



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

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PROFESSIONAL CONDUCT COMMITTEE
Minutes of Meeting on September 11, 2014
[Approved on October 16, 2014]

Prepared by: Lynn P. Read

Meeting Location: Central Regional Office
Massachusetts Department of Environmental Protection (MassDEP)
627 Main Street
Worcester, MA

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting on July 10, 2014
3. Active Case List
4. Letter to the Board from State Senator Rush, State Representatives Scaccia and Coppinger, and Boston City Councilor O'Malley
5. 309 CMR 4.04, Conflict of Interest
6. Draft Regulations Discussion Paper November 9, 1992, p. 5

- 1. Call to Order:** Kirk Franklin called the meeting to order at approximately 1:25 p.m. Also present were David Austin, Benjamin Ericson, Gail Batchelder, Kathleen Campbell, Debra Listernick, Farooq Siddique, and James Smith. Committee members absent were John Guswa and Robert Rein. 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; and Attorney Irfan Nasrullah.

Announcements: Mr. Ericson said that the letter from State Senator Rush and other legislators should be added to today's agenda under New Business.

- 2. Minutes of Meeting Held on July 10, 2014:** The draft minutes of the meeting held on July 10, 2014 were reviewed. **A motion was made and seconded to approve the July 10, 2014 minutes as written, and the motion passed, with Ms. Campbell, Mr. Franklin, and Ms. Listernick abstaining.**
- 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 May meeting.

4. New Business

Letter from State Senator and Representatives, and Boston City Councilor

Ms. Coles-Roby distributed copies of the letter from the State Senator Rush, State Representatives Scaccia and Coppinger, and Boston City Councilor O'Malley ("legislators"). Mr. Ericson said the legislators were concerned that an LSP could benefit improperly from the testing and transporting of soil. He said MassDEP is creating rules so that soils can go to the right places, and much of that discussion is broader than soils covered by the MCP (Massachusetts Contingency Plan). He said the letter reflects concern that an LSP could work for an entity that owned both the receiving location and the source of contaminated soil, therefore there would be no independent analysis of whether the soil was suitable for the receiving location, and the LSP might have a conflict of interest. Mr. Ericson said the legislators' concerns might be broader than the Board can address, because the MCP does not necessarily regulate all locations that receive soils, and the Board does not review the work at sites where soil is generated if no LSP is involved. He said the legislators' questions could apply to a variety of scenarios, and the Board must think carefully about its response. Members said the legislators are concerned about a specific situation in which a company generates soil from many locations and disposes of it at a quarry that the company operates as a landfill. Members discussed that the letter raises the question whether a company can generate contaminated soil and have one of its employees give an opinion that the company may properly dispose of the soil at a facility operated by the same company. **Mr. Franklin volunteered to draft a response to the letter and circulate it to the Board for review. Members said the response should indicate that the Board would be open to fact-finding if given a particular scenario.** Members said a conflict of interest could arise from soil testing and transportation, separate from soil disposal. They discussed that the Board has jurisdiction over LSP professional services, and some activities of concern to the legislators might not be LSP services. Ms. Rundle said there MassDEP might have an opportunity to address some of these issues in soil-management guidance.

Second Report of Screening Team 13C-03

Ms. Read reported that Screening Team 13C-03 reviewed the actions of the third LSP ("LSP#3"), as requested by the Committee at its meeting on April 17, 2014, and the Screening Team concluded that the facts would not support a complaint being opened against LSP#3. She said the Screening Team appreciated that releases of home heating oil can be very difficult for the homeowners, but this release was a mandatory 72-hour reporting condition. Ms. Read said the Screening Team believed LSP#3 acted inappropriately, but his/her assertion that the release was not reportable was moot. She said it was unclear when the site was transferred to LSP#3, thus it was unclear whether LSP#3 was responsible for missing the deadlines for filing a Release Notification Form and Immediate Response Action Plan. She said LSP#3 proposed an alternative site closure method that was neither better nor worse than the proposal by LSP#1, which was aggressive but would have left no

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contamination on site so as to help Mr. Galluzzo sell the house. She said the Screening Team found that LSP#3 did a fair amount of assessment before closing the site with a Method 1 Risk Characterization within one year to save the homeowner the compliance fee, and the team recommended the Committee find that the violations by LSP#3 would not support opening a complaint.

