



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on January 9, 2024

Approved on: February 13, 2024

Prepared by: Terry Wood

Meeting Location: In person at MassDEP, 100 Cambridge Street, Boston, MA and via GoTo Webinar

List of Documents Used at the Meeting:

1. Agenda
2. Active Case List
3. New Complaint 21C-01 and LSP's Response to Complaint, with all identifying information redacted.
4. New Complaint 22C-01 and LSP's Response to Complaint, with all identifying information redacted.
5. New Complaint 23C-01 and LSP's Response to Complaint, with all identifying information redacted.

1. Call to Order: Kirk Franklin called the meeting to order at 12:35 p.m. Present in the room: David Austin. Present via GoToWebinar: Gail Batchelder, Gregg McBride, Kathleen Campbell, Kirk Franklin, Patrick Herron, James Smith, Craig Ellis and Paul McKinlay. Board members absent: None.

Staff members present in the room were: Terry Wood, Matthew Lyne, Notoshia Dix and Jared Muggeo. Staff member present via GoToWebinar: Chris Borges. Also present in the room: Millie Garcia-Serrano from MassDEP. Also present via GoToWebinar were: Charles Young, Lori

McCarthy, Diane Baxter of MassDEP, and Wendy Rundle, Kristin LeFebvre, and Michelle Zelch of the LSPA.

2. **Announcements:** There were no announcements.

3. **Previous Minutes**

Board staff noted that the transcript of the Committee's previous meeting had been posted on the Board's Web page.

4. **Old Business**

A. Status of Complaint Review Teams (CRTs)

The active case list was reviewed and the status of the active cases was discussed. Board staff noted that going forward the active case list will be included in each month's meeting packet.

5. **New Business**

A. Discussion re: Screening Teams

Ms. Batchelder discussed the Board's historical practice of appointing a screening team to review a complaint and LSP written response for the purpose of making a recommendation to the Board whether the complaint should be accepted for investigation or dismissed. Ms. Batchelder noted that screening teams have been useful in the past, particularly in cases of complaints by private parties who may not be familiar with the role of LSPs or the content of the Massachusetts Contingency Plan regulations. She noted that, in the event the Board votes to appoint a screening team, the team would be comprised of an LSP and a non-LSP Board member. The screening team members would be given a non-redacted version of the complaint and any LSP written response in order to better understand the nature of the allegations and relevant facts. In the event the complaint is ultimately accepted for investigation, the screening team members would be appointed to the Complaint Review Team along with a staff attorney.

B. Complaint 21C-01

This complaint was filed by a private party against an LSP who performed MCP work on a property abutting property owned by the complainant. The complainant's LSP filed a Downgradient Property Status Opinion (DPS) that identified the abutting property as the source of contamination on complainant's property. The LSP that is the subject of the complaint submitted a rebuttal to the DPS and a Phase I Comprehensive Site

Assessment/Tier II Classification to MassDEP. The complaint alleges, among other things: the LSP's DPS rebuttal included inconsistencies and misrepresentations with

respect to, among other things, groundwater flow direction and the prior use of Complainant's property as a dumping area with filled-in wetlands; the LSP's Phase I submittal did not meet MCP requirements; and the LSP never contacted the complainant to conduct assessment work on his/her property for purposes of the Phase I site investigation.

After discussion of the complaint and the LSP's written response, a motion was made and seconded to appoint a Screening Team to further review the Complaint, the response, and related documents and make a recommendation whether the Board should accept the Complaint for investigation or take other action. The motion passed unanimously. Ms. Batchelder and Mr. McBride were appointed to the Screening Team.

C. Complaint 22C-01

This complaint was filed by a citizens' group against an LSP. The complaint listed a number of allegations which included, among other things: allowing the premature redevelopment of a property before the extent of TCE contamination was properly delineated and controlled; failure to properly test building indoor air quality prior to approval for full occupancy of a building; failure to install a sub-slab depressurization system to prevent ongoing TCE vapor intrusion into an occupied residential building; failure to install a groundwater collection and treatment system to address TCE contamination; failure to install a groundwater and preferred contaminant pathway barrier system to prevent the ongoing spread of TCE-contaminated groundwater; failure to address the leakage of TCE-contaminated groundwater into the municipal stormwater drainage system; and failing to disclose a conflict of interest by working for a tenant company interested in purchasing the property from a municipality while the LSP's opinions were filed on behalf of the municipality. After discussion of the complaint and the LSP's written response, a motion was made and seconded to appoint a Screening Team to further review the Complaint, the response, and related documents and make a recommendation whether the Board should accept the Complaint for investigation or take other action. The motion passed unanimously. Mr. Austin and Mr. Herron were appointed to the Screening Team.

D. Complaint 23C-01

This complaint was filed by a private party against an LSP that the complainant hired to respond to a gasoline release on complainant's property. The complainant alleged up-front payment of 50% of the contract amount was made to the LSP when the contract was executed and prior to the initiation of work, and that another payment was made approximately eight months later when the LSP arrived on site to sample wells which turned out to be dry. Complainant alleges that over the next 12 months, the LSP failed to respond to the complainant's numerous attempts to reach the LSP and LSP never returned to the site to complete the contracted work. After discussion of the complaint and the LSP's written response, a motion was made and seconded to ask the Board's investigator to reach out to the Complainant for an update prior to the Board's next Professional Conduct Committee meeting. The motion passed unanimously.

6. **Future Meetings**

The Committee's next scheduled meeting will be on February 13, 2024 both in person at 100 Cambridge Street, Boston, MA and via Zoom.

7. **Adjournment:** The meeting was adjourned at 1:30 p.m.