

309 CMR: BOARD OF REGISTRATION OF
HAZARDOUS WASTE SITE CLEANUP PROFESSIONALS

309 CMR 2.00: INTRODUCTORY PROVISIONS

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2.01: Preamble

(1) 309 CMR is adopted by the Board of Registration of Hazardous Waste Site Cleanup Professionals, pursuant to its authority under M.G.L. c. 21A, §§ 16 and 19 through 19J, and M.G.L. c. 30A, §§ 2 and 3. The purpose of 309 CMR is to provide for the implementation, administration, and enforcement of M.G.L. c. 21A, §§ 16 and 19 through 19J, by establishing:

- (a) requirements which must be met by each individual to be licensed by the Board as a licensed site professional;
- (b) procedures for the issuance and renewal of licenses;
- (c) rules of professional conduct applicable to licensed site professionals;
- (d) procedures for the Board's issuance of advisory rulings interpreting the standards for professional conduct; and
- (e) procedures for the Board to take appropriate disciplinary action to enforce M.G.L. c. 21A, §§ 19 through 19J, and 309 CMR, and orders, licenses, and approvals issued or granted by the Board.

The Board deems 309 CMR sufficiently stringent so that waste site cleanup activity opinions rendered by individuals licensed by the Board will be rendered so that they protect public health, safety, welfare and the environment.

(2) 309 CMR should be read together with M.G.L. c. 21A, §§ 16 and 19 through 19J. The Board presumes that an individual licensed by the Board has notice of the provisions of M.G.L. c. 21A, §§ 16 and 19 through 19J, M.G.L. c. 21E, 310 CMR 40.0000: *Massachusetts Contingency Plan*, and 309 CMR, and will practice in accordance with them.

2.02: Definitions

As used in 309 CMR, the terms "waste site cleanup activity opinion" and "hazardous waste site cleanup professional" shall have the meanings ascribed to such terms by M.G.L. c. 21A, § 19.

For the purposes of 309 CMR, words and phrases shall have the meaning ascribed to such words and phrases by M.G.L. c. 21E, § 2, and/or 310 CMR 40.0000: *Massachusetts Contingency Plan*, unless the context clearly indicates otherwise.

In 309 CMR, the following terms and phrases shall have the following meanings unless the context clearly indicates otherwise:

Adjudicatory Hearing means a hearing conducted in accordance with M.G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*.

Agency means any agency, authority, board, commission, department, office, or political subdivision of the federal, state, or local government.

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2.02: continued

Applicant means any individual who submits to the Board an application for licensure as a licensed site professional.

Board means the Board of Registration of Hazardous Waste Site Cleanup Professionals established pursuant to M.G.L. c. 21A, § 19.

Civil Administrative Penalty and Penalty each means a civil administrative penalty that the Board seeks to assess pursuant to M.G.L. c. 21A, §§ 16 and 19G, and 309 CMR.

Client means any person, including, but not limited to an employer who has engaged a licensed site professional to provide professional services with respect to a particular site.

Department means the Massachusetts Department of Environmental Protection.

Good Moral Character means such character as will enable an individual to discharge the responsibilities of a licensed site professional. Evidence of inability to discharge such duties includes, but is not limited to, felonious acts and acts involving dishonesty, fraud or deceit which have or could have a substantial connection to the professional responsibilities of a licensed site professional.

Imminent Hazard means a hazard that would pose a significant risk of harm to health, safety, public welfare or the environment if it were present even for a short period of time, as described in 310 CMR 40.0321: *Reporting of Releases and Threats of Release That Pose or Could Pose an Imminent Hazard*.

Informal Conference means a conference not subject to those provisions of M.G.L. c. 30A governing adjudicatory proceedings.

Laws means statutes, rules, regulations, codes, ordinances or bylaws.

License means approval which the Board issues to an individual pursuant to M.G.L. c. 21A, § 19C, and which authorizes the individual to render waste site cleanup activity opinions.

Licensed Site Professional and LSP each means a "hazardous waste site cleanup professional" as defined in M.G.L. c. 21A, § 19.

Massachusetts Contingency Plan and MCP each means the regulations published at 310 CMR 40.0000 as amended from time to time.

