**Advisory Ruling 98-01**

December 21, 1998

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**Re: Request for Advisory Ruling No. 98-01**

Dear Mr. XXXXXXXXXXXXX:

The Board of Registration of Hazardous Waste Site Cleanup Professionals has received your letter dated October 16, 1998, requesting that the Board render an Advisory Ruling pursuant to Part 5 of the Board's regulations. See 309 Code Mass. Regs. ("CMR") 5.00 et seq. Having reviewed and discussed your letter and the questions it presents, the Board is providing you with its response, which is set forth below.

Your letter presents three questions concerning work that LSPs are occasionally asked to perform that does not result in the rendering of a formal waste site cleanup activity opinion at the conclusion of the work. Your questions are as follows:

1. When an LSP signs a DEP Material Shipping Record and Log form for contaminated soil that is being shipped for disposal to a Massachusetts landfill, do the Board's regulations at 309 CMR 6.00, governing the use of an LSP's seal, prohibit the LSP from using his or her seal on that form?
2. Similarly, when an LSP signs a Bill of Lading for contaminated material that is not regulated under the 21E program (e.g., contaminated material removed from a closed storage tank), do the Board's regulations at 309 CMR 6.00, governing the use of an LSP's seal, prohibit the LSP from using his or her seal on that form?
3. What level of oversight must an LSP provide in the situations described above? Must the LSP have overseen the soil excavation, collected the samples and reviewed landfill permit requirements, or is review of the documentation sufficient if the LSP is familiar with the party that actually did the sampling?

As further explained below, the Board's regulations preclude the issuance a formal Advisory Ruling regarding any of these questions. The Board has elected, however, to provide you with an informal interpretation of 309 CMR 6.00 which should answer your first two questions and provide you with useful guidance regarding the appropriate use of an LSP's seal. The Board cannot answer your third question, however, because it concerns work that may be performed by non-LSPs and is not within the Board's jurisdiction. Therefore, the Board has no requirements concerning this work. The Board suggests that you redirect this question to DEP, the agency that regulates these activities.

**I. Prerequisites to Issuance of an Advisory Ruling Have Not Been Met**

Part 5.00 of the Board's regulations sets forth certain prerequisites for the issuance by the Board of formal Advisory Rulings. One of these prerequisites is that the request for an Advisory Ruling must seek an interpretation of one or more of the Board's Rules of Professional Conduct. 309 CMR 5.01(1).([footnote 1](http://www.mass.gov/eea/agencies/lsp/statutes-and-regulations/advisory-ruling-98-01.html%22%20%5Cl%20%221)) The Board's Rules of Professional Conduct are contained in Sections 4.01 through 4.05 of the Board's regulations. Your questions, however, concern the Board's interpretation of 309 CMR 6.00, entitled "Design and Use of Licensed Site Professional Seal." These regulatory provisions are not part of the Board's Rules of Professional Conduct and, therefore, are not subject to interpretation by the Board in a formal Advisory Ruling.

**II. Informal interpretation of 309 CMR 6.00 - Use of an LSP's Seal**

Although the Board cannot render a formal Advisory Ruling with respect to Part 6.00 of the Board's regulations, the Board does have an informal interpretation of this part which bears on your first two questions. That interpretation is this: an LSP can only use his or her seal on waste site cleanup activity opinions. While an LSP who signs other documents, including but not limited to those you mentioned above, may note after his or her signature that he or she is an "LSP" or a "Licensed Site Professional," the LSP's seal should not be used to stamp or emboss these other documents.

This informal interpretation is derived from the Board's reading of 309 CMR 6.00(1), 6.00(2), and 6.00(3), which state as follows:

6.00(1) For the purpose of rendering waste site cleanup activity opinions, each licensed site professional shall procure and use a rubber stamp or embossing device for a seal, the design, arrangement, size and working of which shall conform with the Board's specifications.

6.00(2) A licensed site professional shall use his or her seal to attest that, in his or her professional judgment, the waste site cleanup activity opinion upon which it appears, complies with the provisions of M.G.L. c. 21A, §§ 19 through 19J, 309 CMR, M.G.L. c. 21E, 310 CMR 40.0000, and all other laws, regulations, orders, permits, and approvals applicable to such response action or response actions.

6.00(3) The licensed site professional's seal is intended for his or her personal use in connection with waste site cleanup activity opinions for which he or she will be responsible and is not transferable.

In the Board's view, inherent in these provisions are two restrictions:

1. an LSP must include his or her seal when signing waste site cleanup activity opinions; and
2. an LSP must not use his or her seal when signing other documents.

