

345 CMR: LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT BOARD

345 CMR 4.00: LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT FUND

Section

- 4.01: Purpose, Authority and Applicability
- 4.02: Definitions
- 4.03: Low-Level Radioactive Waste Management Fund Assessments
- 4.04: Enforcement

4.01: Purpose, Authority and Applicability

(1) Purpose. The purpose of 345 CMR 4.00 is to provide funds for the Low-Level Radioactive Waste Management Fund and otherwise to implement the provisions of M.G.L. c. 111H, §§ 4A and 4B. The Fund will be used to defray the costs of implementing the management plan and carrying out the powers and duties conferred on the Board. Except to the extent specifically provided herein, nothing in 345 CMR 4.00 shall be construed to affect any rights, duties, or obligations established by any statute or by any regulation promulgated by the Board.

(2) Authority. 345 CMR 4.00 is adopted pursuant to M.G.L. c. 111H, §§ 4A and 4B.

(3) Sunset. Pursuant to M.G.L. c. 111H, § 4A(e), no assessments pursuant to 345 CMR 4.00 shall be due and payable after June 30, 1993 unless the Board has submitted the schedule of assessments it has adopted to the House and Senate Committees on Ways and Means at least 90 days prior to sending any notice of such assessment.

(4) Computation of Time. Unless otherwise specifically provided by statute or 345 CMR 4.00, any time period prescribed or referred to in 345 CMR 4.00 or in any action taken pursuant to 345 CMR 4.00 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day on which the Board's offices are closed, the deadline shall run until the end of the next business day.

4.02: Definitions

As used in 345 CMR 4.00, the following terms shall have the following meanings, unless the context otherwise clearly requires:

Board. The Low-Level Radioactive Waste Management Board.

Fund. The Low-Level Radioactive Waste Management Fund.

High Volume, Low Activity Waste. Soils, demolition rubble or other LLRW that:

- (a) is produced in the course of remediating unanticipated site contamination or a site at or in which no LLRW was placed after December 8, 1987; and
- (b) has average concentrations of radioactive materials less than or equal to the concentrations set forth in 345 CMR 1.13: *Table 1.13B*.

Licensee. Any person licensed by the U.S. Nuclear Regulatory Commission or the Department of Public Health, as of the date of the Board vote taken pursuant to 345 CMR 4.03(2)(a), to receive, possess, use, transfer or acquire radioactive materials in the Commonwealth.

Other Class A Waste. Any waste classified as Class A waste pursuant to 345 CMR 1.00 that is not high volume, low activity waste.

Person. Any agency or political subdivision of the Commonwealth or of any state, any public or private corporation or authority, individual, firm, joint stock company, partnership, association, trust, estate, institution or other entity, and any officer, employee or agent of such person, and any group of such persons, but not including any city or town to which the provisions of M.G.L. c. 29, § 27C apply or to any agency of the federal government, except as authorized by section 4(b)(1)(B) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2121d(b)(1)(B).

345 CMR: LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT BOARD

Registrant. Any person registered pursuant to the requirements of M.G.L. c. 111, § 5N or M.G.L. c. 149, § 6, as of the date of the Board vote taken pursuant to 345 CMR 4.03(2)(a), to receive, possess, use, transfer or acquire radioactive materials in the Commonwealth.

Total Proportional Assessment. The total amount to be assessed by the Board in any year, minus the total flat assessment expected to be collected by the Board in that year pursuant to 345 CMR 4.03(2)(b).

Waste Produced and Shipped for Disposal Off Site or Stored for Later Disposal. All radioactive material produced by, or in the possession of the licensee or registrant at any time which:

- (a) is neither high-level waste, nor spent nuclear fuel, nor by-product material as defined in § 11(e)(2) of the Atomic Energy Act of 1954, as amended 42 U.S.C. § 2014(e)(2);
- (b) is not the responsibility of the federal government, as designated in § 3(b) of the Low-Level Radioactive Waste Policy Act, as in effect on December 8, 1987, as amended, 42 U.S.C. § 2021c(b);
- (c) is not being stored for decay within the storage period authorized by a current license or registration;
- (d) will not be put to further productive use by any person;
- (e) is not discharged as air or water effluent in accordance with applicable requirements of law;
- (f) has not been included in the calculation of assessment amounts pursuant to 345 CMR 4.03(2) in any prior year; and
- (g) in the case of waste stored for later disposal, is in a form acceptable for disposal at a licensed LLRW facility, or can be changed to such a form through commercially available treatment.