Misconduct means any act or omission in noncompliance with M.G.L. c. 21A, §§ 19 through 19J or 309 CMR.

Noncompliance, Failure to Comply, and Violation each means any act or failure to act which constitutes or results in one or more of the following:

- (a) acting as, advertising as, holding oneself out to be, or representing oneself as being a licensed site professional without being in possession of a valid license;
- (b) engaging in any activity prohibited by, or not in compliance with, any requirement; or
- (c) failure to comply with any requirement.

Notice of Intent to Assess a Civil Administrative Penalty and Penalty Assessment Notice each mean a written notice that the Board is seeking to assess a Penalty pursuant to M.G.L. c. 21A, §§ 16 and 19G, and 309 CMR.

Notice of Noncompliance means a written notice given to a person by the Board which states that said person has failed to comply with certain requirement(s), as set forth therein.

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2.02: continued

Person means any agency or political subdivision of the federal, government or state; any state, public or private corporation or authority; any interstate body, foreign nation, individual, trust, firm, joint stock company, partnership, association or other entity; any officer, employee, or agent of such person; and any group of persons.

Practical Experience means the application of technical knowledge and skills within a field or fields of expertise during assessment, containment or removal projects. Such projects must have been conducted or supervised by the applicant, must encompass a variety of environmental and contaminant conditions, and must have included locations at which subsurface investigations were conducted. The Board may accept as practical experience projects which it determines to be equivalent to assessment, containment and removal projects.

Principal Decision Maker means an individual who regularly bears all or a significant portion of the responsibility and accountability for the overall conduct of one or more major components (site investigation, risk characterization, remediation) of response actions at disposal sites. In general, this denomination will not include individuals with responsibility and accountability only for sub-tasks (*e.g.*, field exploration program, groundwater modeling, air modeling, data manipulation) within the major components of response actions.

Professional Services means the rendering of waste site cleanup activity opinions, and services associated with the rendering of such opinions.

Proficiency means competence in assessment, containment or removal projects. Proficiency will be evaluated by the Board, in its discretion, based on evidence from references, Department comments, the application form, or other sources.

Recognized educational institution means an institution which is accredited by a regional board or association of institutions of higher education approved by a nationally recognized regional accrediting association or the United States Department of Education (DOE). For the purposes of 309 CMR 3.02, such accreditation must have been in effect at the time the claimed degree was granted to an applicant for licensure. Degrees from foreign institutions will be evaluated by the Board on a case by case basis.

Relevant Professional Experience means experience that the Board determines, separately for each position held by an applicant, is a concurrent combination of waste site cleanup decision making experience and practical experience, both performed with proficiency. The Board will consider the following criteria in evaluating whether an applicant's waste site cleanup decision making experience and practical experience constitute relevant professional experience: the range of methods evaluated and selected; the number of individuals and other disciplines of other professionals supervised or coordinated; the nature of conclusions reached and recommendations and opinions presented; the extent of review of conclusions, recommendations and opinions by supervisors; the nature of the applicant's relationship with waste site consultants and the manner in which the applicant's decision making responsibilities were differentiated from those of others; the duration of employment; the nature of work performed (including, but not limited to, whether such experience includes work at sites where subsurface investigations have occurred); the extent to which assessment, containment or removal responsibilities were exercised throughout each position; the nature of the employer's primary business interests and the relation of those interests to hazardous waste work; the relevance of the prior experience to the technical and regulatory knowledge, skills and abilities ordinarily required of licensed site professionals at the time of application; and any other factors the Board deems relevant. Relevant professional experience does not include experience involving only or primarily non-scientific or non-technical activities associated with a disposal site, such as contract management, budget control, legal analysis, and other similar management activities.

Requirement means any regulation, order, license, or approval issued or adopted by the Board, or any law which the Board has the authority or responsibility to enforce.

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2.02: continued

Rules of Professional Conduct means the regulations set forth at 309 CMR 4.00: *Rules of Professional Conduct*.

Same Requirement(s) means requirement(s) that require, or prohibit, the same action or activity.

Standard Adjudicatory Rules of Practice and Procedure means the rules set forth at 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*.

