



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

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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on February 5, 2013

[Approved on April 17, 2013]

Prepared by: Lynn P. Read

Meeting Location: Northeast Regional Office, Massachusetts Department of Environmental Protection, Wilmington, MA

List of Documents Used at the Meeting:

1. Agenda
 2. Draft Minutes of Meeting on December 11, 2012
 3. Active Case List
 4. Report from Quasi-Judicial Session
 5. Complaint 12C-02 and LSP's Response (both redacted)
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1. **Call to Order:** Kirk Franklin called the meeting to order at approximately 1:03 p.m. Also present were Benjamin Ericson, Deborah Farnsworth, John Guswa, Debra Listernick, Robert Luhrs, Kelley Race and Farooq Siddique. Staff members present were Beverly Coles-Roby, Lynn Read, and Allen Wyman. Gail Batchelder arrived at approximately 2:10 p.m. Also present were Wendy Rundle, Executive Director of the Licensed Site Professional Association (LSPA); Wes Stimpson of the LSPA; James Matz of Terracon, Chair of the LSPA Technical Practices Committee; and Gretchen Latowsky of JSI, Inc.
 2. **Announcements:** There were no announcements.
 3. **Previous Minutes:** The draft minutes of the meeting held on December 11, 2012 were approved as written by all members present except Mr. Ericson, who abstained.
 4. **Old Business**
 - A. **Status of Complaint Review Teams**

At Mr. Franklin's request, each Complaint Review Team (CRT) reported on progress made since the December 11, 2012 meeting.

Mr. Luhrs said that the appeal in Complaint No. 05C-07 is stalled, because the Board lost Ms. Wood, and Ms. Read is the prosecuting attorney, and the Board cannot be represented by the same attorney who was the CRT attorney and prosecuting counsel for the adjudicatory hearing, due to the conflict of interest between the two roles. Mr. Ericson said he and Ms. Coles-Roby are considering having the Board borrow an attorney from MassDEP, who would be walled off from other cases. Ms. Coles-Roby said the case is not stalled, and the Board staff had functioned with only two attorneys from 2009 to 2011, while Ms. Wood was supervising Ms. Read. She said MassDEP and EOEEA had been consulted about this issue. Mr. Luhrs said that using a MassDEP attorney would increase concern among people who believe the Board's relationship with MassDEP is already prejudicial to LSPs in disciplinary cases, and he is not in favor of using a MassDEP attorney. Ms. Batchelder asked if the Attorney General's office could represent the Board, rather than MassDEP. Ms. Coles-Roby said this would be a conflict, because the Attorney General's office represents the Board when the Board's disciplinary decisions are appealed to court.

Ms. Race said that the Board would like to receive a written proposal from the Board staff about filling the role of Board's attorney, before Mr. Ericson or Ms. Coles-Roby take further action and other agencies opine on whether their attorneys can take the Board's cases. Ms. Batchelder said the decision of how to fill this role belongs to the Board, and the Board should vote on it. Mr. Ericson said he understands the Board is asking to have a process for selecting an attorney for the Board. Mr. Guswa asked how long it will be until Ms. Wood will be replaced. Mr. Ericson said vacant positions are not being filled except internally, which is why the Board must consider all potential avenues to fill this role. Ms. Batchelder asked whether EOEEA has attorneys, who would be more appropriate than MassDEP attorneys. Ms. Coles-Roby reviewed the active cases and said the two disciplinary complaints that Ms. Wood had been assigned are now assigned to Ms. Read.

Ms. Batchelder asked if the Board has funds to hire an outside attorney, and Mr. Franklin said in the past, the Board has had attorneys who were independent contractors, and the Board's budget is a question for the Board to decide. Ms. Farnsworth said the Board needs a seasoned attorney with an environmental background in the MCP cleanup regulations. Mr. Ericson said he agreed that all options would be brought back to the table, and that it is a priority to obtain legal counsel for the Board.

Mr. Siddique asked to reconsider hiring a MassDEP attorney, and Ms. Coles-Roby said the Board should not rule out MassDEP attorneys, who have specialized knowledge and can be kept isolated from other cases. Ms. Race said the Board must be very careful, because there is a perception the Board is too close to MassDEP. Ms. Coles-Roby said the perception already exists. Ms. Batchelder said the Board will be the body that will choose a path for finding its lawyer.

Mr. Luhrs said there needs to be a deeper discussion of the attorney case assignments. He noted Ms. Read is now working on one appeal and four investigations, and recently it took a month to schedule an interview in an investigation. Mr. Wyman said several years ago, Jan Reitsma was engaged to study how to expedite Board disciplinary cases, and Mr. Reitsma concluded that a Board staff member can work on two cases at a time, due to the detailed review the staff and the CRT give the sites in each case. Ms. Race requested that Mr. Ericson review why Board staff who are attorneys are not taking cases. Ms. Coles-Roby said she would decide this issue and would not allow Ms. Read to be overwhelmed. Mr. Guswa said the Board's case system requires two attorneys, one to represent the Board in an appeal, and he is concerned about fairness to LSPs when cases are delayed. Ms. Coles-Roby said one case has been taken from complaint to full disposition while she has been Executive Director. Mr. Ericson agreed to look into it and figure out the best mix of attorneys. He suggested the Board meet again in one month to see what the options are. Ms. Coles-Roby said Terry Wood told her it would be a conflict of interest for Ms. Coles-Roby to represent the Board. She offered to provide minutes showing this.

Mr. Siddique asked how often the former Executive Director took cases. Mr. Luhrs said Mr. Fierce took several cases. Mr. Siddique said he observed that the staff on each CRT does a tremendous amount of work on each case, and if the Board has the resources to hire another attorney, it should be considered. Mr. Franklin said none of the positions that are unfilled were eliminated: the Program Coordinator, investigator Brian Quinlan who passed away, and the General Counsel Ms. Wood's position should be filled. Ms. Coles-Roby said due to current economics, staffing will not be what it was in the past. Mr. Ericson said they will push to get as much help as they can and will work on all options discussed today.

B. Report from Quasi-Judicial Session

Ms. Coles-Roby announced that a report from Quasi-Judicial Session held on December 11, 2012, would be read into the record at the Board meeting. She said that Complaint No. 11C-03 had been resolved, and Ms. Race noted it had been dismissed.

5. New Business

Complaint No. 12C-02: Ms. Race recommended that the Board assign a screening team. The members discussed the allegations of conflict of interest by the LSP, and determined it is necessary to get more facts to see if a violation of the Board's regulations has occurred. Ms. Listernick, Ms. Race, and Mr. Ericson agreed to serve on the screening team.

6. Future Meetings

The Committee is scheduled to meet on March 5, 2013, at a location to be determined.

7. Adjournment: The meeting was adjourned at approximately 3:30 p.m.