

THE
LICENSED SITE PROFESSIONAL
ADVISORY COMMITTEE'S

REPORT

TO THE
MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

March 23, 1992

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Dear Commissioner Greenbaum:

Attached is the report of the "LSP Advisory Committee" created by DEP in August, 1991, to address the issues associated with the licensing of technical professionals doing work required by the MCP. The intent of the LSP Advisory Committee was to develop not only the report, which would set out in narrative form a discussion of key issues, but also the accompanying draft regulations which we hope will expedite the development of regulations by the Board of Registration in the future.

In carrying out our work, the LSP Advisory Committee spawned two subcommittees: one subcommittee to deal with qualifications to be demanded of a potential LSP, and a second subcommittee to deal with the professional practices of LSPs. Both subcommittees were chaired by members of the LSP Advisory Committee, but most of the balance of each subcommittee was made up of interested non-committee members. Without the hard work and good humor of the subcommittee members, the work of the Committee could not have been accomplished.

From the beginning, the Qualifications Subcommittee agreed that an LSP should be a highly qualified individual. Outright grandfathering and low educational or experience requirements were considered but quickly rejected, since the subcommittee members felt that such provisions would dilute the quality and credibility of the LSP pool. Other aspects of the subcommittee discussions--interim licensing, baseline educational requirements, the definition of "full time employment," the nature of "relevant experience," and other issues discussed in the report--led to additional refinement of the concept of the LSP, and the role of the LSP in the successful completion of disposal site remediation under the MCP.

Similarly, the Practices Subcommittee grappled with the standards of practice for a new profession. While rules regarding some aspects of LSP practice could be borrowed from existing rules for somewhat related professions, such as engineering, all such borrowing had to be carefully considered; the LSP profession is not yet well-defined, and probably will not be well-defined for several years. In order to develop a standard of practice that balanced control with flexibility, the Subcommittee adapted those rules that had some relevance to the profession, and created from whole cloth rules where no model existed.


Both subcommittees, and the full Committee, have attempted to develop a firm basis on which the Board of Registration will be able to build. We have all appreciated the opportunity to be of service to the Department in this effort to develop a more workable approach to hazardous waste sites.

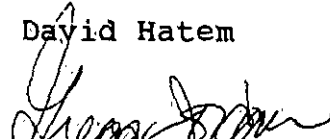
Respectfully submitted,

The Licensed Site Professional Advisory Committee:

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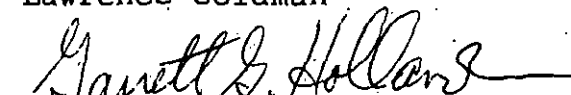

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SECTION 1

Introduction

In its November 1990 "Interim Report," the Study Committee for Waste Site Cleanup Program Improvements and Funding Recommendations described a set of interrelated changes it thought should be made to the 21E ("Massachusetts Oil and Hazardous Material Release Prevention and Response Act") program. A key component of these changes was a recommendation to license environmental professionals to oversee and coordinate response actions at disposal sites in order to expand the Commonwealth's ability to ensure that such sites are properly identified, assessed, and cleaned up. The report noted that licensing site professionals would serve the following purposes:

- o to enlist the considerable expertise of the community of environmental professionals in assessing and cleaning up sites to enable the private sector to deal with more sites at a faster pace than can happen currently;
- o to provide DEP and the public with confidence that assessment and cleanup actions are adequate;
- o to provide DEP and the public with confidence that the scope of response actions is determined by the conditions of the site and not entirely by the Potentially Responsible Party's (PRP) budget; and
- o to make the private sector accountable for the quality of technical work for response actions.

A licensed site professional (LSP) would be an individual qualified by the Commonwealth to render key Waste Site Cleanup Activity Opinions regarding assessment, containment, and remediation actions at disposal sites. The LSP would oversee the work of other technical specialists who may be needed to address the features of each particular site, and integrate their work to ensure appropriate levels of assessment and remediation. An LSP

could be self-employed, work in a consulting firm, or be employed directly by a PRP. Specifically, the LSP would be empowered to:

- o provide a Waste Site Cleanup Activity Opinion as to whether a site which meets the notification requirements needs further action;
- o for sites which need further action, provide a Waste Site Cleanup Activity Opinion as to whether the site meets criteria for classification as Tier I or Tier II;
- o for Tier II sites, coordinate planning and implementation of response actions, and provide a Waste Site Cleanup Activity Opinion when complete as to whether the site needs further action;
- o for Tier I sites, develop recommendations for short term measures, if needed, and for any appropriate interim measures. If approved by DEP, the licensed site professional may coordinate implementation of these measures and provide a Waste Site Cleanup Activity Opinion at the end as to whether the site needs further action;
- o for Tier I sites, prepare a permit application, including a recommendation for categorizing the site category A, B, or C;
- o once a Category B or C permit is approved for a Tier I site, coordinate planning and implementation of response actions, and provide a Waste Site Cleanup Activity Opinion when complete as to whether a permanent solution has been achieved; and
- o for Category A sites, conduct response actions with DEP oversight.

The Study Committee proposed draft legislation necessary to implement the program redesign, including the licensing program. The proposed law, as revised, is currently contained in H. 2026.

The proposed legislation amends M.G.L. 21A ("Executive Office of Environmental Affairs") by establishing a Board of Registration of Hazardous Waste Site Cleanup Professionals, whose members would be appointed by the Governor and whose chair would be the Commissioner of the Department of Environmental Protection. The Board, following public hearing and after considering public comment, would promulgate regulations to license environmental professionals, including regulations establishing qualifications for licensure and standards of professional practice.

To begin creating the licensing program, DEP Commissioner Daniel

S. Greenbaum formed the Licensed Site Professional Advisory Committee. The Advisory Committee's goal was to give the Board a head start on conceptualizing the LSP program and transforming those concepts into recommended regulations. The Board will have the benefit of this Advisory Committee's work once the legislation is enacted and the Governor appoints the Board.

The Advisory Committee had its first meeting on August 29, 1991. It is comprised of twelve members representing the range of interests in the redesigned waste site cleanup program generally and in the concept of licensing waste site cleanup professionals in particular. In his initial letter to Advisory Committee members, the Commissioner noted that developing a program for LSPs will play a significant role in the implementation of the redesigned waste site cleanup program.

The Advisory Committee immediately proceeded with its mission by establishing two subcommittees--which welcomed and encouraged the participation of all interested parties--and assigning chairpersons to each for the purpose of fleshing out key conceptual issues. The two subcommittees are:

- o Qualifications Subcommittee -- Co-chaired by Lawrence Feldman and Joel Loitherstein. This Subcommittee focused on the qualifications an applicant must possess in order to do the work of an LSP, and on the process by which applicants will demonstrate to the Board that they meet the qualifications for licensure. Other Advisory Committee members on this subcommittee were Lawrence Goldman, Garrett Hollands, and Robert Ruddock (or his designee).