4.03: Low-Level Radioactive Waste Management Fund Assessments

(1) General. Annual assessments shall be payable by all licensees and registrants in the amounts set forth in 345 CMR 4.03(2). Amounts assessed shall be deposited in the Fund and may be expended by the Board, subject to appropriation, to carry out the duties and powers conferred by M.G.L. c. 111H.

(2) Assessment amounts.

- (a) The total amount to be assessed shall be apportioned annually by vote of the Board in accordance with the schedule set forth in 345 CMR 4.03.
- (b) Each licensee or registrant shall pay a flat assessment of \$150.00 per year, except for those licensees or registrants performing lead paint analysis using x-ray fluorescence analyzers. Licensees or registrants using x-ray fluorescence analyzers to perform lead paint analysis shall pay a flat assessment of \$100.00 per year. These assessments apply whether or not such licensee or registrant has produced and shipped waste off site or stored waste for later disposal.
- (c) In addition to the flat assessment established pursuant to 345 CMR 4.03(2)(b), proportional assessments shall be calculated in accordance with 345 CMR 4.03, as follows:
 - 1. For each licensee and registrant, the volume of Class A, B and C waste shall be measured by the average annual amount of waste produced and shipped for disposal off site or stored for later disposal by such licensee or registrant. To establish this average, the Board shall utilize the yearly production figures given in the Board's annual survey for the most recent calendar year for which, in the judgment of the Board, data sufficient for these purposes have been produced, except that, if the Board determines that such survey have not produced one years' data sufficient for these purposes, it shall substitute whatever data, in its judgment, best approximates the data required. Class A waste thus measured shall be subclassified either as high volume, low activity waste or as other Class A waste.
 - 2. The volumes established for each licensee or registrant pursuant to 345 CMR 4.03(2)(c)1 shall be multiplied by the weighting factor assigned in 345 CMR Table 4.03A to each waste classification and then summed.

TABLE 4.03A

Waste Classification	Weighting Factor

High volume, low activity	0
Class A	1
Class B	3
Class C	5

3. The sum established for each licensee or registrant pursuant to 345 CMR 4.03(2)(c)2 shall then be multiplied by the classification of radioactivity factor assigned in 345 CMR Table 4.03B to such licensee or registrant who has shipped waste for disposal off site or stored waste for later disposal.

TABLE 4.03B

Radioactivity of Waste Shipped for Disposal Off Site or Stored for Later Disposal	Classification of Radioactivity Factor
Less than 1.0 curies/year	1.0
1.0 curies/year or more but less than 10.0 curies/year	1.1
10.0 curies/year or more but less than 100.0 curies/year	1.2
100.0 curies/year or more	1.3

4. The volume of high volume, low activity waste established for each licensee or registrant pursuant to 345 CMR 4.03(2)(c)1 shall be multiplied by the classification of radioactivity factor assigned in 345 CMR Table 4.03B to such licensee or registrant who has shipped waste for disposal off site or stored waste for later disposal.

(d) The proportional assessment for each licensee or registrant shall be \$5.10 per cubic foot of the weighted volume calculated for such licensee or registrant pursuant to 345 CMR 4.03(2)(c)3 plus \$1.275 per cubic foot of the weighted volume of high volume, low activity waste calculated for such licensee or registrant pursuant to 345 CMR 4.03(2)(c)4.

(3) Time of assessment. The assessment shall be due and payable 90 days after written notice to the person upon whom such assessment is imposed.

(4) Statement of assessment amount.

(a) The Board shall provide the licensee or registrant a written statement of the amount due. The statement may be provided by mail or personal delivery to the correspondence address listed in the license or registration, to the address of the licensed or registered facility, or to any other correspondence address used by the licensee or registrant; or by any means provided for service of process; or by other means reasonably calculated to assure receipt by the licensee or registrant.

(b) The statement of assessment amount shall include, without limitation, the following:

1. the amount due;
2. the date by which payment is due;
3. the manner and form in which payment may be made;
4. the licensee's or registrant's right to contest the validity or amount of the assessment by requesting a hearing pursuant to 345 CMR 4.03(6);
5. a statement that any amount paid shall be received subject to the provision of 345 CMR 4.03(8); and
6. notice of the consequences of failure to make timely payment pursuant to 345 CMR 4.04.

345 CMR: LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT BOARD

(5) Payment of assessment. The licensee or registrant shall make payment in full on or before the due date, and in the manner and form, specified in the statement of assessment amount. Late payment, nonpayment, partial payment, or failure to make payment in the specified manner and form shall constitute failure by the licensee or registrant to pay the assessment when due.

