

# 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 October 8, 2019

Approved on November 12, 2019

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

**Meeting Location:**

**MassDEP CERO  
8 New Bond Street  
Worcester, MA 01608**

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

- Agenda
- Draft Minutes of Meeting on September 23, 2019
- Docket Nos.: 05C-07; 08C-03; 12C-01; 18C-01; and 18C-02.

**2. Call to Order:** Board member, David Austin, called the meeting to order at approximately 1:29 p.m. The Board members in attendance were, Millie Garcia-Serrano, Debra Listernick, Farooq Siddique, Marc J. Richards, Dr. Gail Batchelder, Gregg McBride, and Kathleen Campbell. Board members Kirk Franklin and James N. Smith were absent. Staff member Beverly Coles-Roby was present. Additionally, Wendy Rundle, Executive Director of the LSP Association ("LSPA") and Rebecca Woolley, Audits Section Chief, MassDEP CERO, were present.

**3. Previous Minutes:** The draft minutes of the meeting held on September 23, 2019, were approved as amended. Mr. Siddique 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 September 23, 2019 meeting, giving reports on the status of each case. She prefaced her comments by stating that she hoped to return to cataloging recent developments in the Active Case List next month.

Ms. Coles-Roby reported that 05C-07 would be discussed in Executive Session. She also stated that the assigned assistant attorney general (“AAG”) agreed to meet with the Board members regarding the chapter 30A appeal pending in Middlesex Superior Court before the November 12, 2019 meeting. She also reported that she spoke with Benjamin Ericson, MassDEP’s General Counsel, who was unaware that a Motion to Amend the Complaint was filed with the AAG’s assent in April 2019; Judgment of Default against the plaintiff LSP was entered by the court on July 29, 2019; AAG assented to a Motion to Set Aside Default Judgement; and the LSP had filed an Amended Complaint with the court in late August 2019.

She said 08C-03 would discuss during the Executive Session at the conclusion of today’s Board meeting.

As previously reported Ms. Coles-Roby stated that the Presiding Officer issued an Order to Show Cause for Failure to Comply with OADR Directives (“the Order”). Ms. Coles-Roby said that the Presiding Officer had declined to dismiss the 12C-01 for failure to comply with the Presiding Officer’s directives on September 5, 2019. She reiterated the circumstances that prompted the Presiding Officer’s Order to Show Cause, which were memorialized in her affidavit and an accompanying sixteen-page Memorandum of Law.

That affidavit in pertinent part indicated the following: at the time, the Board licensed approximately 487 LSPs. In 2009 at full complement, the Board had an Executive Director; General Counsel; Assistant General Counsel; two full-time Scientists/Investigators; and a full-time Program Coordinator on staff.<sup>1</sup>

In particular, the affidavit noted the Board has been without either a General Counsel or an Assistant General Counsel since January 2013 and October 2014 respectively, and as a result, Ms. Coles-Roby performed all essential functions of legal counsel for the LSP Board. Since 2011, Ms. Coles-Roby had filed, prosecuted, settled, dismissed, or otherwise resolved nineteen complaints against LSPs: 05C-07; 08C-03; 10C-01; 11C-04; 12C-01; 12C-02; 13C-01; 13C-02; 13C-03; 14C-01; 16C-01; 16C-02; 16C-03; 17C-01; 17C-02; 17C-03; 17C-04; 17C-05; and 18C-03.

The affidavit also indicated that the Board has been without a permanent Investigator since October 2018. A temporary employee held the position from November 2018 until June 10, 2019. The temporary investigator had no prior training with the Board’s duties and responsibilities. As a result, Ms. Coles-Roby performed all of the essential functions of those positions including but not limited to the following: reviewing complaints and LSP’s responses; identifying issues for resolution during the investigation; determining what

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<sup>1</sup> The position description for the Executive Director proscribes a minimum support staff of four to implement the program.