- o Standards of Practice Subcommittee - Chaired by William Rizzo. This Subcommittee developed rules of professional conduct and standards of practice for LSPs. It discussed a number of topics including disciplinary procedures, issuance of advisory rulings by the Board, conflict of interest, duty to report imminent hazards, and the form and content of Waste Site Cleanup Activity Opinions. Other Advisory Committee members participating in this subcommittee were Marcia Benes, David Floreen, David Hatem, and Judy Shope.

Appendix A contains brief biographical sketches of Advisory Committee members, a list of other individuals who have played a role in the development of the LSP program, and a list of DEP's LSP Project Team members.

This report describes the Advisory Committee's substantial progress toward reaching its goals. The Advisory Committee intends this report to summarize many of the issues which this new licensing program raises. Sections two and three summarize the issues discussed in Qualifications Subcommittee and Standards of Practice Subcommittee meetings, respectively.

Section four contains the draft regulations which the two subcommittees developed. The Board will not be bound by this draft; however, the Advisory Committee strongly urges the Board to use it as a starting point. The Board will, as required by law, hold public hearings and consider public comments before promulgating regulations. That process is designed to provide ample opportunity for interested parties to participate further in the development of rules for this program.

The Advisory Committee thanks GZA, Inc. and Posternak, Blankstein and Lund for providing meeting space and support for subcommittee meetings.

SECTION 2

Qualifications Subcommittee Report

2.1 Qualifications to become an LSP: Overview

The Qualifications Subcommittee was charged with drafting application requirements for prospective LSPs in order to answer two general questions:

- o What standards of qualification must the licensee meet?
- o How would he or she demonstrate these qualifications to the Board?

The Subcommittee began its work by focusing on the intent for Licensed Site Professionals described in the "Interim Report":

A licensed site manager [sic] would be an individual authorized by the Commonwealth to oversee planning and implementation of assessment and cleanup actions at all sites which require some type of response action. The licensed site manager would be required to oversee the work of technical specialists, and to integrate their work to ensure complete assessment and permanent cleanups. A licensed site manager could be self-employed, work in a consulting firm, or be employed directly by a PRP.

To give sufficient credibility to [the LSP's Waste Site Cleanup Activity] opinion so that it will be useful to the public...[t]raining and educational requirements would include:

- o experience (more than a minimum number of years in responsible charge of response actions), documented by professional references and examples of work

- o degree(s) in specific fields (allowing some types of experience to substitute for those who have been practicing for a long time)

A testing program and continuing education/relicensing requirements could be added in the future if audits of site work indicate they are needed.

The Subcommittee developed a list of specific attributes that prospective LSPs should possess, and coupled those to the manner in which applicants could demonstrate that they have those attributes (see Exhibit 2-1). Using a combination of different tools (e.g., information on the application form, transcripts, employment references, and an examination), the Board could evaluate the suitability of each applicant to meet the technical, regulatory, and professional responsibilities of Licensed Site Professionals.

The results of these discussions are summarized in this section of the report and are reflected in the recommended regulations in Section 4. In summary, the Subcommittee recommends that the Board:

- o issue licenses valid for three years;
- o require a stringent application process for all applicants, without "grandfathering" any class of applicants;
- o promulgate different application requirements for applicants with listed technical degrees (Standard Track) and without listed technical degrees (Alternate Track);
- o require that all applicants meet minimum technical educational requirements to obtain a license, and that all LSPs meet basic continuing education requirements for license renewal;
- o require all applicants to pass an examination which would demonstrate their knowledge of the Massachusetts Contingency Plan.

Specific information regarding the work of the Qualifications Subcommittee is presented in the remainder of this section:

- 2.2 Duration and Renewal of Licenses
- 2.3 Experience and Education Required to be an LSP
- 2.4 Testing Requirements and Continuing Education

- 2.5 Grandfathering and Reciprocity
2.6 Other Application Issues (application form,
professional references, interviews)
-

EXHIBIT 2-1

PROPOSED QUALIFICATIONS FOR LICENSED SITE PROFESSIONALS

An LSP must have:

- o technical knowledge
- o communications skills
- o analytical and reasoning skills

- o maturity
- o communication/ presentation skills
- o understanding of the scientific method

- o project management skills
- o decision making experience in technical/ regulatory matters
- o technical knowledge and experience related to waste site assessment and/or cleanup
- o experience with QA/QC

- o up-to-date knowledge of the MCP and regulatory environment
- o knowledge of LSP role in MCP

- o history of ethical practice
- o verification of experience and project management
- o overall acceptable character

- o has required education
- o no disqualifying criminal record
- o no other violations of relevant laws

To demonstrate these, an LSP must have:

- degree from an accredited college or university in a related field such as geology, engineering, public health, biology or environmental science; OR
one year of technical course work
- at least 8 years of Total Professional Experience (with a technical degree)
as many as 14 years of Total Professional Experience (if no technical degree)
- at least 5 years of Relevant Professional Experience "in responsible charge" of hazardous waste site assessment, containment, and/or removal
- passage of MCP-related exam;
continuing education or re-examination
- provide references, including employment history, descriptions of projects;
Board may require interview
- submitted complete application form with all accessory information, such as transcripts
-

2.2 Duration, Renewal, and Types of Licenses

Once the program is up and running and the examination is available, the Subcommittee recommends that the Board issue renewable licenses valid for three-year periods. The Subcommittee suspects that a one-year licensing period would create too great an administrative workload for the Board without corresponding benefit, and it believes that five or more years is too long a period for this field, given the rapid pace of technical, scientific, and regulatory advances. These licenses would be renewable subject to, among other requirements, LSPs' completing a minimum level of continuing education in the field.

The Subcommittee believes that the Board should approve applications only after critical scrutiny of each applicant's fitness. Each applicant would be responsible for providing information to the Board to demonstrate that he or she meets the requirements for licensure. The Subcommittee recommends that the Board interview any applicant whose qualifications it questions.

The Subcommittee recommends that the Board move quickly to develop and administer an examination which tests applicants' knowledge of the MCP before issuing three-year licenses, and that the Board issue interim licenses to those applicants who meet all application requirements save passing the examination; the Subcommittee also recommends that the Board issue interim licenses only until it has scheduled the first examination.

The interim license would expire when a three-year license is granted, when an applicant fails the examination, or when an applicant does not appear to take the examination when it is first offered and the applicant is scheduled to take it. While it is not reflected in the regulations, the Subcommittee recommends that all interim licenses expire one year after the Board begins issuing them. In practice, that would mean that the Board would schedule frequent examinations quickly so that all applicants would, at the end of one year, have taken the examination and either passed or failed; the Subcommittee anticipates that not all applicants will take the examination the first time it is offered.

The Subcommittee, recognizing that inherent flaws in any examination may occur, recommends that any holder of a interim license who fails his or her first examination be guaranteed a seat for the next scheduled examination. The Board would revoke the applicant's interim license at the time of the failure of the first examination but would grant a permanent license if the applicant passed on the second try. After failing the first examination, the applicant would not be required to reapply in order to take the guaranteed seat for the second examination.