By restricting the use of the LSP seal to formal waste site cleanup activity opinions, the Board is hoping to eliminate any confusion others may have distinguishing between documents which constitute waste site cleanup activity opinions and those which do not.

As you know, waste site cleanup activity opinions have a special regulatory status. They are professional opinions rendered only by LSPs in connection with the 21E program. They are extremely important documents, because they are intended to be relied upon as sufficient to protect public health, safety, welfare, and the environment. See G.L. c. 21A, § 19 (definition of "waste site cleanup activity opinion"). DEP does not consider a waste site cleanup opinion to be valid unless it is bears both the signature and seal of the LSP who rendered the opinion. 310 CMR 40.0015(1). Pursuant to 310 CMR 40.0015(4), a waste site cleanup activity opinion rendered by an LSP *"shall be considered a representation:*

*a. that the Professional Services associated therewith were provided in accordance with the applicable standards of care;
b. that the response action(s) which is (are) the subject of the Opinion was (were) performed in accordance with the applicable provisions of M.G.L. c. 21E and the MCP; and
c. that the conclusion(s) expressed therein is (are) based upon the rendering LSP's professional judgment and reflect his or her knowledge, information and belief."*

Because none of these special representations apply when an LSP signs other documents that are not waste site cleanup activity opinions, it is important for the public to be able to distinguish readily between these other documents and those that are in fact waste site cleanup activity opinions. Since waste site cleanup activity opinions are contained on many different transmittal forms prepared for submission to DEP, there is no one form that the public clearly recognizes as a waste site cleanup activity opinion. In the Board's view, an LSP's seal along with his or her signature on a document is critical evidence that the document is indeed a waste site cleanup activity opinion.

Some have suggested that the Board should prohibit LSPs from using the words "Licensed Site Professional" or "LSP" after their names when signing documents that are not waste site cleanup activity opinions. This prohibition, it is suggested, would ensure that readers of these other documents would not erroneously conclude that these documents were waste site cleanup activity opinions. The Board has not supported this suggestion because it understands that some third parties (banks, for example) legitimately may wish to have certain non-21E services provided only by those who are LSPs. The purchasers of these non-21E services often ask for the submission of reports signed by these LSPs, and in such instance the Board believes that it is not unreasonable for the client to request that the LSP include the words "Licensed Site Professional" or "LSP" after his or her signature. To ensure that these documents are not confused with waste site cleanup activity opinions, however, they should not contain the LSP's seal.

You have suggested in your letter that confusion could be avoided if LSPs simply attached to all non-21E documents a statement that "the affixing of the seal and signature of an LSP on this document is intended to represent a statement of qualifications and is not intended to represent a waste site cleanup opinion in Massachusetts or any other state." The Board disagrees with this suggestion. In the Board's view, the seal itself is the best evidence of a waste site cleanup activity opinion, and limiting statements attached on subsequent pages or riders are often overlooked.

Thus, because the Board intends the inclusion of the LSP's seal to be a key differentiating factor between those documents that are waste site cleanup activity opinions and those that are not, it is the Board's intention to use its regulations to prohibit the use of an LSP's seal on documents which are not waste site cleanup activity opinions. We strongly urge you not to do this.

Please be advised that pursuant to 309 CMR 7.01(1) the Board can take disciplinary action against any LSP who fails to comply with any of the Board's regulations, including the regulations governing the use of an LSP's seal.

**III. Availability of Advisory Rulings**

Pursuant to 309 CMR 5.04, all Advisory Rulings issued by the Board are public documents and are made available for public inspection during the Board's normal working hours. In addition, the Board may otherwise publish or circulate advisory rulings as it deems appropriate. The Board's rules provide, however, that the name of the person requesting a ruling and any other identifying information will not be included in such publication or circulation unless the person who requested the ruling consents to such inclusion in writing.

As noted above, this letter does not constitute a formal Advisory Ruling. Nevertheless, because you submitted a request for an Advisory Ruling, the Board has concluded that you are eligible to request that your name and any other identifying information not be included in any publication of this letter or the informal interpretation it contains. Please be advised that the Board does intend to publish or circulate this informal interpretation of its rules. If you wish to request that your name or other identifying information not be published, please advise the Board's staff in writing within 7 days.

Sincerely,
The Board of Registration of
Hazardous Waste Site
Cleanup Professionals

By:
Sarah Weinstein
Chair

**Footnotes:**

1. Section 5.01(1) states in full as follows: "A licensed site professional, or an attorney acting on his or her behalf, may at any time request an advisory ruling interpreting one or more of the Rules of Professional Conduct."