

## 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 November 15, 2017

Approved on January 31, 2018

**Prepared by:** Beverly Coles-Roby

**Meeting Location:**

**MassDEP Boston  
One Winter Street  
Boston, MA 02108**

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

- Agenda
- Draft Minutes of Meeting on October 25, 2017
- Active Case List

**2. Call to Order:** Co-Chairperson James N. Smith called the meeting to order at approximately 1:00 p.m. The Board members in attendance were Maria Pinaud, Debra Listernick, Dr. Gail Batchelder, Farooq Siddique, Kirk Franklin, Gregg McBride, Marc J. Richards, and David Austin. Board member Kathleen Campbell was absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Wes Stimpson of WES Associates was also present. Lisa Alexander of MassDEP arrived at 1:03 p.m.

**3. Previous Minutes:** The draft minutes of the meeting held on October 25, 2017, were approved as amended. Board member David Austin abstained from voting to approve the minutes.

**4. Old Business: None**

**5. Status of Complaint Review Teams and Active Case List**

At co-chairperson, James Smith's request, the Complaint Review Teams ("CRT") reported on progress made since the September 20, 2017 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.

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Ms. Coles-Roby explained that 05C-07 would be presented to the Board at the January 2018 Board meeting.

Ms. Coles-Roby reported 08C-03; 10C-01; and 11C-04 would be discussed in Quasi-Judicial session at the conclusion of today's Board meeting.

In the matter of 12C-01, Ms. Coles-Roby informed the Committee that the Complaint Review Team held a conference call on November 13, 2017. She added that Ms. Williamson will begin preparing the CRT's report for presentation to the Board at its February 2018 meeting.

With respect to 16C-01, Ms. Coles-Roby reported that the Complaint Review Team held a conference call on October 31, 2017, and will present its findings at the January 2018 Board meeting.

Ms. Coles-Roby also explained that LSP staff had received and docketed three new cases 17C-02; 17C-03; and 17C-04, all of which were undergoing review.

Ms. Pinaud said that she did not see any indication that the respondent in 17C-02 represented himself/herself as a LSP. Mr. Smith agreed, referencing the Board's regulations regarding persons rendering waste site cleanup opinions. Dr. Batchelder added that the respondent was not filing an opinion. Ms. Listernick thought that the consultant would not know that the person was a LSP unless he/she said so. Mr. Stimpson told the Committee that the regulations provide two separate conditions under which a party could be held liable. He went on to state that a party does not necessarily have to render an opinion to hold himself or herself out to be a LSP. Mr. Siddique said that LSPs are well known to realtors. Ms. Listernick said that somehow the complainant knew that the respondent was a LSP and that's misleading. Ms. Siddique posited that the person who introduced the respondent could have made a statement about him/her being a LSP. Ms. Listernick thought differently, saying that there was more to it than that, and it was questionable. Mr. Smith countered that there was no direct documentary evidence. Dr. Batchelder said that the Board could not discipline a non-LSP without a business card or something. Ms. Listernick said that the Board was empowered to issue a cease and desist order. Mr. Siddique believed that the Board could not issue a blanket edict that an entity could not provide environmental services. Dr. Batchelder supported Mr. Siddique's position by noting that the allegations cannot be proven. She also said that the Board could not go by what the homeowner said. "We need a document, a contract, or person who can corroborate that the respondent said he/she was a LSP," she said. Ms. Coles-Roby stated, "It is not what you know but what you can prove." She expressed concern that the difficulty will be moving the evidence beyond a he said/she said dispute. She reminded the Committee that this is matter is a fee dispute over six thousand dollars owed to the respondent, and litigation is pending. Mr. Franklin cautioned that if this is a fee dispute, one party or the other may use the Board's ruling to their advantage. Mr. Austin asked whether the dismissal letter had been mailed. Mr. McBride asked what the dismissal letter would say: "that the Board declined to move forward?" Mr. Stimpson suggested that the letter indicate that dismissal was based on insufficient evidence that the respondent held himself/herself out to be a LSP. Ms. Williamson raised the issue of a second ground for

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dismissal, that complainant appeared to be under the impression that you need a LSP to file an ASTM. The Committee voted to recommend that the complaint be dismissed for lack of evidence. Dr. Batchelder asked whether the Committee thought that it should send a letter to the respondent reminding him/her of the Board's regulations. The Committee did not deem it necessary to do so. Ms. Williamson indicated that typically the dismissal letter would be sent to the respondent.

With respect to 17C-03 Ms. Williamson told the Committee that under normal circumstances LSP staff would have dismissed the complaint. Ms. Listernick approved saying that the review clarified the process, giving examples of what is and what is not acceptable. Mr. Siddique wondered whether being belligerent or threatening counted as evidence of a lack of good moral character. Ms. Listernick noted that the LSP staff confirmed that the respondent was not a LSP. Ms. Coles-Roby concurred adding that as a general rule, these sorts of cases are dismissed for lack of jurisdiction as the staff level. Mr. McBride commented that as a new Board member, the review was instructive to see what does not pass muster in terms of jurisdiction.

Mr. Smith asserted that 17C-04 raised good points for discussion, i.e., whether as a matter of policy the Committee should secure a response from the respondent before bringing the matter to the Committee. Ms. Listernick answered that the LSP staff dismisses cases all the time. Focusing on the facts of this case, Ms. Williamson said that the LSP was hired to review Massachusetts Contingency Plan reports filed years ago by another LSP. She said that only unequivocal fee disputes have been dismissed by LSP staff during her tenure. Mr. Siddique asked how the complaint was connected to the respondent and also inquired if this was simply a neighbor who intended to stop the development work. The facts denoted that the respondent merely made a presentation to a town Planning Board. Ms. Coles-Roby said that it was important to note that MassDEP had closed the site. Mr. Austin thought that the LSP should file a response. Dr. Batchelder commented on professional engineers' requirements for truthfulness and objectivity for its licensees. Ms. Pinaud said that the LSP here was hired to do something very specific; he/she was not hired to render an opinion about current conditions. Mr. Smith did not think that the Committee needed the respondent's rebuttal. Ms. Coles-Roby opined that requesting a response from the respondent would open Pandora's Box because doing so would trigger Constitutional rights guaranteed the respondent. The Committee agreed that it did not need to vote for a dismissal because the LSP staff did not indicate that there was a grey area and so they could proceed with its normal course.

### **6. New Business:**

No new business was discussed.

### **7. Future Meetings: January 17, 2018—MassDEP CERO**

**8. Adjournment:** The meeting was adjourned at approximately 1:46 p.m.