The proposed legislation requires that the Board levy annual fees of an amount sufficient to cover the actual cost of administering the program. The Subcommittee believes that although annual fees would be easier for applicants to pay, they might create an undesirable administrative load for the Board, and would prefer that LSPs make payment every three years; the Subcommittee noted, however, that a fee due only every three years could be extremely large and difficult for LSPs to pay. Since these fees would be based upon the costs of administering the program, the Subcommittee is concerned that fees may escalate unless the Board conducts the program efficiently.

The Subcommittee believes that persuasive arguments can be made in favor of the Board's issuing more than one type of LSP license. Individuals choosing to become LSPs will have various education and employment backgrounds and may prefer to qualify themselves, through the Board's licensure process, to perform only discrete components of LSP work. The Subcommittee discussed, for example, creating a multi-license system, with one license for assessment work, one for remediation, and a third for risk assessment. It did not pursue this at any great length, acknowledging that the charge to the Subcommittee was limited to one license. It felt that as the profession matures, a need for more than one license would emerge. The Subcommittee strongly recommends that, when more information is in hand, the Board revisit this matter.

2.3 Experience and Education Required to be an LSP

The Subcommittee, following the lead of the proposed legislation, recognizes the value of on-the-job experience, training, and formal education as key criteria for becoming an LSP. The Subcommittee's deliberations centered upon the following two issues:

- o defining the experience and training an applicant must have to demonstrate he or she has skills necessary to perform the technical and managerial work of LSPs; and
- o determining the extent to which one gains the necessary experience and training through formal education.

The result of these deliberations is the Subcommittee's recommendation--described in detail below--to balance the number of years of required experience against the level of formal education attained.

The Subcommittee used the direction from the "Interim Report" and its own listing of the types of skills and abilities that an LSP

must have (see Exhibit 2-1) as the basis for developing two recommended methods of meeting the education and experience application requirements. The general agreements that the Subcommittee used to develop specific recommendations are explained below.

First, the Subcommittee believes that Relevant Experience--prior work experience "in responsible charge" of hazardous waste site assessments, containments, or removals--is the single most important requirement for receiving a license. Such Relevant Experience indicates that a person has grappled with the technical problems and challenges of the field, and is committed to this profession. (Note: the Subcommittee borrowed the phrase "in responsible charge" from the engineering license requirements and used it as shorthand to represent the range of LSP responsibilities; see Exhibit 2-2 for the actual definition of Relevant Experience.) The Subcommittee believes strongly that Relevant Experience should include at least some experience at disposal sites where subsurface investigation has occurred. The applicant need not have been responsible for conducting the subsurface investigation; the Subcommittee's intent is to exclude from licensure individuals whose experience is limited exclusively to "walkovers," because that kind of work does not provide suitable experience.

Second, the Subcommittee believes that applicants should have had an additional amount of professional experience to demonstrate maturity and good judgement. LSPs must not only apply technical skills at sites, but must also use, interpret, and correctly apply the Rules of Professional Conduct. In addition, the LSP may face potential conflicts of interest or, in the worst case, may be pressured to make improper decisions. Requiring a certain amount of Total Professional Experience means that LSPs would have some measure of increased maturity needed to carry out their critical, non-technical responsibilities.

EXHIBIT 2-2

DEFINITIONS OF
RELEVANT PROFESSIONAL EXPERIENCE
AND
TOTAL PROFESSIONAL EXPERIENCE

Relevant Professional Experience means experience which includes selecting scientific or technical methodologies for conducting assessments, containments, or removals at sites; conducting or coordinating other professionals in the conduct of those scientific and technical tasks necessary to complete assessments, containments, or removals; and drawing technical conclusions, making recommendations, and rendering Waste Site Cleanup Activity Opinions based on the results of assessments, containments, or removals. Relevant professional experience does not include experience involving only non-scientific or non-technical activities associated with a disposal site, such as contract management, budget control, legal analysis, and other similar management activities.

Total Professional Experience means experience applying scientific or engineering methods or calculations in the environmental, scientific or engineering fields where the resultant conclusions form the basis for reports, studies, and other similar documents.

Third, the Subcommittee believes that the amount of experience required should be lower for potential LSPs who have earned an appropriate technical degree than for those who have not. The Subcommittee viewed obtaining a technical degree as indicating many of the same desirable attributes as Total Professional Experience, such as serious commitment to a scientific or environmental profession and familiarity with the scientific method. The Subcommittee also recognizes, however, the value of non-technical degrees as indicators of applicants' ability to achieve a complex set of goals.

Fourth, the Subcommittee considered the need to require a minimum amount of formal, post-high school course work, and whether individuals with no post-high school academic course work or training but with many years of experience should be eligible for licensure as LSPs. Some members thought that a minimal level of technical course work is an essential companion to on-the-job training and experience, while others felt that people with extensive on-the-job experience have gained the same benefits through their work, and should not have to meet a formal education requirement. However, the Advisory Committee firmly

expressed concerns about public perception of the program if it included no requirement for post-high school education, and it directed the Subcommittee to look at ways of increasing public confidence in LSPs who do not have technical degrees.

In response, the Subcommittee developed two tracks which applicants may follow toward receiving their licenses: the Standard and Alternate Tracks. The Standard Track is for applicants who have bachelor's or graduate degrees in technical fields; the Alternate Track is for applicants with other educational backgrounds. The Subcommittee's development of the requirements for the two tracks is described below and is followed by a presentation of educational substitutions. Summaries of the requirements for the Standard and the Alternate Tracks are presented at the end of this Section.

Standard Track (with an appropriate technical degree)

The Subcommittee concludes that an applicant with an appropriate technical bachelor's or graduate (not associate's) degree must have at least five years of Relevant Experience "in responsible charge" of assessment or remediation work at hazardous waste sites with eight years of Total Professional Experience. The Subcommittee considers this combination of two types of experience plus education the minimum that a potential LSP must have to meet the responsibilities of licensure. That length of time would be adequate for an applicant to demonstrate such qualities as the ability to apply technical skills and scientific methods, project management ability, maturity, experience applying site regulations and laws, a history of ethical practice, and commitment to the field.

The Subcommittee based its selection of the specific number of years on a balancing of all these factors, coupled with information about the credentials of current practitioners in the field. It believes the requirements to be rigorous enough to maintain the high standards LSPs are expected to meet.

The Subcommittee discussed the extent to which Total Professional Experience should be tied to experience with environmental science and engineering, or to technical experience in general. Since the value of this experience (above that directly related to assessment or remediation work at hazardous waste sites) focused upon technical methods, rather than upon solely environmental applications of those methods, and upon length of commitment to applying those methods, the Subcommittee agrees that this experience need not be directly related to environmental applications.

The Subcommittee also considered requiring that at least one year of Relevant Experience must have been in Massachusetts. Supporters of this requirement held that applicants would then be

familiar, through hands-on experience, with both the regulatory environment and the geology and hydrogeology of the Commonwealth. However, the majority believed that a mandatory test was a better way to measure an applicant's level of knowledge of regulatory matters, and that the Commonwealth's geology and hydrogeology were not sufficiently unique to justify this requirement on technical grounds.

