

PROFESSIONAL CONDUCT MEETING MINUTES



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
ONE WINTER STREET, 3rd Floor
BOSTON, MA 02108

PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on May 16, 2018

Approved on June 20, 2018

Prepared by: Beverly Coles-Roby, Esq.

Meeting Location:

MassDEP CERO
8 New Bond Street
Worcester, MA 01606

1. List of Documents Used at the Meeting:

- Agenda
- Draft Minutes of Meeting on May 16, 2018
- Active Case List
- 05C-07 Oral Argument, Respondent's Exhibits 1-7

2. Call to Order: Co-Chairperson James N. Smith called the meeting to order at approximately 1:43 p.m. The Board members in attendance were Maria Pinaud, Debra Listernick, Farooq Siddique, Gregg McBride, Kathleen Campbell, Dr. Gail Batchelder, Marc J. Richards, and David Austin. Board member Kirk Franklin was absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Mr. James Decoulos, of Decoulos & Company, LLC, Wendy Rundle, Executive Director of the LSP Association ("LSPA"), and Rebecca Woolley of MassDEP were also present.

3. Previous Minutes: The draft minutes of the meeting held on April 26, 2018 were approved as written. Mr. Richards abstained from voting to approve the minutes.

4. Old Business: None

5. Status of Complaint Review Teams and Active Case List

Oral argument in 05C-07 took place at the beginning of the Committee meeting. The argument was transcribed.

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At co-chairperson, James N. Smith's request, the Complaint Review Teams ("CRT") reported on progress made since the April 26, 2018 meeting. Ms. Coles-Roby gave the 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 explained that 05C-07; 08C-03; 10C-01; and 11C-04 would be discussed during Quasi-Judicial Session at the conclusion of today's Board meeting.

With respect to 12C-01, Ms. Coles-Roby indicated that the Complaint Review Team held a telephone conference on May 10, 2018. The CRT report, prepared by Ms. Williamson, was completed, and the CRT is currently preparing its recommendation for discipline. Both the memorandum and the report will be forwarded to Board members in the June materials packet and discussed at the June 20, 2018 Professional Conduct Committee meeting.

In 18C-01, Ms. Coles-Roby reported that the relevant documents will be delivered to the CRT by the June 20, 2018 Committee meeting. Once the documents are reviewed, the CRT will schedule a meeting to begin preparing its report to the Committee.

The Committee discussed a Request for Reconsideration in 17C-05-2. Ms. Pinaud, who is recused, left the meeting and did not participate in the discussion. Ms. Coles-Roby noted that Requests for Reconsideration generally turn on whether the Request demonstrates: an error of law; mistake of fact; presents newly discovered evidence; or shows prejudice or bias. She added that at page one, paragraph two, of the Request, the complainant asserted that the "moderator along with the LSP intentionally mislead the audience . . ." Ms. Coles-Roby explained that both the Board's regulations and allegations supported the Committee's decision to dismiss the complaint, and the Request presented no new evidence that warranted further investigation. In fact, she said that the Committee meeting minutes of March 29, 2018, were not public on April 3, 2018, the date of the alleged misconduct. She also said that the LSP emailed her on April 24, 2018 asking about the status of the case. She was told that the matter was still under investigation. Ms. Listernick commented on page one, paragraph 3, saying that three business days, from March 29, 2018 until April 3, 2018 was not a significant amount of time. Ms. Williamson said that the complainant may have thought that the LSP had been previously notified. She went on to inform the Committee that the Committee voted to dismiss the complaint on March 29, 2018. In turn, the dismissal letters were reviewed and approved at the April 26th meeting. The letters were forwarded on May 1, 2018. For the record, Mr. McBride said that he did not participate in, nor was he aware of his firm, GZA's, involvement in the project, referring to page 2, paragraphs one through four. Mr. Richards similarly said that he did not know either the site or the LSP. He asked whether the complainant was aware that the LSP Board's disciplinary process is anonymous. Ms. Coles-Roby told the Committee that she had explained to the complainant that everything about the process is anonymous, and that no members other than the CRT know the identity of the LSP or the site's location. Mr. Smith asked the Committee members whether they needed further review of the complaint or other documents. They indicated that they did not. Dr. Batchelder moved to deny the Request for Reconsideration, based on the Committee having taken into consideration all of the information presented and not finding

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error or a violation of the Board's disciplinary regulations. Mr. Austin seconded the motion. Mr. Smith added that the submissions by the complainant continue to refer to a conflict of interest and he thought it important to say that LSPs are part of a privatized program, and responsible parties are free to hire the licensed LSP of their choosing to perform waste site cleanup activities so long as the LSPs render opinions that protect the public health, safety, welfare and the environment; follow the Board's statutes, regulations; and the Massachusetts Contingency Plan ("MCP"). Based on the information in the complaint as well as the Board's review thereof, and the Request for Reconsideration, the Committee found no evidence that the LSP in this matter violated the MCP or the Board's regulations. The dismissal was affirmed by roll call vote.

- Kathleen Campbell--aye
- James N. Smith—aye
- David Austin—aye
- Marc J. Richards--aye
- Debra Listerick--aye
- Farooq Siddique--aye
- Dr. Batchelor--aye
- Gregg McBride--abstained

The Committee briefly discussed 18C-01, with Mr. Austin expressing concern about a previous discussion about the Committee reviewing applications of LSPs facing disciplinary proceedings. Ms. Listerick said that doing so could expose an Application Review Panel to being called out. Ms. Coles-Roby agreed telling the Committee that it might also destroy the anonymity and lead to conflict of interest issues. Mr. McBride concluded the discussion by commenting that in the broader context the Committee might learn from doing so, just not in this particular setting.

6. New Business:

No new business was discussed.

7. Future Meetings: June 20, 2018—MassDEP SERO

8. Adjournment: The meeting was adjourned at approximately 2:19 p.m.