



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on April 17, 2014

[Approved on May 15, 2014]

Prepared by: Lynn P. Read

Meeting Location: Massachusetts Department of Environmental Protection (MassDEP)
One Winter Street
Boston, MA

List of Documents Used at the Meeting:

1. Agenda
 2. Draft Minutes of Meeting on March 20, 2014
 3. Active Case List
 4. Tracking Deadlines
- 1. Call to Order:** Kirk Franklin called the meeting to order at approximately 2:13 p.m. Also present were David Austin, Kathleen Campbell, Benjamin Ericson, John Guswa, Debra Listernick, Robert Rein, Farooq Siddique, and James Smith. Gail Batchelder was absent. Staff members present were Beverly Coles-Roby, Lori Williamson, and Lynn Read. Also present were Lauren Konetzny; Phil Peterson; Matthew Hackman, President of the LSP Association (LSPA); Wendy Rundle, Executive Director of the LSPA; and Wesley Stimpson of WES Associates.
- 2. Minutes of Meeting Held on March 20, 2014:** The draft minutes of the meeting held on March 20, 2014, were discussed. **A motion was made and seconded to approve the March 20, 2014 minutes as written, and the motion passed unanimously.**
- 3. Old Business**

Status of Complaint Review Teams & Active Case Table

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

Ms. Coles-Roby asked for direction from the Committee regarding a CRT's offer of settlement to which the LSP has neither responded nor given any indication when s/he might respond. The members present discussed that it is important to move the investigation forward, and the CRT should notify the LSP in writing that the CRT will give him or her a

reasonable time of 30 days to respond to the offer, and if no response is received in that time, the CRT will present its report at the next meeting of the Board.

Case Management System

Ms. Coles-Roby distributed a proposed list of Tracking Deadlines. She requested that **Committee members should email any comments on the proposed deadlines to her.**

4. New Business

A. Report from Screening Team re: Complaint No. 13C-03

At its meeting on February 26, 2014, the Board had appointed a Screening Team to review the allegations raised in Complaint 13C-03 and report back to the Board. The complainant was a homeowner who engaged contractor to remove a fuel UST in preparation for selling his home, and during removal, a release was detected. The complaint alleged that the first respondent LSP (“LSP#1”) reported the release to MassDEP without discussing the reporting requirements with the owner or receiving the owner’s authorization to report. The complaint also alleged that LSP#1 failed to give written notice of the reporting condition to the homeowner, in violation of 309 CMR 4.03(5)(b), and made a series of proposals for remediation that increased to an amount that was predatory upon the owner. The complaint alleged that LSP#2, an insurance claim adjuster, negligently failed to recognize the insignificance of the release, and restricted the remedial work, compromising regulatory compliance under the MCP. The owner stated he had engaged a third LSP (“LSP#3”) who tested the excavated soil and informed the owner that the release need not have been reported to MassDEP.

At this April 17, 2014 meeting, having reviewed the complaint and all accompanying documents, the responses of LSP#1 and LSP#2, and other documents in the public file of MassDEP, the screening team recommended that the Board dismiss the complaint without investigation by a Complaint Review Team on the grounds that the evidence submitted to support the allegations indicated no violations occurred and would not warrant discipline against LSP#1 or LSP#2.

The screening team reported that the release was indisputably a 72-hour reporting condition under 310 CMR 40.0313(2) because when the tank was removed, five measurements of organic vapors exceeded 100 parts per million by volume. The screening team reported that the homeowner authorized LSP#1 to report the release to MassDEP, as documented by the LSP’s proposal for response actions, which the homeowner signed within four days of the release. The screening team reported that LSP#1 communicated frequently with the homeowner by email, and at the owner’s request, provided a financing letter that included potential unknown costs, to help the owner obtain insurance coverage or financing, and LSP#1’s proposed remedial action would have removed all contamination from the property. The screening team reported that LSP#2 did not perform professional services because s/he only reviewed the LSP’s proposed costs for response actions, and no evidence indicated that LSP#2 restricted the response by LSP#1. The team reported that the response actions by LSP#3 may have included violations of the MCP and closed the site without removal of

additional contamination, as proposed by LSP#1. **A motion was made and seconded to dismiss Complaint 13C-03 as to both LSP#1 and LSP#2. The motion passed unanimously. The members present asked the screening team to review the actions of LSP#3 and report back to the Committee.**

6. Future Meetings

The Committee is scheduled to meet on May 15, 2014 at the Northeast Regional Office of MassDEP in Wilmington.

7. Adjournment: The meeting was adjourned at approximately 2:44 p.m.