Total Professional Experience means all of an applicant's professional experience that is determined by the Board to be experience applying scientific or engineering principles in the environmental, scientific, or engineering fields where the resultant conclusions form the basis for reports, studies and other similar documents. The Board will consider the following criteria in evaluating an applicant's total professional experience: the description of work activities, the field or fields of activities, the duration of employment, the types of reports, studies and documents prepared and any other factors the Board deems relevant.

Unauthorized Practice means acting as, advertising as, holding oneself out to be, or representing oneself as being a licensed site professional when not in possession of a currently valid license issued by the Board.

Waste Site Cleanup Decision Making Experience means professional experience in positions in which:

- (a) an applicant's assessment, containment or removal responsibilities were an integral and substantial component of the position;
- (b) an applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments or removals at sites;
- (c) an applicant supervised or coordinated other professionals in the conduct of those scientific and technical tasks necessary to complete assessments, containments or removals; and
- (d) an applicant drew technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.

Waste site cleanup decision making experience must be gained through exercising a broad range of responsibilities within assessments, or containments, or removals, and may not be gained through exercising a narrow spectrum of responsibilities for parts and/or components of assessments, or containments or removals. Waste site cleanup decision making experience may consist of work which includes the contributions of others in reaching decisions on waste site cleanup activities; however, applicants must demonstrate that they have been an active participant and a principal decision maker. Waste site cleanup decision making experience does not include experience involving only or primarily non-scientific or non-technical activities associated with assessments, containments or removals, such as contract management, budget control, legal analysis, and other similar management activities. Waste site cleanup decision making experience also does not include experience with landfills, septic systems or similar non-hazardous material disposal facilities, water supply systems, or with the management of hazardous waste under M.G.L. c. 21C, Resource Conservation Recovery Act, 42 U.S.C. § 6901 *et seq.* or similar statutes unless the applicant clearly demonstrates to the Board that the assessment, containment and/or removal of oil or hazardous materials released to the environment was the subject of the applicant's decision making in such contexts, and that the other criteria of this definition are met.

2.03: Severability

It is hereby declared that the provisions of 309 CMR are severable. If any provision or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

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2.04: Scheduling and Conduct of Meetings

- (1) Meetings. (Reserved)
- (2) Decisions by the Board.
 - (a) Regulations. The affirmative vote of at least a majority of the Board members shall be required for adoption, amendment or repeal of regulations.
 - (b) Disciplinary Proceedings. A decision by the Board to take disciplinary action against an applicant, licensed site professional, or other person shall require the affirmative vote of at least a majority of those Board members who are not prohibited from voting due to favorable or unfavorable bias or prejudice, participation in the investigation of the matter, or a recognized conflict of interest as defined in M.G.L. c. 268A.
 - (c) Licenses. The affirmative vote of at least a majority of the Board members present at a meeting shall be required to approve or deny license applications.
- (3) Robert's Rules of Order. Unless otherwise specified in 309 CMR, the most recent edition of Robert's Rules of Order will govern the conduct of business at Board meetings.
- (4) All meetings of the Board will be open to the public, unless the Board votes to go into executive session as provided by M.G.L. c. 30A, § 11A½.

2.05: Public Records and Personal Data

All documentary materials and data made or received by the Board or any employee of the Board, including documentary information concerning any applicant or licensed site professional, shall constitute public records unless such materials or data fall within one or more of the exemptions to the definition of public records in M.G.L. c. 4, § 7. Subject to the restrictions described in the following sentence pertaining to personal data, the Board may, in its discretion, release to the public documentary materials and data which does not constitute a public record. Neither the Board nor its employees shall permit access to any information which qualifies as personal data, as defined by M.G.L. c. 66A, § 1, to any person other than a Board member, an employee of the Board, or the data subject unless such access is authorized by statute or a regulation which is consistent with the purposes of M.G.L. c. 66A or is approved by the data subject whose personal data are sought.

2.06: Submissions to the Board

Each submission to the Board shall be delivered by hand, mail delivery, electronic mail, or bonded delivery service, unless the Board provides otherwise.

2.07: Computation of Time

Any period of time prescribed or referred to in 309 CMR 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. When the last day of any such period falls on a day when the Board's office is closed, the period will be deemed to run until the end of the next day on which the Board's office is open.