The Subcommittee recommends establishing a list of technical fields that meet the educational requirement for the Standard Track (see Exhibit 2-6). Holders of degrees in fields not listed may request, through the presentation of justifying materials, that the Board rule that their degrees are appropriate to qualify them for the Standard Track. The Subcommittee recommends that the Board approve such requests with caution, so as not to broaden too greatly the Standard Track criteria.

Alternate Track (with no technical degree)

In its initial deliberations, the Subcommittee proposed requiring a minimum of twelve years of Total Professional Experience for applicants with non-technical degree and a minimum of sixteen years of Total Professional Experience for applicants with no degrees at all. (It also proposed seven years of Relevant Experience for the former and nine years for the latter.) Members proposed differing standards for these groups, because:

- o the attainment of a degree in a non-technical field indicates that a portion of the non-technical attributes of an LSP have been addressed (e.g., achievement of a complex goal, application of a method of inquiry);
- o longer periods of experience for applicants without degrees is roughly equivalent to shorter periods of experience for applicants with college degrees;
- o required years of both Relevant and Total Professional Experience should be increased to ensure such equivalency; and
- o current practitioners of assessment or remediation work at hazardous waste sites who happened not to have any college degree often were as competent as, and in some cases more competent than, less experienced practitioners with college degrees.

However, some members of the Advisory Committee questioned whether the public's confidence in the effectiveness of the LSP program might be significantly enhanced by requiring a certain amount of post-high school formal education. Accordingly, the

Subcommittee, after discussing its rationale for the two pathways described above (one for applicants with non-technical degrees and the other for applicants with no degrees), combined them into one Alternate Track. It based this decision on these precepts:

- o a certain amount of college-level course work is necessary for all LSPs;
- o completion of non-technical degrees generally is not an indicator that a sufficient number of college level technical or science courses have been taken (i.e., undergraduate science breadth requirements were not found to be universally adequate);
- o requiring one year of post-high school level technical course work is equivalent, in some cases, to the amount of technical course work required for technical degrees; and
- o it is common (and desirable) for practitioners in the field who do not have technical degrees to have taken college level technical courses to improve their understanding of technical issues and advances.

The Subcommittee therefore recommends that applicants for the Alternate Track have a minimum of one year of college level technical course work and fourteen years of Total Professional Experience, within which an applicant must have seven years of Relevant Professional Experience (see Exhibit 2-3). The Subcommittee acknowledges that the Board may find it difficult to measure the required year of college level technical course work; educational institutions grant credit for courses under varying systems, and comparing the relative worth of those credits and Continuing Education Units presents an additional complication. The Subcommittee believes that these are issues the Board will be able to resolve.

The following example illustrates the net effect of the requirements for the Standard Track and the Alternate Track. Consider the cases of two hypothetical 18 year-olds who initially pursue differing careers, one directly toward licensed site professional work, the other in an unspecified scientific or technical field. The latter one then switches careers into assessment and remediation work, and aims toward becoming a licensed site professional. Both apply for a license at the appropriate time, and are both assumed to meet all other LSP application requirements. Their different paths are set forth in Exhibit 2-4.

EXHIBIT 2-4

HYPOTHETICAL COMPARISON OF CAREER PATHS FOR
STANDARD AND ALTERNATE LSP TRACKS

<u>Cumulative years of experience</u>	<u>Standard Track</u>	<u>Alternate Track</u>
years 0-4	earns scientific or technical degree	does scientific or technical work
years 5-8	does sites work	does sites work
years 9-12	does sites work	does sites work and takes technical courses
years 13-16	becomes eligible for LSP in year 13 at age thirty-one	becomes eligible for LSP in year 15 at age thirty-three

Other Experience and Education Issues

There are other important experience and education requirements that the Subcommittee considered in its deliberations:

- o how to analyze the portion of assessment or remediation work performed in an applicant's employment history;
- o whether and how to allow credit for part-time work;
- o how to allow educational substitutions; and
- o consideration of other methods for maximizing public confidence in the rigor of the LSP application process, such as apprenticeships and mandatory interviews.

The Subcommittee does not believe that the proposed regulations should dictate the method by which the Board should calculate how much of an applicant's time was spent on assessment or remediation work at hazardous waste sites. Instead, the Subcommittee suggests that the Board should exercise its

discretion to scrutinize any applicant whose application indicates that his or her Relevant Professional Experience does not contain a sufficient amount of sites-related work.

The result of this recommendation is a regulatory definition of "Full Time Work" which emphasizes responsibilities and job duties, rather than the number of hours of assessment or remediation work at hazardous waste sites, associated with a position. The intent of this definition is to honor the "Interim Report's" direction to allow all people with requisite sites experience to qualify as LSPs, independent of the source of their compensation (that is, whether self-employed, employed by a consulting firm, or employed directly by a PRP).

The Subcommittee notes that practical difficulties would occur if it required a specific number of chargeable hours of assessment or remediation work at hazardous waste sites: chargeable hours will vary by level of responsibility within organizations, and typically lessen when an individual reaches mid- to higher- levels in a company; professional support work (such as this Committee's own endeavors to craft what will be a new profession) and other non-chargeable activities will significantly affect the percentage of directly chargeable assessment or remediation work at hazardous waste sites; there are substantial similarities to assessment and cleanup work that should be taken into account for work on locations that may not be defined as "sites," such as Treatment, Storage, and Disposal facilities; applicants who are employed part-time and who do not participate in the necessary indirect work of an organization may falsely be considered to have the same level of experience as applicants who are employed full-time and who do participate; and the Board's scarce time for reviewing applications would not be best spent examining time sheets of applicants to verify numbers of hours of assessment or remediation work.

Concerning part-time work, the Subcommittee believes that it should count toward either Total Professional or Relevant Experience, as appropriate. However, the Subcommittee thinks it ill-advised to place a specific conversion formula (changing part-time work into a fraction of full-time work) into the regulations, reasoning that such applicants' qualifications should be examined on a case-by-case basis.

The Subcommittee believes that limited educational substitutions beyond the minimum required by the Standard and Alternate Track criteria should be allowed, but only for Total Professional Experience. The Subcommittee reasoned that Relevant Professional Experience should remain "on-the-job," and that there was no suitable non-employment substitute for being "in responsible charge."

The Subcommittee recommends that education should be allowed to

substitute for a maximum of two years of Total Professional Experience, and that substitutions be allowed generally on a 2-for-1 basis with one year of experience counted for each two years of the degree. For the Standard Track, educational substitutions would include one year for each master's degree in an approved technical field (even if earning the degree took less than two years) and two years for a doctorate in an approved technical field, up to a maximum of two years. For the Alternate Track, educational substitutions would include one year for an associate's degree and two years for a bachelor's degree in a non-approved field. There would be no additional substitution for graduate degrees in non-approved fields.