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chapter 21E reports and other documents in MassDEP's files are potentially relevant to the investigation; acquiring all potentially relevant reports and other documents; conducting a detailed review of all documents obtained; summarizing the results in memoranda to Complaint Review Team ("CRT") the appropriate MassDEP region(s); interviewing appropriate MassDEP staff and third parties, including technical experts, to obtain additional information about the LSP's alleged misconduct, documenting each interview in writing; determining appropriate investigative strategies for interviewing the LSP and others; participating fully at CRT meetings, assisting in the evaluation and assessment of all information gathered during the investigation; preparing, reviewing, and editing investigative reports for accuracy and completeness.

According to the affidavit, the Board has at least twelve frequent course providers, including the Massachusetts Department of Environmental Protection ("MassDEP"). However, the Board has been without a permanent Continuing Education Coordinator since October 2018. As a result, Ms. Coles-Roby reviewed each Continuing Education course submittal to the Board for completeness; communicated with course providers, responded to questions and advised them on how to submit courses for approval; preparing a packet of course proposals for distribution before each Board meeting; presented course proposals received and recorded the Committee's recommendation with respect to each course; contacted course providers when the Continuing Education Committee sought additional information regarding course content, syllabus, and/or instructor qualifications; ensured that the Continuing Education Committee had adequate regulatory grounds for recommending denial or approval of proposed courses; carrying out all Board course approval and denial decisions by notifying course providers and, for approved courses, sending out the necessary instructions and official course attendance certificates; maintaining a database of all courses approved for continuing education credit and posting that information on the Board's website; reviewing and verifying license renewal applications for required continuing education credits; assisting in preparing letters to those LSPs granted 90-day extensions, verifying the number and type of credits needed to renew; serving as the staff contact for license renewal applicants who call with questions about their continuing education credits or denial of their renewal applications. No one was in the position at the time the Order was issued.

The affidavit also stated that the Board has been without a permanent full-time Program Coordinator since July 2011. Ms. Coles-Roby has attempted to hire the third temporary employee since November 2018. The most recent temporary staffer was terminated on August 2, 2019, for poor attendance and failing to perform the essential functions of the job; she had held the position for less than three months. Her predecessor held the job for six months. As a result, Ms. Coles-Roby performed all of the essential functions of the Board's Program Coordinator including but not limited to coordinating and monitoring the Board's program activities including but not limited to license applications; licensing examinations; license renewals; billing and collection of Application Fees, Exam Fees, Annual Fees, and Renewal Fees; maintaining the Board's Applicant/Licensee Database; responding to inquiries about the program from LSPs, applicants, LSP Board members, the LSP Board staff, MassDEP staff, and the public; acting as liaison with MassDEP's Revenue Unit regarding all fee invoices; and the collection and tracking of revenue received; serving as the agency's office manager, receptionist, and administrative assistant, copying, filing, mailing, and mail

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distribution. which means that Ms. Coles-Roby opened the mail; answered the telephone; returned calls; responded to email; processed fee payments; entered important data on both the public website and the internal databases. At that time, no one was in the position. In declining to dismiss the case the Presiding Officer issued the following Scheduling Order:

- October 4, 2019 Board's Pre-Hearing Statement due;
- October 23, 2019 10:30 a.m. Presiding Officer's Pre-Hearing Order;
- December 18, 2019 Board's Pre-filed Direct Testimony, Exhibits and Memorandum of Law are due;
- February 19, 2020 Decoulos Pre-filed Direct Testimony, Exhibits and Memorandum of Law are due;
- March 27, 2020 Board's Pre-Filed Rebuttal Testimony, Exhibits and Memorandum of Law are due; and
- April 22, 2020 9:30 a.m. Adjudicatory Hearing, OADR Conference Room

Ms. Coles-Roby concluded by stating that she had filed a Pre-Hearing Statement on the Board's behalf on October 4, 2019.

In 18C-01, Ms. Coles-Roby indicated that she would forward the draft Complaint Review Team ("CRT") Report to the CRT members before the November 12, 2019, Board meeting for their review.

Ms. Coles-Roby said that she needed to work on the draft interview questions for the CRT in 18C-02. She added that the CRT could then schedule the LSP's interview.

### **6. Future Meetings: January 14, 2020--MassDEP SERO**

**7. Adjournment:** The meeting was adjourned at approximately 1:37 p.m.