Mr. Ericson invited Mr. Galluzzo to address the Committee. Mr. Galluzzo said he was here to respond to the Public Records he received from the Board in July. He said at the July meeting he asked if the Board verified the education of the chemist who took the readings that resulted in reporting the oil release to MassDEP, and there was no indication that that person was a chemist. He said there were no invoices showing that LSP#1 was ever at his property. Ms. Coles-Roby said that more documents will be produced, and they might include such documents. Mr. Galluzzo said the chemist's worksheet showing that five drums held two yards of contaminated soil was not accurate. He said his house was converted from fuel oil to gas, and he never received laboratory results from LSP#1. He said the photos taken on June 24, 2013 did not show a hole in the oil tank, although the chemist reported a ¼-inch hole and the Fire Department reported a ½-inch hole. He said he was told there was a pinhole leak. Mr. Galluzzo said if there were the amount of oil the chemist claimed, there would be an odor in the cellar and staining on the wall, but there was none. He said it is his understanding that for pure oil, it is difficult to get a reading above 200 parts per million ("ppm"), so how was it possible to get the PID (photoionization) reading of 450 ppm in the chemist's worksheet? He asked why the Board accepted the statements of LSP#1 and not LSP#3, who was the LSP of Record. Mr. Galluzzo said he would formally request that John Fitzgerald of MassDEP look at the data, because LSP#1 never did VPH/EPH testing. He asked how the chemist could get a reading above the tank when the leak was reported below the tank.

Mr. Galluzzo said that LSP#1 proposed excavating under the house, and the estimate increased from \$6,000 to \$46,000 not including soil gas testing, which was estimated about \$6,000, or the price to jack up the house, or the tank excavation. He said more than one contractor told him it would cost \$250,000 to \$350,000 to do the job proposed by LSP#1. He said he was fortunate that his oil deliveryman told him the proposal from LSP#1 was way too aggressive and there was no way that that much oil had leaked. Mr. Galluzzo said he has always tracked his oil bills and never noticed a significant variation of more than \$50. He said the Board should not have relied on the headspace reading when MassDEP instructions say analytical and environmental monitoring data must be valid and defensible with precision and accuracy. He said LSP#3 provided lab reports on more than 20 samples and tested all five drums, which were left sealed, and only one sample from the five drums exceeded MCP standards. He said photos from LSP#3 showed no oil stain on the basement wall, and LSP#1 failed to take an indoor air reading.

Mr. Galluzzo said that one of the public records he received from the Board was a letter dated November 1, 2013, from the lawyer for LSP#1. He said the letter responded to a letter from his lawyer. He said the letter did not answer his lawyer's questions, his lawyer did not receive it, and it was produced without its attachments.

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Mr. Ericson said the Screening Team and the Committee took a lot of time to review all the information related to Mr. Galluzzo's complaint, and at the April 2014 meeting the Committee agreed unanimously that the complaint should be dismissed. He said the Board provided Mr. Galluzzo with the public records he asked for, and will give him more documents subject to the Public Records Law, and if Mr. Galluzzo has any new information, the Board will review it. Mr. Ericson said unfortunately much of Mr. Galluzzo's information is not relevant to the issues in the complaint, which were: (1) Was notice of the release given appropriately? (2) Was LSP#1 authorized to give the notice? (3) Was LSP#1's proposal predatory? and (4) Did LSP#2 act inappropriately in approving LSP#1's proposal? Mr. Ericson said the Committee looked at all those issues and decided that: (1) headspace readings of more than 100 ppm justified giving notice of the release; (2) there was sufficient information that LSP#1 was authorized to notify MassDEP of the release; (3) the estimates by LSP#1 were not given to gouge Mr. Galluzzo but provided information for financials and were not predatory; and (4) LSP#2 did not act inappropriately. Mr. Ericson said any new information from Mr. Galluzzo will be reviewed to determine if it would cause the Committee to think differently.

Ms. Coles-Roby and Mr. Ericson said the Board's letter to Mr. Galluzzo said the Board's regulations permit requests for reconsideration for good cause. They said he had 30 days after the dismissal letter to request reconsideration. They said the 30 days expired in May 2014, and the Board has allowed Mr. Galluzzo to speak at two meetings after that expiration. Ms. Coles-Roby and Mr. Ericson said Mr. Galluzzo should make any further request for reconsideration in writing, and **the Board will extend him the courtesy to consider any new information he might provide in writing.**

Mr. Galluzzo said the affidavit by LSP#1 was replete with false statements. He said the Committee ignored reams of scientific data in lab reports from LSP#3, and the Screening Team included two members who had no experience investigating complaints.

Mr. Austin asked Mr. Galluzzo whether the cleanup of his property was finished and closed with MassDEP. Mr. Galluzzo said yes, it was cleaned up and closed, and he asked what the Board has to do with getting his property expunged from the superfund list. Mr. Ericson responded that the Board has nothing to do with listing of hazardous waste disposal sites, and Mr. Galluzzo must contact MassDEP. Mr. Galluzzo thanked the Board for their time and left the meeting.

A brief recess was taken from 3:05 p.m. to 3:15 p.m. The Committee members resumed meeting at 3:15 p.m. and noted that no vote had been taken on the recommendation by Screening Team 13C-03. **A motion was made and seconded to accept the recommendation of Screening Team 13C-03 that the Board not open a complaint against the third LSP. The motion passed unanimously.**

6. Future Meetings

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The Committee's next meeting is tentatively scheduled for October 16, 2014, at the Northeast Regional Office of MassDEP in Wilmington.

7. Adjournment

A motion was made and seconded to adjourn the meeting. The motion passed unanimously, and the meeting was adjourned at approximately 3:18 p.m.