The Subcommittee also considered instituting other application requirements for LSPs who have not earned technical degrees as a way of increasing the public's confidence in the expertise of all LSPs. The Subcommittee considered but does not recommend requiring apprenticeships or interviews. It raised a number of concerns about apprenticeships including the difficulties that could arise from having a highly educated, but less experienced LSP overseeing the work of a very experienced, less educated LSP. The Subcommittee recommends, as described below, that the Board make interviews an optional part of its application review process.

The Exhibits on the following two pages illustrate the results of the Subcommittee's deliberations:

- o Exhibit 2-5 shows the experience and education requirements for the Standard and Alternate Tracks.
- o Exhibit 2-6 lists the fields of study which the Subcommittee agrees are technical, for the purpose of determining whether an applicant belongs in the Standard or Alternate Track.

EXHIBIT 2-5
EXPERIENCE AND EDUCATION REQUIREMENTS FOR LSPs

Standard Qualifications

- o Bachelor's or graduate degree in a technical field (see list in Exhibit 2-6)
- o 8 years Total Professional Experience, of which
- o 5 years must be Relevant Professional Experience "in responsible charge"
- o Credit against 8 years Total Professional Experience for technical master's (1 year each) or Ph.D. (2 years); maximum of 2 years credit

Alternate Qualifications

- o High school diploma; no bachelor's or graduate degree in a technical field
- o Equivalent of 1 year of post-high school technical course work
- o 14 years Total Professional Experience, of which
- o 7 years must be Relevant Professional Experience "in responsible charge"
- o Credit against 14 years Total Professional Experience for associate's degree (1 year) or bachelor's degree (2 years); maximum of 2 years credit

Note: an applicant who has a non-technical bachelor's degree and a technical graduate degree falls under the Standard Qualifications.

EXHIBIT 2-6
POTENTIAL LSP DEGREES

Degrees meeting the "Technical Degree" standard would include a bachelor's or advanced degree from an accredited college or university with a major or concentration in the following fields:

- Air Resources
- Applied Mechanics
- Applied Physics
- Biochemistry
- Biology (including toxicology, ecology, botany, zoology)
- Chemistry
- Earth Science
- Engineering (of any type)
- Environmental Sciences
- Environmental Studies (if technical in nature)
- Epidemiology
- Geology
- Hazardous Waste Management
- Hydrogeology
- Hydrology
- Materials Science
- Mathematics
- Medicine
- Meteorology
- Microbiology
- Natural Science
- Oceanography
- Physics
- Public Health (if technical in nature)
- Risk Assessment
- Soil Science
- Water Resources
- Wetland Science

If the applicant's degree is not in a field listed above, the applicant may ask the Board to consider whether the degree is fundamentally equivalent to one or more of the degrees listed. The applicant has the burden of proof; the Board would base its decision in part on official transcripts sent directly to the Board by the applicant's educational institutions.

2.4 Testing Requirements and Continuing Education

The Subcommittee recommends requiring both an examination on the MCP and technical and scientific continuing education. This recommendation goes farther than the "Interim Report's" charge to develop a testing program and continuing education requirements "in the future" if audits of assessment or remediation work indicate they are needed. The Subcommittee believes those two tools are the best methods available to demonstrate to the public that LSPs would be knowledgeable about Massachusetts regulatory requirements and would keep up with technical advances in the field.

In coming to this conclusion the Subcommittee considered a variety of proposals concerning examinations, ranging from no examinations to comprehensive technical examinations covering all aspects of waste site assessment, cleanup and removal; examinations to test basic scientific knowledge; and examinations to test knowledge of the Massachusetts Contingency Plan.

The Subcommittee views an examination as a sound, quantitative measure of an applicant's fitness for the LSP profession and believes that the Board should use the examination in conjunction with the qualitative components of the application process. The Subcommittee considers any examination to be a complement to the application process. This belief is reflected in the draft regulations, which require that the Board decide that an applicant is in all other aspects qualified to receive a license before deeming an applicant eligible to take the examination.

There was general agreement in the Subcommittee that developing a test at this time for all of the scientific, engineering, and technical components of the waste site cleanup profession would be impractical and therefore undesirable, because 1) the LSP profession itself is still young and evolving, with no clear consensus yet that defines the basic scientific knowledge needed for this profession; 2) there are inherent practical problems with devising a new technical examination that would take years to overcome (e.g., accuracy of answers, appropriateness of questions, consistency of test results over time and populations); and 3) some members of the Subcommittee believe that there are problems with the nature of quantitative tests themselves that may limit the appropriateness of standardized tests as an indicator of fitness for any profession.

The group believes that requiring a base level of technical course work and a base level of continuing education will be more reliable than testing to demonstrate technical expertise in this complex field. However, the Subcommittee also believes that it would be appropriate to develop and administer a standardized examination testing knowledge of the Massachusetts Contingency Plan, and that this type of examination would best demonstrate

that an LSP knows enough about the requirements of the MCP to render the required Waste Site Cleanup Activity Opinions. The Subcommittee views knowledge of the MCP as the unique, defining requirement of the LSP program that could not be fully demonstrated through either formal, technical education or on-the-job training.

Therefore, the Subcommittee recommends that the Board develop a test on the MCP as soon as practicable. No three-year licenses would be granted until the test is developed and administered and the results made available to the Board and applicants. The Subcommittee anticipates that the examination would be offered frequently during the first year to allow the program to begin functioning as quickly as possible. The Board would issue interim licenses only to applicants who meet all application requirements except passing this test; interim licenses would not be available to any applicant after the Board adopts the content for and schedules the first examination.

The Subcommittee discussed, but made no recommendation regarding, the advisability of contracting with a private organization to develop and administer the test, but does recommend that the test be administered frequently during the first year of testing. The Subcommittee urges the Board--either on its own or with the help of a test development organization--to develop and administer this test rapidly in order to begin issuing three-year licenses as quickly as possible.

The Subcommittee views continuing education (attendance at technical and regulatory courses and seminars) as the best method of ensuring that LSPs maintain basic regulatory and technical knowledge. The Subcommittee feels that this requirement should appear stringent when compared with continuing education requirements for other professions and recommends that the Board require two eight-hour days per year over the three-year licensing period, for a total of forty-eight hours each period. The Board would have to approve all courses or seminars used to meet the continuing education requirement.

2.5 Grandfathering and Reciprocity

The Subcommittee considered whether it would be appropriate to allow two classes of individuals to obtain LSP licenses without meeting the general application requirements that all other applicants must meet. These two classes are:

- o practitioners who are currently in responsible charge of sites and who might, by virtue of their status as current practitioners, be granted licenses (i.e, grandfathering); and

o holders of other professional licenses which are viewed as related to the LSP license, such as engineers or geologists, who might, by virtue of their holding this professional license, be granted LSP licenses (i.e., reciprocity).

The Subcommittee, which included members of a variety of professions, decided not to recommend granting either grandfathering rights or reciprocity because both were seen as contrary to the goal of establishing a licensing program with standards which all practitioners must meet in order to create a publicly credible program.

