



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

ONE WINTER STREET, 3rd Floor
BOSTON, MA 02108
PHONE: (617) 556-1091 FAX: (617) 292-5872

PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on November 20, 2014

Approved on January 15, 2015

Prepared by: Beverly Coles-Roby

Meeting Location: MassDEP Boston
One Winter Street
Boston, MA 02108

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting on October 16, 2014
3. Active Case List
4. Letter to the Board from State Senator Rush, State Representatives Scaccia and Copping, and Boston City Councilor O'Malley

1. Call to Order: Kirk Franklin called the meeting to order at approximately 1:34 p.m. The other Board members in attendance were David Austin, Benjamin Ericson, Kathleen Campbell, Debra Listernick, Farooq Siddique, John Guswa and Robert Rein. Committee members absent were James Smith and Gail Batchelder. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (LSPA); Wesley Stimpson of WES Associates; Dominic Galluzzo; Joseph Polsinello; Sarah McKnight; and Linda Segal.

2. Previous Minutes: The draft minutes of the meeting held on October 16, 2014 were approved 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 October meeting. Ms. Coles-Roby reported on the status of each case. Ms. Rundle asked whether in light of the Assistant General Counsel's departure from the LSP Board there are questions about which attorney does what. Ms. Coles-Roby responded that there

has been full disclosure to all parties and their legal counsel. She added that the process remains the same with respect to offers of settlement; in quasi-judicial sessions and with respect to Board votes.

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Mr. Austin indicated that he had looked at all of the documents and there was no new information. Ms. Listernick said that she too reviewed the list of documents sent to the Quasi-Judicial Session Board members and did not see any new written information. Moreover, it was the same presentation Mr. Galluzzo made at the last three Board meetings. Mr. Austin also said that in general the lack indoor air screening was new, but considering the condition of the basement wall and floor, it was not enough of a reason to reopen the case. Mr. Franklin asked whether there were any further comments from Board members.

He then allowed Mr. Galluzzo an opportunity to be heard. Mr. Galluzzo told the Board that he was disappointed with the comments made so far. As an example, he stated, "Isn't it strange that the retainer amount for LSP 1 and LSP 2 was the same. LSP 1 directed the process and LSP 2 went along with it." He informed the Board that the letter he included in his packet of materials was "a clear indication of collusion." He went on to say that LSP 3 never mentioned groundwater because he never bumped into it. He did not dig deep enough.

Mr. Galluzzo also stated that he has COPD, is a grandfather twice over, and he and his wife babysit two to three times a week. His wife's health has been jeopardized. Mr. Galluzzo noted that LSP 2 did not indicate anything until he told him, "Don't you see the risk to my health and the environment?" He asserted, "If I go down that road your mission stands incomplete. Shame on you."

Referring to the documents Mr. Galluzzo's submitted in support of his petition, Mr. Ericson said, some information was relevant and some was not. Mr. Ericson observed that the notice Mr. Galluzzo received from the LSP was appropriate and could not be cast as unfair or predatory. He added that he was unsure how the information submitted related to the issues under consideration. Mr. Ericson indicated that the Board reviewed the cost estimates and decided that they were not predatory. Mr. Galluzzo countered that he was not offered any options. LSP 1's opinion was based on dubious data. There were no soil samples or boring samples. He also said that he did not know what the Board was wrestling with. He asked, "Who is going to pay for the compromise to my home's foundation?" Mr. Ericson noted that the work was never performed. Mr. Galluzzo responded that he had stopped it. Mr. Ericson then said that in his opinion there was some miscommunication along the way, miscommunication rather than an attempt to bill him for work that was not performed. Mr. Galluzzo doubted whether anyone had really read his letter of appeal. He told the Board members that they were supposed to be watching the work of LSPs and protecting the environment. Ms. Listernick indicated that LSP 1 was writing a proposal; he was not acting as LSP of record; and he was not performing services. Mr. Franklin said that it was just an opinion. It is not of consequence; anyone can propose anything they want. Mr. Siddique said, what was presented and what was presented later was not anything different.

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Mr. Franklin asked whether there was something that could be brought to a vote. Mr. Siddique moved that the Board allow the Complaint Review Team to reconsider the matter with the additional information Mr. Galluzzo provided. Mr. Franklin called for a second. There was no second. Mr. Ericson asked whether after considering the materials and anything else Mr. Galluzzo has said or could provide was there anything that would warrant further consideration beyond the meeting and whether the Board needed to provide a written decision. Mr. Guswa indicated that the Screening Team had already done so. Mr. Austin told the body that nothing he heard changed his opinion. Mr. Siddique said that this was the second or third meeting that time had been spent on the matter. He added more discussion would not lead to a certain end point. Ms. Listernick said that after review she did not see how there was any additional information. Mr. Austin agreed.

Mr. Franklin called for a motion to approve the original dismissal by the Screening Team. Mr. Ericson suggested that the Board render a written decision. Mr. Siddique stated that it would be good to have closure. Mr. Guswa said that the Board should prepare something that reflects the review of the newly submitted information. Mr. Franklin again called for a motion to uphold the decision of the Screening Team. To which Mr. Austin added, that it would mean denying the Petition for Reconsideration. Mr. Ericson asked Mr. Galluzzo if there was anything that was new information that the Board should consider because the members were struggling to find new information. Mr. Austin stated that he did not struggle. He reviewed the new information and he did not think that it should be reopened. Mr. Galluzzo questioned whether the Board really considered what he submitted. He went on to say that he had to apologize for not being able to write clearly enough for the Board members to understand it. He added one final coda, saying that MassDEP came away with a different decision. A motion was made and seconded to deny the Petition for Reconsideration.

4. **New Business:** None
5. **Future Meetings:** The next meeting will take place before the LSP Board Meeting on December 18, 2014.
6. **Adjournment:** The meeting was adjourned at 2:24 p.m.