active Case Table

At Mr. Franklin's request, each Complaint Review Team (CRT) reported on progress made since the September 11, 2014 meeting. Ms. Coles-Roby said the public should notice that the

disciplinary cases are moving through the process. Mr. Stimpson asked why the time between the filing of the complaint and the interview of the respondent LSPs was so long. The members present discussed the factors that delay the disciplinary cases, including the fact that the members of the Board are volunteers, delays requested by the LSP, and that there are only two lawyers on the Board's staff, including Ms. Coles-Roby who has additional responsibilities as Executive Director. Ms. Coles-Roby said Ms. Read's last day with the Board will be October 31, 2014, and all parties to her cases will receive notices of withdrawal so that they would be informed of the transition. Ms. Coles-Roby said she would fill the position as soon as possible. She said in the interim, Ms. Williamson will take telephone inquiries, and the staff will do its best to cover the absence until the position is filled.

Petition for Reconsideration

Mr. Ericson introduced the letter from Dominic Galluzzo as a Request for Reconsideration of the dismissal of his Complaint No. 13C-03 (the "Request"). The members present discussed that it was necessary to compare the Request to the original Complaint to determine whether the Request presented new information. Mr. Ericson suggested the members take more time on the matter, to determine whether the Request included any new evidence that was not previously considered by the Board. He said the appropriate response would be in writing. The members present said that information that identified the firms in the Complaint remained in the Request, and therefore some members are aware of the identity of the respondent LSP. The members present also discussed that it was the Screening Team that reviewed the details of the Complaint and reported to the Committee. They requested that **the staff send electronic (PDF) copies to the Committee with the following: redacted copies of the original complaint and its attachments; redacted copies of the answers by the two named LSPs and attachments; and the minutes of the Committee meetings held on April 17, 2014, July 10, 2014, and September 11, 2014, in which this matter was discussed.**

Mr. Franklin said Mr. Galluzzo could address the Committee briefly about his Request. Mr. Galluzzo said that in his previous two appearances before the Committee, he requested verification of whether the chemist who reported the soil screening PID readings was a chemist, whether the LSP was on site the day the tank was removed, and why there was always a disclaimer as to the LSP's predictions of the cost of the proposal. Mr. Austin said it is not unusual in the profession to include a disclaimer; in fact it is a typical practice. Mr. Austin asked what was done at the site. Mr. Galluzzo said LSP#3 took 25 samples, no VPH or EPH contaminants were detected, the site was closed and the excavated fill was removed and replaced. He said the Board was in conflict with MassDEP, because MassDEP accepted the Response Action Outcome Statement ("RAO") filed by LSP#3. Mr. Galluzzo said this is not a fee dispute, but LSP#1 said he should pay more and more and more, but did not include the cost to excavate the area or restore the property. Mr. Galluzzo said the work would cost from \$250,000 to \$300,000, which only came to light because he did not like LSP#1's disclaimers. He said the Board did not validate the work done by LSP#1 and LSP#2, but turned on LSP#3, who saved Mr. Galluzzo money and his health. He said he promised this Board he would not drop this matter because it involved the value of his property, his health, and the health of his wife. Mr. Galluzzo said MassDEP told LSP#3 there was no reason not

to proceed with a LRA (Limited Removal Action). He said jacking up the house was not necessary, and LSP#1 never provided one lab report or vapor intrusion reading. Mr. Galluzzo said you cannot get a PID reading above 200 ppm (parts per million), so how did the chemist get a reading of 450 ppm? He said that a member of this Board said the least experienced members were assigned to the Screening Team. Mr. Ericson said the Screening Team members were very experienced, and they presented the information to the full Board for decision. He said there seems to have been some miscommunication along the way regarding the amount of work to be done, but the Committee will take a look and will deliberate. Mr. Galluzzo said the Board produced a letter from the lawyer for LSP#1 that responded to requests from Mr. Galluzzo's lawyer, but Mr. Galluzzo's lawyer never received that letter. Ms. Read said she had checked all the case records carefully about this issue, and it appeared that Mr. Galluzzo's lawyer did receive the letter, because Mr. Galluzzo's Complaint included documents that LSP#1 provided only with that letter. Ms. Coles-Roby said Mr. Galluzzo received all the requested documents from the Board.

Mr. Galluzzo and Ms. McKnight left the meeting at approximately 2:25 p.m.

Letter from State Senator, State Representatives, and Boston City Councilor

Mr. Franklin and Mr. Ericson distributed a draft response to the letter from the State Senator, State Representatives, and Boston City Councilor ("legislators"). The letter from the legislators had been discussed at the September 11, 2014 meeting. The members present discussed that every situation that involves an LSP who might have a financial interest in soils from a contaminated site being tested or transported must be decided on its own merits. They discussed that the remedy for such a situation might be disclosure of the financial interests by the LSP to the client. Members discussed that such a situation might run afoul of the general LSP standards if not the conflict of interest rules. Mr. Ericson noted that the legislators' concerns would probably be assuaged by MassDEP's recent revisions to the "Similar Soils Provision Guidance." The members asked Mr. Ericson and Mr. Franklin to **circulate the draft response letter to the Committee members in electronic format for comment electronically.**

4. New Business

There was no new business.

6. Future Meetings

The Committee is scheduled to meet on November 20, 2014, at MassDEP's offices at One Winter Street in Boston.

7. Adjournment: The meeting was adjourned at approximately 2:43 p.m.