Grandfathering normally applies when people have been practicing a profession on an unlicensed basis. However, the LSP program establishes a profession that is not currently practiced (that of rendering Waste Site Cleanup Activity Opinions that waste site cleanup laws and regulations have been met). Establishment of this new profession does not affect existing professionals providing assessment, cleanup, and removal services because it does not preclude them from continuing to practice their profession; only those among them who wish to render the Waste Site Cleanup Activity Opinions would need an LSP license.

Further, grandfathering, when it has been allowed in other licensing programs in Massachusetts (for example, waste water treatment operators), restricted the grandfathered licenses to specific individuals and locations: only those facilities at which the individuals were presently working. As soon as a grandfathered licensee moved to another facility, his or her license ceased to be valid, and the standard requirements for licensure applied. In the case of the LSP, the Subcommittee believes that since LSP licenses will not be site-specific, grandfathering does not make practical sense for LSPs.

Reciprocity between licenses generally occurs when the subject matters of the licenses are considered similar and when there are comparable experience and/or education requirements. The Subcommittee reviewed professional licenses granted by Massachusetts and other states in fields such as engineering and geology and various certificates issued by private national organizations. Although the members know that the waste site profession includes and requires the expertise of these other professions, members believe that the LSP program requires a unique combination of various disciplines that are not mirrored in any one specific currently licensed discipline.

After a review of sixteen national and state programs for certifying, licensing, or registering environmental professionals, the Subcommittee concluded that no other state's or private organization's registration of waste site

professionals has the high set of public responsibilities that Massachusetts LSPs would have. Since the purposes of those other registrations are not similar to the purpose of the LSP program, it would be inappropriate to grant reciprocity to those other organizations. The Subcommittee urges the Board to revisit this matter from time to time to learn of any new, sufficiently similar programs.

2.6 Other Application Issues

The Subcommittee believes that it is the applicant's responsibility to demonstrate to the Board that he or she meets the requirements for becoming an LSP. While the Subcommittee established what it views as minimum information that the Board would need from all applicants to make its decisions (such as employment history and transcripts) the Subcommittee urges the Board to pay particularly close attention to professional references when evaluating an applicant's fitness to become an LSP, and to hold interviews, when appropriate, to discuss concerns with an applicant.

Given that the Subcommittee views relevant work experience as the most important qualification, references take on added significance as a way for the Board to verify the quality of that experience, in particular the assertion by the applicant that he or she was "in responsible charge." The Subcommittee concludes that each applicant should select three professional references as part of the application process. These individuals will submit reference material directly to the Board. The content of references will be kept confidential. The Subcommittee has not looked into the structure and content of the reference form.

The Subcommittee initially considered interviews a routine component of every application but realized that in most cases an application package would speak for itself, and an interview would add little significant information. The Subcommittee then considered requiring the Board to interview all individuals in a specific group of applicants, such as those without technical degrees, since it is expected that the Board would have greater concern with qualifications of some groups and lesser concern with others. However, after deciding to require one year of college level course work for all applicants, the Subcommittee rejected this interview requirement on the grounds that it was inflexible and might create too great a workload for the Board. That decision-making process caused the Subcommittee to consider the interview as an optional tool that it urges the Board to use whenever an application does not clearly demonstrate an applicant's fitness or unfitness to become an LSP.

The Subcommittee presents the first draft of a form that the Board may use as starting point for developing an LSP Application Form. This draft form appears in Attachment B.

SECTION 3

Standards of Practice Subcommittee Report

3.1 LSP Standards of Practice: Overview

The Standards of Practice Subcommittee's mission was to consider issues that would surround drafting regulations and then to draft regulations which would govern (1) standards of professional practice for the Licensed Site Professional and (2) enforcement procedures that should be established by the Board.

The Subcommittee used the purposes of the LSP as described in the "Interim Report" as its touchstone:

- o to provide DEP and the public with confidence that assessment and cleanup relating to Waste Site Cleanup Activity Opinions actions are adequate;
- o to provide DEP and the public with confidence that the scope of response actions is determined by the conditions of the site and not entirely by the PRP's budget; and
- o to make the private sector accountable for the quality of technical work for response actions.

With these purposes in mind, the Subcommittee developed the following program goals to be considered during the development of draft regulations for presentation to the Board:

- o creating a profession with public credibility;
- o making Waste Site Cleanup Activity Opinions credible and giving them weight in commerce;

- o employing standards broad enough to encompass widely varying technical skills and flexible enough to evolve with a changing profession;
- o enabling the Board to balance the interests of each individual LSP with those of the Board, the public, and the business community; and
- o ensuring that LSPs exercise independent professional judgement and are not improperly influenced by monetary or other self-interest.

The results of this work are summarized in this Section of the Report and are reflected in the draft Regulations in Section 4. In summary, the Subcommittee:

- o drafted recommended Rules of Professional Conduct regulating professional competency and responsibility, conflict of interest, contingency fees, and compliance with laws;
- o provided the Board with proposed procedures and guidelines for issuing advisory rulings;
- o proposed rules for the design and use of the LSP's professional seal;
- o drafted procedures governing disciplinary procedures covering suspension or revocation of licenses, civil administrative penalties, public or private censure, informal conferences, and other related matters; and
- o proposed administrative penalty regulations.

The remainder of this section presents a discussion of the work of the Standards of Practice Subcommittee and is divided as follows:

- 3.2 Rules of Professional Conduct
- 3.3 Advisory Rulings
- 3.4 Design and Use of Waste Site Cleanup Professional's Seal
- 3.5 Procedure Governing Disciplinary Proceedings
- 3.6 Administrative Penalty Regulations

3.2 Rules of Professional Conduct - Introduction

A code of professional conduct describes the responsibilities that separate the member of a profession from a member of the

public. Such a code embodies responsibilities accepted by the professional in return for the granting of special privileges or rights by a public body. The Rules of Professional Conduct recommended by the Subcommittee encompass five sections: (1.00) Professional Competency, (2.00) Professional Responsibility, (3.00) Conflict of Interest, (4.00) Contingency Fees, and (5.00) Compliance with Laws.

The Subcommittee tried to balance three sets of concerns while drafting a code of conduct for the profession: those of the LSP, the client or employer, and the public. Each party has a stake in the professional actions of the LSP, but their interests may be widely divergent. Accordingly, the Subcommittee weighed the following three factors during its deliberations:

- o the obligation incurred by a member of a legally recognized profession not to subordinate protection of the public interest to other concerns;
- o the LSP's duty to represent and protect the interests of the client or employer; and
- o the need to maintain professional standards and public credibility by ensuring the objectivity and independence of the LSP.

The Subcommittee's intent is to describe in a broad manner what degree of protection the public can reasonably expect from an LSP, what type of services a client or employer can expect when hiring an LSP, and what limits LSPs must place on their own behavior to maintain the profession's objectivity and independence.

3.2.1 Professional Competency

The Subcommittee found that the changing nature of waste site cleanup technology, frequent advances in scientific knowledge, LSPs' varied backgrounds, and difficulty in describing site conditions preclude reference to a fixed standard as a basis for evaluating professional competency. Unlike accountants who follow standards promulgated by an independent board, LSPs do not have the benefit of any single set of technical guidelines to use as a basis for professional action. The diverse tasks LSPs are called upon to perform would necessitate that the Board develop numerous sets of technical standards to guide the professional actions of LSPs.