(6) Right to a hearing. Any licensee or registrant who receives a statement of assessment amount pursuant to 345 CMR 4.03(4) and who wishes to contest the validity, method of computation or amount of such assessment shall have the right to request a hearing regarding the matter in dispute. Such request shall state, with reasonable specificity, the factual and legal basis for the licensee's or registrant's position. Any licensee or registrant who does not request a hearing in writing within 21 days of the issuance of the statement of assessment amount shall be deemed to have waived the right to contest the validity, method of computation, or amount of the assessment made.

(7) Obligation to pay assessment.

(a) The filing of a request for a hearing pursuant to 345 CMR 4.03(6) shall not relieve the licensee or registrant from the obligation to pay the assessment pursuant to 345 CMR 4.03(5). Except as otherwise provided in 345 CMR 4.03(7)(b), any licensee or registrant who fails to make timely payment of an assessment in accordance with 345 CMR 4.03(5) shall be deemed to have withdrawn any request for hearing filed regarding such assessment and to have waived the right to contest the validity, method of computation or amount of the assessment made.

(b) No hearing shall be conducted regarding the validity or amount of an assessment unless timely payment of such assessment has been made in accordance with 345 CMR 4.03(5).

(8) Right to Refund. If, after a hearing conducted pursuant to 345 CMR 4.03(6), or by agreement with the licensee or registrant requesting such a hearing, the Board determines that the amount of a licensee's or registrant's assessment is incorrect, it shall promptly refund to the licensee or registrant, without interest, the amount by which the sum paid by such licensee or registrant pursuant to 345 CMR 4.03(5) exceeds the total of the correct assessment and any interest or penalties due.

4.04: Enforcement

(1) Failure to make timely payment. Failure without just cause to pay any assessment when due pursuant to 345 CMR 4.03 shall constitute a violation of 345 CMR 4.00. Interest on the assessment shall accrue at 12% per annum on and after the due date of the assessment. The Board may cooperate with other agencies or take any steps authorized by law to achieve compliance with 345 CMR 4.00 including, but not limited to, the enforcement measures set forth in 345 CMR 4.04.

(2) Notice of violation.

(a) The Board shall give written notice to any licensee or registrant who violates the provisions of 345 CMR 4.03. The notice may be provided by mail or personal delivery to the correspondence address listed in the license or registration, to the address of the licensed or registered facility, or to any other correspondence address used by the licensee or

345 CMR: LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT BOARD

registrant; or by any means provided for service of process; or by other means reasonably calculated to assure receipt by the licensee or registrant.

(b) The written notice, at a minimum, shall:

1. describe the violation;
2. set a reasonable deadline by which the violator shall pay the assessment, plus interest as provided in 345 CMR 4.04(1);
3. notify the violator that if the deadline for compliance is not met, the Board will assess civil penalties pursuant to 345 CMR 4.04(4); and
4. notify the violator of the right to a hearing before being assessed civil penalties pursuant to 345 CMR 4.04(3).

(3) Right to a hearing. Any licensee or registrant who is notified by the Board of a violation of 345 CMR 4.03 shall have the right to request a hearing before being assessed civil penalties pursuant to 345 CMR 4.04(4). Any violator who does not request a hearing in writing within 21 days of the issuance of notice of violation shall be deemed to have waived the right to a hearing.

(4) Civil penalties. In addition to requiring a violator to pay the assessment amount determined to be due, the Board shall impose civil penalties on a violator, whether or not the violation was willful, after providing written notice and a hearing, if requested. The money amount of each penalty shall be determined by the Board in consideration of the following factors:

- (a) the willfulness of the violation;
- (b) the actual and potential cost to the Commonwealth of collecting the assessment and penalty to enforce such requirement;
- (c) whether the violator did everything reasonable to pay the assessment and to pay promptly after the notice of violation was issued;
- (d) whether the violator has previously failed to comply with any requirement of 345 CMR 4.00;
- (e) the financial condition of the violator; and
- (f) the goals of making compliance less costly than noncompliance, deterring future non compliance, and the public interest.

The minimum money amount of each penalty shall be not less than the actual and potential cost to the Commonwealth of collecting the assessment and penalty, unless the violator shows, by clear and convincing evidence that such an amount would result in manifest injustice.

(5) Court action. In addition to assessing civil penalties pursuant to 345 CMR 4.04(4), the Board may also request the Attorney General to bring action in superior court to compel payment of assessments and penalties and immediate and full compliance with any order issued by the Board. The expense of such proceedings shall be recoverable from the violator in such manner as provided by law.

REGULATORY AUTHORITY

345 CMR 4.00: M.G.L. c. 111H, §§ 4A and 4B.

