

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

309 CMR 4.00: RULES OF PROFESSIONAL CONDUCT

Section

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4.01: Preamble

In order to safeguard the public health, safety, welfare and the environment and to establish and maintain a standard of professional integrity, the Board has established 309 CMR 4.00 (Rules of Professional Conduct). 309 CMR 4.00 shall be binding on every person licensed by the Board to render waste site cleanup activity opinions within the meaning of M.G.L. c. 21A, § 19.

Any person who may become aware of the failure of a licensed site professional to comply with an obligation or prohibition imposed by 309 CMR 4.00 may file a complaint with the Board pursuant to 309 CMR 7.00: *Procedure Governing Disciplinary Proceedings and Other Dispositions*. However, the availability of this right is not intended to subject an LSP to any liability in addition to any actions that may be taken by the Board, nor is it intended that a violation of 309 CMR 4.00 shall by itself give rise to a private cause of action or create any presumption that a legal duty to a party other than the Board or the Department has been breached.

All LSPs are charged with having knowledge of 309 CMR 4.00 and shall be deemed to be familiar with the provisions and to understand them.

4.02: Professional Competency

(1) In providing Professional Services, a licensed site professional shall act with reasonable care and diligence, and apply the knowledge and skill ordinarily exercised by licensed site professionals in good standing practicing in the Commonwealth at the time the services are performed.

(2) An LSP shall not provide Professional Services outside the LSP's areas of professional competency, where this competency is based on the LSP's education, training, and experience, unless that LSP has relied upon the technical assistance of one or more professionals whom the LSP has reasonably determined are qualified in such area or areas by education, training and experience.

(3) In providing Professional Services, a LSP may rely in part upon the advice of one or more professionals whom the LSP reasonably determines are qualified by education, training and experience.

(4) A successor hazardous waste site cleanup professional may render a waste site cleanup activity opinion regarding response actions performed under a previous hazardous waste site cleanup professional, and that opinion may be relied upon as sufficient to protect public health, safety, welfare, or the environment, only when the successor hazardous waste site cleanup professional has:

- (a) reviewed all reasonably available documentation known to the successor hazardous waste site cleanup professional that describes previous releases, site assessment activities and results, and work performed in connection with the assessment, containment or removal action that is the subject of the opinion;
- (b) conducted a site visit to observe current conditions and to verify the completion of as much of the work as is reasonably observable; and
- (c) concluded, in the exercise of the successor hazardous waste site cleanup professional's independent professional judgment, that the successor hazardous waste site cleanup professional has sufficient information upon which to render the waste site cleanup activity opinion.

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4.03: Professional Responsibility

- (1) A licensed site professional shall hold paramount public health, safety, welfare, and the environment in the performance of professional services.
- (2) A licensed site professional shall render a waste site cleanup activity opinion only when the LSP has either:
  - (a) in the case of an opinion related to an assessment:
    1. managed, supervised or actually performed such assessment, or
    2. periodically reviewed and evaluated the performance by others of such assessment;or
  - (b) in the case of an opinion related to a containment or removal action:
    1. managed, supervised, or actually performed such action, or
    2. periodically observed the performance by others of such action.
- (3) In providing professional services, a licensed site professional shall:
  - (a) exercise independent professional judgment;
  - (b) follow the requirements and procedures set forth in applicable provisions of M.G.L. c. 21E, and 310 CMR 40.0000: *Massachusetts Contingency Plan*;
  - (c) make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports and other information evidencing conditions at a site that the LSP's client possesses or that is otherwise readily available, and identify and obtain such additional data and other information as the LSP deems necessary to discharge the LSP's professional obligations under M.G.L. c. 21A, §§ 19 through 19J, and 309 CMR; and
  - (d) with regard to the rendering of waste site cleanup activity opinions, disclose and explain in the waste site cleanup activity opinion the material facts, data, other information, and qualifications and limitations known by the LSP which may tend to support or lead to a waste site cleanup activity opinion contrary to, or significantly different from, the one expressed.
- (4) If a licensed site professional identifies a release or threat of release that in the LSP's professional judgment poses or could pose an Imminent Hazard as described in 310 CMR 40.0321: *Reporting of Releases and Threats of Release That Pose or Could Pose an Imminent Hazard* at a particular site at which the LSP is providing Professional Services, the LSP shall:
  - (a) immediately advise the LSP's client of the need to notify the Department of the Imminent Hazard; and
  - (b) notify the Department of the imminent hazard no later than 24 hours after identifying such, unless the client has provided such notice.
- (5) If, in the course of providing Professional Services, a licensed site professional obtains knowledge of a condition:
  - (a) on a property, known by the LSP to be owned or operated by the client, that either
    1. contains all or a portion of the disposal site for which the LSP has been retained or
    2. is contiguous to a property, known by the LSP to be owned or operated by the client, that contains all or a portion of the disposal site for which the LSP has been retained, and
  - (b) that the LSP, in the exercise of the LSP's professional judgment, considers to require notification to the Department within either two or 72 hours,  
then the LSP shall promptly notify the client in writing of the existence of the condition.
- (6) In the event a licensed site professional knows or has reason to know of an action taken or a decision made by the LSP's client with respect to a particular aspect of the licensed site professional's professional services that significantly deviates from any scope of work, plan, or report developed to meet the requirements of M.G.L. c. 21E, 310 CMR 40.0000: *Massachusetts Contingency Plan*, or an order of the Department, then the licensed site professional shall promptly notify the LSP's client in writing of such.
- (7) An LSP shall not reveal facts, data or information obtained in the LSP's professional capacity without the prior consent of the client, except as authorized or required by law, if such facts, data, or information are claimed in writing to the LSP to be confidential by the client and are not already in the public domain.