As an alternative, the Subcommittee chose to place much of the responsibility for ensuring each LSP's technical and managerial

competency in the hands of the individual. Each LSP will judge the extent of his or her own expertise and the limits that it places on his or her professional activities. This issue shows up in the regulations regarding the standard of professional care, self-evaluation by the LSP of areas of expertise, and the supervision of subconsultants (see 3.00(1)(a) through (c) in the draft regulations found in Section 4 of this report).

The standard of professional care serves as a criterion by which one can judge the degree to which the LSP has satisfied his or her professional obligations to the client or employer (see 3.00(1)(a)). This rule incorporates several distinct elements. Common law requires one who renders professional services to exercise the skill and knowledge normally possessed by members of that profession in good standing. Generally speaking, the common law requires that one who renders professional services does so with that degree of skill, care, and knowledge normally possessed by members of that profession at the time the services are performed and under the same or similar circumstances.

"Diligence" imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards. The standards of practice in effect in Massachusetts at the time services are rendered would determine the minimum care due. The proposed regulation offers a basis for determining the LSP's minimum duty and is not meant to prevent the LSP from offering services beyond the standard of care.

The Standards of Practice Subcommittee's intent is to ensure that LSPs undertake only that work which they can perform in a competent and professional manner (see 3.00(1)(b)). The Qualifications Subcommittee addressed the elements of competency, education, training, and experience on a profession-wide basis. However, given the variety in the backgrounds of LSPs, the individual LSP must make a similar judgement both about his or her own abilities and that of individuals whom the LSP supervises or otherwise engages in the course of a task. The Standards of Practice Subcommittee, drawing directly from the proposed legislation, distinguishes between qualifications for assessment-related actions and work related to containments and removals. The LSP must have direct experience managing, supervising, or performing assessments to be competent to offer Waste Site Cleanup Activity Opinions regarding their results. To undertake the evaluation of containment or removal actions the LSP must have periodically observed their performance by others. It should be noted that the Subcommittee based this provision on House Bill 5891 which did not allow for the "periodic observation" of assessments (that is, LSPs would have to manage, supervise or actually perform assessments). Should the language in the legislation change, the Subcommittee recommends that the Board review this provision.

LSPs are free to hire, consult with, or otherwise engage professionals, who have technical expertise which the LSP does not have, to assist with waste site cleanup activities and to provide information necessary for the LSP to render a Waste Site Cleanup Activity Opinion (see 3.00(1)(C)). The LSP is responsible for ensuring the professional expertise of these other individuals, just as the LSP must evaluate his or her own qualifications. The Subcommittee made it clear, however, that the LSP should not be held responsible for verifying the accuracy of work performed by others when that work falls outside the LSP's own areas of expertise.

3.2.2 Professional Responsibility

The public, clients and employers, LSPs themselves, and the LSP profession share concerns about LSPs' professional responsibility. The Subcommittee's challenge during these discussions was to strike a balance between the interests of each of these groups.

Subcommittee discussions touched on four related topics. First, the Subcommittee sought to define the circumstances under which the obligation to protect the public outweighs the need to safeguard the interests of PRPs. Second, it evaluated the circumstances in which LSPs must act in the public interest by providing information either to DEP or to their clients. Third, the Subcommittee evaluated questions about LSPs' obtaining and handling information pertinent to a Waste Site Cleanup Activity Opinion. Fourth, the Subcommittee endeavored to describe the LSP's duty to protect the integrity of the profession.

1. Public Protection: The Subcommittee proposes to ensure consistency with the MCP by holding paramount in its regulations the protection of public health, safety, welfare, and the environment (see 3.00(2)(a)). Making these four interests "paramount" places them above any obligations to the client or employer or to the profession. This is the fundamental obligation incurred by the LSP in exchange for the special rights and privileges conferred by legally recognized professional status. There is general agreement among Subcommittee members that public health and safety deserve this special attention. However, some members question the appropriateness of including public welfare and the environment, because they believe 1) it is more difficult to define harm to public welfare or the environment than to public health and safety, and 2) threats to public welfare and the environment cannot present the same degree of danger to the human interest as a threat of injury to human beings. The Subcommittee, while recommending following the standard used in the MCP, notes that the Board may want to reconsider the matter. DEP participants suggest that the standard should be consistent with the definition of an "imminent

hazard" found in the MCP in order to avoid having separate definitions of "imminent hazard" (one for reporting pursuant to the MCP and one governing an LSP's obligations).

2. Reporting Requirements: In order to protect health, safety, public welfare, and the environment, the Subcommittee acknowledges that certain kinds of information must be available to DEP. The Subcommittee notes, however, that LSPs should not generally be in the position of reporting to DEP, but that PRPs should be, and, according to 21E and the MCP must be. With that in mind, the Subcommittee proposes four reporting requirements--one which may result in LSPs' reporting information to DEP and three which require LSPs to report information to their clients; in addition, the MCP continues to require PRPs to report certain information to DEP. Therefore, two criteria against which the Subcommittee evaluated reporting requirements are: 1) maintaining a reporting system which is "driven" by PRPs; and 2) ensuring the proper "tension" in private parties' engagements of LSPs to obtain a balance between the needs of the public to know (for example, knowledge of the existence of an imminent hazard) and the concern of business of misreporting by LSPs of less significant information, which PRPs, under the MCP, should be responsible for reporting.

a. Reporting to DEP--Imminent Hazards: The Subcommittee recommends that LSPs have an obligation to report to DEP threats to public interests in the following circumstance: when an LSP judges a hazard to be "imminent," he or she would 1) advise the PRP of the PRP's obligation to report the imminent hazard and 2) if the PRP refused or failed to report the imminent hazard to DEP, the LSP would have to make the report. The Subcommittee further noted that the definition of imminent hazard in M.G.L. c. 21E includes threats to public health, safety, welfare, and the environment. There was general agreement among Subcommittee members that imminent threats to public health and safety should be reported. Concern was also expressed about the difficulty in defining clearly threats to public welfare, and to a lesser degree threats to the environment. Some held the view that this issue should be addressed within the context of the redrafting of the MCP, and that the definition should be consistent in the MCP and these regulations to avoid dual standards which may contribute to confusion.

Under this rule, the LSP must notify his or her client immediately, and should his or her client fail to make proper notification, the LSP must notify DEP within 24 hours after discovery of the imminent hazard. This rule applies only to sites where an LSP is engaged to provide professional services relating to Waste Site Cleanup Activity Opinions. Employment engagements outside of rendering such an Opinion, casual observations, and informal discussions of similar conditions at other locations that might give the LSP "reason to know" of an

imminent hazard would not invoke any duty to report. Similar reporting requirements are found in regulations governing the engineering and architecture professions.