2.08: Application Fee

The Board will accept applications for licensing only if the applicable fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00: *Rates*, has been paid. Payment shall be made in full by electronic payment, check or money order made payable to the Commonwealth of Massachusetts. The application fee is non-refundable.

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2.09: Annual Fee

To maintain a license, each licensed site professional (including both licensed site professionals on active and inactive status) shall pay the applicable annual fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00: *Rates*. Payment shall be made in full by electronic payment, check or money order made payable to the Commonwealth of Massachusetts. Payment shall be made annually, including the initial year of licensure. The annual fee is non-refundable. If an LSP fails to pay the Annual Fee by the date specified on the payment invoice sent by the Board, the Board shall notify the LSP that the LSP's license will be suspended unless payment is made in full within 30 days. If payment is not made in full within this 30-day period, the LSP's license shall be suspended automatically for a period of 90 days. During this 90-day suspension period, the LSP may reinstate a license and terminate the suspension by paying the Annual Fee in full. The date of reinstatement shall be the date the Board receives verification of payment. If the LSP has not paid the Annual Fee within the 90-day suspension period, the LSP's license shall be revoked. Thereafter, the former LSP may reapply by submitting the following:

- (a) a limited licensure application in a form approved by the Board; and
- (b) the full application fee described in 309 CMR 2.08.

2.10: Issuance of Notices

Each notice given by the Board to a person pursuant to M.G.L. c. 21A, § 16 and/or §§ 19 through 19J, and/or 309 CMR 2.00 shall be deemed to be issued by the Board as follows:

- (1) if served in hand, the notice shall be deemed to be issued on the date when delivered:
 - (a) personally to the person, or
 - (b) at the person's address last known to the Board:
- (2) if given by mail (either regular mail, overnight Priority Mail, or certified mail, return receipt requested) the notice shall be deemed to be issued on the date postmarked.
- (3) if given by electronic mail, the notice shall be deemed to be issued on the date the electronic mail is sent by the Board.

2.11: Receipt of Notices

Each notice given by the Board to a person pursuant to M.G.L. c. 21A, § 16 and/or §§ 19 through 19J, and/or 309 CMR shall be deemed to be received by said person as follows:

- (1) if served in hand, the notice shall be deemed to be received when delivered:
 - (a) personally to the person, or
 - (b) at the person's address last known to the Board;
- (2) if given by certified mail, return receipt requested, the notice shall be deemed to be received either:
 - (a) when signed for by:
 1. the person, or
 2. the person's employee or agent; or
 - (b) when returned by the U.S. Postal Service to the Board as unclaimed or refused, unless the Board is persuaded that the notice was not claimed for reasons beyond the control of the person to whom the notice was mailed.
- (3) If given by regular mail, the notice shall be deemed to be received no later than the third business day after it is mailed to the person, unless the Board is persuaded otherwise by the person to whom the notice was mailed.

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- (4) If given by overnight Priority Mail or bonded delivery service, the notice shall be deemed to be received either:
- (a) when a receipt is signed by the person or the person's employee or agent; or
 - (b) when records of the U.S. Postal Service or bonded delivery service indicate that the notice was delivered, unless the Board is persuaded that the notice was not delivered to the correct address.
- (5) If given by electronic mail, the notice shall be deemed to be received on the date the electronic mail is sent by the Board.

2.12: Petitions for Waivers

Notwithstanding any of the requirements, limitations, provisions and/or deadlines set forth in 309 CMR 1.00 through 8.00, any licensee or applicant may petition the Board for good cause shown to waive any requirement, limitation or provision, or waive or extend any deadline, and the Board shall in its sole discretion, approve or deny any such petition. The Board shall require said licensee or applicant to demonstrate why the petition is within the spirit of the Board's regulations and is not contrary to the public interest. Under no circumstances shall the Board approve a petition allowing any of the following:

- (a) waiver of any fees; and
- (b) waiver of any rules of professional conduct set forth in 309 CMR 4.00: *Rules of Professional Conduct*.

The affirmative vote of at least a majority of the Board members shall be required to approve or deny such petitions.

REGULATORY AUTHORITY

309 CMR 2.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.