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(8) If subsequent to the date a licensed site professional renders a waste site cleanup activity opinion the LSP learns that material facts, data or other information existed at the time the waste site cleanup activity opinion was rendered which may tend to support or lead to a waste site cleanup activity opinion contrary to, or significantly different from, the one expressed, then the LSP shall promptly notify the LSP's client in writing of such.

(9) If, subsequent to the date of the LSP's engagement, a successor licensed site professional learns of material facts, data or other information that existed at the date of a predecessor LSP's waste site cleanup activity opinion and was not disclosed in that waste site cleanup activity opinion, then the successor LSP shall promptly notify the LSP's client in writing of such.

(10) A licensed site professional shall not allow the use of the LSP's name by, or associate in a business venture with, any person or firm which the LSP knows or should know is engaging in fraudulent or dishonest business or professional practices relating to the professional responsibilities of an LSP.

(11) Applicants and licensed site professionals shall cooperate fully in the conduct of investigations by the Board by promptly furnishing, in response to formal requests, orders or subpoenas, such information as the Board, or persons duly authorized by the Board, deems necessary to perform its duties under M.G.L. c. 21A, §§ 19 through 19J. In connection with the investigation by the Board of applications or disciplinary complaints, an LSP shall not:

- (a) knowingly make a false statement of material fact;
- (b) fail to disclose a fact necessary to correct a material misunderstanding known by the LSP to have arisen in the matter;
- (c) knowingly and materially falsify, tamper with, alter, conceal, or destroy any document, data record, remedial system, or monitoring device that is relevant to the investigation, without obtaining the Board's permission; or
- (d) knowingly allow or suffer any of the LSP's employees, agents, or contractors to do any of the foregoing.

(12) An LSP who is involved in a management or review capacity at a disposal site will be considered responsible, along with a second LSP, for the second LSP's violation of the Board's Rules of Professional Conduct set forth in 309 CMR 4.00 if the LSP:

- (a) orders, directs, or formally ratifies Professional Services or an Opinion being conducted or prepared by the second LSP;
- (b) recognizes that the Professional Services and/or Opinion violate an obligation or prohibition contained in the Rules of Professional Conduct; and
- (c) fails to take reasonable steps to attempt to avoid or mitigate this violation.

(13) An LSP shall comply with all conditions that are imposed on the LSP's license as a result of a disciplinary proceeding.

(14) In communicating with a client or prospective client, including but not limited to communications with respect to a proposed scope of services or proposed contract, it is the LSP's responsibility to inform the LSP's client or prospective client of the relevant and material assumptions, limitations, and/or qualifications that underlie the LSP's communication. Evidence that an LSP has provided the LSP's client or prospective client with timely written documentation of these assumptions, limitations, and/or qualifications shall be deemed by the Board to have satisfied the requirements of this section.

(15) In communicating with a client or prospective client, an LSP shall not state or imply, either as an inducement or a threat, an ability to improperly influence a government agency or official.

(16) In describing the LSP's qualifications, experience, or ability to provide Professional Services, an LSP shall not knowingly:

- (a) make a material misrepresentation of fact or law;
- (b) omit a fact necessary to make the description, when considered as a whole, not materially misleading; or

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(c) make a statement that in the Board's opinion is likely to create an unjustified expectation about results the LSP can achieve, or state or imply that the LSP can achieve results by means that violate the Massachusetts Contingency Plan, the Rules of Professional Conduct contained in 309 CMR 4.00, or other law.

(17) A licensed site professional who becomes obligated to make any of the notifications required by 309 CMR 4.03 shall make the required notification even if the LSP is discharged by the client before doing so.

4.04: Conflict of Interest

(1) A licensed site professional shall not accept compensation, financial or otherwise, for the LSP's professional services pertaining to a site from more than one person having significant conflicting or adverse interests unless the circumstances are fully disclosed to, and agreed to by, all clients engaging the LSP with regard to that site.

(2) In the event a licensed site professional has, develops or acquires any business association, direct or indirect financial interest, or other circumstance which is substantial enough to create an impression of influencing the LSP's judgment in connection with the LSP's performance of professional services pertaining to any site, the licensed site professional shall fully disclose in writing to the LSP's client the nature of the business association, financial interest or circumstance. For the purposes of 309 CMR 4.04(2) receipt of salary or employee benefits by a LSP employed by the LSP's client on a full time basis is deemed not to be substantial.

(a) If the client or employer objects to such business association, financial interest or circumstance, the licensed site professional shall offer to terminate, at the LSP's discretion, either the business association, financial interest or circumstance, or the LSP's engagement with regard to the site or sites.

(b) If a licensed site professional believes that the LSP's business association, financial interest or circumstance renders the LSP incapable of discharging the LSP's professional obligations under 309 CMR 4.00 in connection with the LSP's performance of professional services pertaining to a site, the licensed site professional shall terminate the LSP's engagement with regard to that site.

(3) A licensed site professional shall not solicit or accept financial or other valuable consideration from material or equipment suppliers in return for specifying or endorsing their products.

4.05: Accepting Compensation

An LSP shall not let the LSP's ownership interest, compensation, or continued employment affect the LSP's Professional Services to the extent that said Professional Services do not meet the standards set forth in 309 CMR 4.00 and 310 CMR 40.0000: *Massachusetts Contingency Plan*.

REGULATORY AUTHORITY

309 CMR 4.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.