

# PROFESSIONAL CONDUCT MEETING MINUTES



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

ONE WINTER STREET, 3<sup>rd</sup> Floor  
BOSTON, MA 02108

## PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on May 15, 2019

Approved on June 19, 2019

**Prepared by:** Beverly Coles-Roby, Esq.

**Meeting Location:**

**MassDEP SERO**  
**20 Riverside Drive**  
**Lakeville, MA 02347**

**1. List of Documents Used at the Meeting:**

- Agenda
- Draft Minutes of Meeting on April 24, 2019
- Active Disciplinary Cases Table
- Docket Nos.: 05C-07; 08C-03; 10C-01; 11C-04; 12C-01; 18C-01; and 18C-02.

**2. Call to Order:** Co-chairperson Kirk Franklin called the meeting to order at approximately 12:50 p.m. The Board members in attendance were, Maria Pinaud, Debra Listernick, David Austin, Farooq Siddique, Marc J. Richards, Dr. Gail Batchelder, and Gregg McBride. Board members Kathleen Campbell, and James N. Smith were absent. Staff members Beverly Coles-Roby and Richard Friend were present. Additionally, Wendy Rundle, Executive Director of the LSP Association ("LSPA") and Michele Paul, President Elect of the LSPA, were present.

**3. Previous Minutes:** The draft minutes of the meeting held on April 24, 2019, were approved as written. Mr. Richards abstained from voting to approve the minutes.

**4. Old Business: None**

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### 5. Status of Complaint Review Teams and Active Case List

Ms. Coles-Roby reported on progress made since the April 24, 2019 meeting, giving reports on the status of each case as reflected in the Active Discipline Case List. She prefaced her comments by stating that all recent developments were catalogued in the Active Case List.

Ms. Coles-Roby reported that 05C-07 would be discussed in Executive Session. She also stated that the assistant attorney general assigned to the case requested assembly of the Administrative Record, which is all of the documents comprising the legal file. The record must be filed in Middlesex Superior Court by June 11, 2019. She indicated that she hoped to forward the documents by May 30, 2019.

She said 08C-03 would be discussed during the Executive Session at the conclusion of today's Board meeting.

Ms. Coles-Roby repeated that the Order to Show Cause in 12C-01 was served on the LSP on April 3, 2019, and that his response was due within twenty-one days. She filed the Order with the Office of Appeals and Dispute Resolution on that date. The OADR Case Administrator informed her that the case would be docketed, and the Presiding Officer assigned when a response was received. She also said that to date the LSP had failed to file a response with OADR. Ms. Pinaud said that it is important to precisely count the days. Mr. McBride asked whether the Board could weigh in with the Presiding Officer about the LSP's failure to file a timely response. Ms. Coles-Roby said that this was uncharted water since typically LSPs filed their response within twenty-one days. She concluded by saying that the Presiding Officer would take note of any failure to comply with the regulatory deadlines. Mr. McBride asked whether the Presiding Officer might be flexible, giving leeway to individuals such as this LSP, who acted as their own legal counsel. Ms. Coles-Roby said that was true. In fact, she said, there are guidance documents for judges and hearing officers set by the Massachusetts Supreme Judicial Court regarding parties who are pro se. Mr. McBride asked whether the Board could recommend that the LSP be defaulted. Mr. Siddique asked if the current Presiding Officer is the same one who tried the initial case against the LSP. Ms. Coles-Roby said yes. She went on to say that the Presiding Officer's decision is a Recommended Final Decision, and the Board can accept it in whole or in part; reject it in whole or in part; or accept it in its entirety. Dr. Batchelder asked why Ms. Coles-Roby is listed as recused. Ms. Coles-Roby told the Committee that she had signed the complaint. Ms. Listernick said that at the time the Board hoped to join the two separate prosecutions against the LSP, and this matter was sent to LSP staff as an amendment to the first case. The first complaint was filed and signed by MassDEP. Additionally, Ms. Coles-Roby said, the LSP was represented by counsel at the time, and all parties were fully informed of her involvement. Ms. Pinaud indicated that Ms. Coles-Roby is not a voting member on any decision made by the Board.

In 18C-01, Ms. Coles-Roby reported that the Complaint Review Team ("CRT") is working to complete its report to the non-recused Board members.

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Ms. Coles-Roby indicated that the CRT in 18C-02 has scheduled a conference call for June 11, 2019.

**6. Future Meetings: June 19, 2019--MassDEP CERO**

**7. Adjournment:** The meeting was adjourned at approximately 1:09 p.m.