



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

Minutes of Meeting on March 12, 2024

Approved on: April 9, 2024

Prepared by: Terry Wood

Meeting Location: In person at 100 Cambridge Street, Boston and via ZOOM

List of Documents Used at the Meeting:

1. Agenda
2. Draft Professional Conduct Minutes from February 13, 2024.
3. Active Case List

1. Call to Order: James Smith called the meeting to order at 12:24 p.m.

Present via ZOOM: Gail Batchelder, Gregg McBride, Paul McKinlay, Kathleen Campbell, and Kirk Franklin. Board members present in the room: David Austin, Diane Baxter, Patrick Herron, James Smith, and Craig Ellis. Board members absent: None.

Staff members present in the room were: Chris Borges, Matthew Lyne, Notoshia Dix and Terry Wood. Also present remotely via ZOOM were: Charles Young-LSP; Nancy Fitzpatrick and Brian Roden of MassDEP; Wendy Rundle, LSPA Executive Director; and Kristi Lefebvre, LSPA Communications Manager.

2. Announcements: There were no announcements.

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.
TTY# MassRelay Service 1-800-439-2370

3. Review of Draft February 13, 2024 Committee Meeting Minutes

The draft meeting minutes from February 13, 2024 were unanimously approved without changes by roll call vote.

4. New Business

A. Status of Complaint Review Teams (CRTs)

The active case list was reviewed, and the status of each case was discussed.

B. Complaint 21C-01

The screening team members (Ms. Batchelder and Mr. McBride, assisted by Mr. Lyne) stated they had completed review of the complaint and response and then presented the basis for their recommendation that the Committee dismiss certain allegations of the complaint and form a CRT to investigate others.

This complaint was filed by a private party against an LSP who performed MCP work on a property that abutted 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 screening team recommended, for the reasons listed below, that the Committee dismiss the following allegations:

- The complaint alleges 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 Screening Team noted that a DPS Rebuttal does not require a BWSC form with a certification as an LSP Opinion and, therefore, is not a waste site cleanup activity opinion. As a result, the LSP's work on the rebuttal was not Professional Services and, therefore, was outside the Board's jurisdiction.
- The complaint alleges that submittal of the Rebuttal to the DPS may be a Conflict of Interest under 309 CMR 4.04. The Screening Team determined the submittal of the Rebuttal to the DPS did not violate any section of 309 CMR 4.04.
- The complaint alleges that the complainant was never contacted by the LSP to seek access to conduct assessment work on the complainant's property. The Screening Team stated that no sampling work was done on the complainant's property during the Phase I Investigation and, therefore, there was no requirement to contact the complainant.

The Screening Team recommended the Committee appoint a CRT to further investigate the allegation in the complaint that the LSP's Phase I/Tier Classification submittal failed to meet MCP requirements.

After the screening team concluded its presentation, Ms. Batchelder and Mr. McBride left the meeting. The remainder of the Committee unanimously voted by roll call vote to accept the Screening Team's recommendations to dismiss some allegations in the complaint and to form a Complaint Review Team consisting of Ms. Batchelder, Mr. McBride and a staff attorney to investigate the Phase I/Tier Classification submittal.

Ms. Batchelder and Mr. McBride rejoined the meeting.

5. New Business - No new business.

6. Future Meeting – April 9, 2024 both in person at 100 Cambridge Street, Boston and via ZOOM.

7. Adjournment: The meeting was adjourned at 12:41 p.m.