



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

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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on March 20, 2014

[Approved on April 17, 2014]

Prepared by: Lynn P. Read

Meeting Location: Massachusetts Department of Environmental Protection (MassDEP)
Western Region
436 Dwight Street
Springfield, MA

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting on February 26, 2014
3. Active Case List
4. Redacted Complaint 13C-02, and Redacted Answer

- 1. Call to Order:** Benjamin Ericson called the meeting to order at approximately 1:07 p.m. Also present were David Austin, Gail Batchelder, Kathleen Campbell, Debra Listernick, Robert Rein, Farooq Siddique, and James Smith. Kirk Franklin and John Guswa were absent. Staff members present were Beverly Coles-Roby, Lori Williamson, and Lynn Read. Also present were Rebecca Woolley, Environmental Analyst with the Bureau of Waste Site Cleanup in MassDEP's Central Regional Office; Wendy Rundle, Executive Director of the LSP Association (LSPA); Wesley Stimpson of WES Associates, and Kevin O'Reilly of the LSPA Regulations Committee.

Announcements: There were no announcements.

Agenda: At Ms. Read's request, the following item: Composition of Screening Team 13C-03, was added to the Agenda under Old Business.

- 2. Minutes of Meeting Held on February 26, 2014:** The draft minutes of the meeting held on February 26, 2014, were discussed. Dr. Batchelder asked that the description of item number 4.A, Complaint 13C-03, be revised to reflect that, in addition to requesting that an experienced member of the Board serve on Screening Team 13C-03, she offered to serve on that Screening Team in that capacity, and she said it was her impression that the Committee members present agreed with her position and agreed she would serve on the team. The

members present instructed that Dr. Batchelder's offer to serve on the screening team be added to the minutes, and deferred further discussion on this issue until later in the meeting. **A motion was made and seconded to approve the February 26, 2014 minutes as amended, and the motion passed with Mr. Rein and Ms. Listernick abstaining from voting.**

3. Old Business

Status of Complaint Review Teams & Active Case Table

At Mr. Ericson's request, each Complaint Review Team (CRT) reported on progress made since the February meeting.

Composition of Screening Team 13C-03

Ms. Read said she was not sure that the Committee had decided Dr. Batchelder's proposal to include an experienced member of the Board as a third member of the Screening Team for 13C-03, or her offer to serve in that capacity on that team. Ms. Read said she believed that this question raised policy issues that the full Committee should decide. She said since 2006, Screening Teams have consisted of two Board members and a staff attorney, and adding a third Board member would reduce the number of non-recused Board members who could vote on the Screening Team's recommendations. She said this case involves a small disposal site, and although the Complaint included numerous documents, the issues were straightforward and could be reviewed efficiently, but adding a third member could delay the team's report to the Committee. Dr. Batchelder said she was concerned that new Board members who have not yet been exposed to the Board's thinking in disciplinary matters should learn what the Board considers important, including the special care given to complaints filed by members of the public, who might not include material information. She said that adding a third member to the Screening Team would not threaten the Board's ability to act in the matter, because the regulations state that disciplinary votes must pass by a majority of non-recused members. Members present discussed that currently, the Board is in a unique position because so many Board members are newly appointed, and the reason they had requested that the replacement of Board members be done in phases was the risk of not enough continuity in the Board's decisions. Dr. Batchelder said it is important that the new members receive training, such as appointing experienced members to serve with the new members on Screening Teams and Complaint Review Teams. Members discussed that when a Screening Team reports to the Committee, the members have an opportunity to ask questions and probe the reasons for the Screening Team's recommendations, and during such discussions, experienced members of the Board would be expected to discuss and apply the expertise they developed over time. **The members present requested that sufficient time be allotted in meeting Agendas for full discussion of each disciplinary case by all members present, and Screening Team 13C-03 should remain as Ms. Campbell, Mr. Smith, and Ms. Read.**

Case Management System

Ms. Coles-Roby said she would submit a written proposal to the Committee at the next meeting.

4. New Business

A. Complaint No. 13C-02

Ms. Coles-Roby said the primary issue with the complaint in 13C-02 was the same issue that was raised in the earlier Complaint No. 12C-02 against the same LSP at the same site, namely, did the LSP have a conflict of interest when s/he negotiated the purchase of the hazardous waste disposal site property while serving as the LSP of record and advocating for MassDEP to approve a new remedial system for the site? She noted that the LSP withheld from MassDEP his or her financial interest in the property while seeking approval for the new remedy. The members present discussed that the LSP's identity was fully disclosed to his or her clients, an elderly couple who owned the property and who had sought a purchaser for several years unsuccessfully, and the LSP proposed a more aggressive remedy than the one previously implemented by a predecessor LSP. The members discussed that the LSP negotiated with the couple and their attorney to purchase the site on condition that the LSP's proposed remedy would be approved by MassDEP, and that similar conditions are typical in real estate transactions, to ensure that future costs are known to the purchaser and to preserve Brownfield credits. Members noted that the couple's daughter became involved after the couple and the LSP had negotiated the purchase and sale agreement, and the daughter then discharged the couple's lawyer and the LSP, and alleged that the LSP had a conflict of interest and engaged in dishonesty and fraud. The members discussed that the only new allegations in Complaint No. 13C-02 related to fees billed by the LSP, including fees billed after the LSP was dismissed as the LSP for the site. **A motion was made and seconded to dismiss Complaint 13C-02 on two grounds: first, the Board considered all the new information, but there was no showing that the LSP's actions violated the Board's regulations prohibiting conflict of interest, dishonesty, or fraud, thus there was no need to re-open the complaint; and second, the Board has a policy that it will not address or arbitrate fee disputes through the disciplinary processes of the Board. The motion passed with Mr. Rein abstaining.**

6. Future Meetings

The Committee is scheduled to meet on April 17, 2014 at the Boston office of MassDEP.

7. Adjournment: The meeting was adjourned at approximately 2:32 p.m.