Most Subcommittee members support requiring LSPs to report imminent hazards to DEP and feel that such a provision will contribute to the building of the profession's credibility with the public. However, Subcommittee members representing PRP interests and in-house LSPs believed that all reporting requirements, including those involving imminent hazards, should be the PRP's and not the LSP's, since the MCP is "PRP-driven." Subcommittee members also generally agree that this is the only reporting requirement that warrants the immunity provided by the draft legislation. Note, however, that as proposed, Section 3.00 (2)(b) requires the LSP to act in all ways, including in identifying an imminent hazard, in accordance with at least the standards of this profession. Thus, the Subcommittee views the immunity offered by the legislation as protecting the LSP only from collateral liability resulting from the disclosure itself and not from negligence or improper determinations. These understandings led the majority of members to believe that the "PRP-driven" and "proper tension" concerns were satisfied.

b. Reporting to Clients: Three other provisions of the proposed regulations require an LSP to report information in writing to his or her client. Earlier drafts of these provisions required the LSP to report this information to DEP. The Subcommittee, agreeing that waste site cleanup activities should be PRP-driven, revised those early drafts so that they now require LSPs to give this information to their clients.

The first of these provisions applies when the PRP undertakes an action that results in a significant deviation from "any scope of work, plan or report developed to meet the requirements of M.G.L. 21E, the MCP, or an order of the Department" (see 3.00(2)(c)). The purpose of this provision is to protect an LSP from a client acting in bad faith. This proposed rule states no time frame for the LSP's making a report. The Subcommittee limited the proposed rule to "significant deviations" in an attempt to prevent its application to trivial issues.

The other instances where the proposed rules require an LSP to make a report to his or her client relate to information that forms the basis for Waste Site Activity Cleanup Activity Opinions, and both concern the LSP's duties upon the subsequent discovery of data that existed at the time a Waste Site Cleanup Activity Opinion was rendered. In cases where an LSP learns about existing materials that would have affected the content of either his or her own Waste Site Cleanup Activity Opinion or that of a predecessor LSP had they been made available sooner, the LSP must notify his or her client of the discrepancy (see 3.00(2)(e) and (f)). The Subcommittee discussed proposing that the LSP also

have the option to notify DEP in the former case and the predecessor LSP in the latter but does not make those recommendations. Those present who represented PRPs and LSPs who will serve as LSPs in the employ of PRPs argued against reporting to anyone but the client (that is, the employer).

3. Obtaining and Handling Information: The Subcommittee intends its suggested rules for obtaining and handling information pertinent to professional services to ensure the independence and objectivity of the LSP. Toward that end, it proposes a rule concerning the preparation of Waste Site Activity Cleanup Opinions. The rule has four components. The first component requires the "exercise of independent judgement" to ensure the objectivity of the LSP. The second makes compliance with the technical standards and procedures of the MCP and M.G.L. 21E part of the Waste Site Cleanup Activity Opinion writing process. The third calls for the LSP to make a "good faith and reasonable effort" to obtain pertinent existing data and additional information as needed to "discharge his or her professional obligations." The fourth seeks to create trust and limit LSP liability by requiring the LSP to disclose available information that does not support the conclusions stated in a Waste Site Cleanup Activity Opinion (see 3.00(2)(d)(i) through (iv)).

4. Maintaining Integrity: The final portion of the rules of Professional Responsibility describes those duties incumbent upon an LSP to protect the integrity of the profession. The Subcommittee proposes three related rules. The first requires that members of the profession avoid involvement in any fraudulent activity related to the responsibilities of an LSP. The second directs LSPs to cooperate with subpoenas issued by the Board. The third states that an LSP who believes another LSP has violated the Rules of Professional Conduct must promptly notify the Board (see 3.00(2)(g) through (i)).

The Subcommittee believes that the regulations should prohibit LSPs from knowingly associating with persons or companies engaged in fraudulent or dishonest business practices related to waste site cleanup activities. However, it did not reach a consensus over what should serve as the standard for "knowing" about such activities. There was no argument about what an LSP must do when "he or she knows" about unacceptable activities. No such unanimity was expressed when the discussion turned to what the LSP "should know" and what efforts a reasonable person should make to learn about the existence of an inappropriate association. Several members of the Subcommittee were uncomfortable with the inclusion of this provision. They asked whether it would require LSPs to determine if business partners had a criminal history and pointed out the difficulties involved in being knowledgeable about the broad range of activities of large corporations. The Subcommittee recommends that the Board examine this matter in greater detail and either clarify the

"should know" standard or employ different language.

The provision regarding subpoena powers of the Board codifies the expectation that LSPs will cooperate during an investigation. The Subcommittee noted that this language would prove helpful if a client objected to an LSP's revealing information obtained during the course of professional activities. The Board could subpoena the information, and the LSP would have no choice but to comply. Since the LSP would be following a legal requirement, the immunity provision in the proposed legislation would protect the LSP from civil claims.

The proposed regulation requiring an LSP to report to the Board violations by other LSPs engendered much debate. On the one hand, if a profession is to grow and prosper, it must be diligent both in protecting itself from those who would take unfair advantage of their special authority and in establishing a foundation for public trust. Furthermore, an LSP may be the only person qualified to recognize actions taken by another LSP that pose a serious question of integrity or competence. On the other hand, some members of the Subcommittee expressed concern about the potential for judging their fellow LSPs on the basis of incomplete information. Other members stated the belief that this clause, in combination with early versions of the reporting requirements, would result in many inappropriate notices to DEP of imminent hazards and overly conservative actions by LSPs, as LSPs sought to protect themselves from second-guessing by others. In spite of these concerns, the Subcommittee recommends this provision to the Board because it believes that self-policing of the profession is an important component of a credible licensing program. In addition, the reporting requirements presented by the Subcommittee in this report further reduce concern over "synergistic effects" with this provision.

3.2.3 Conflict of Interest

The Subcommittee recognizes that the perception of conflict of interest undermines the basis for trust in the profession on the part of both clients and the public. However, eliminating conflicts of interest is difficult because of the complex nature of business relationships. For example, an employee LSP's financial interest in a PRP may exceed the stake of an independent consultant, but, in most circumstances, by itself provides no basis for the assumption that the employee will prove ineffective as an LSP. The draft legislation explicitly states that nothing in the regulations and policies of the Board may prohibit direct employment by a PRP of an LSP, and it supports the definition of "client" found in the draft regulations.

The Subcommittee proposes three rules to limit conflicts of interest:

First, the regulations should prohibit LSPs from providing services to two or more clients affected by conditions at a site without the full knowledge of all of the clients (see 3.00(3)(a)). The Subcommittee acknowledges that the boundaries of a site may be unclear; for example, hydrogeologic connections could effectively combine several geographically distinct locations into a single site. The Subcommittee considered replacing the word "site" with "project" but rejected the idea after determining that similar problems of definition arise.

Second, in the case of a business association, financial interest, or other circumstance that creates the impression of an influence on the LSP's judgement, the LSP must resign from a project if the client objects to the association which is causing the impression of influence or if the LSP perceives that the association is in fact influencing his or her conduct (see 3.00(3)(b)).

Subcommittee members concerned with the status of employee LSPs took issue with the requirement to resign if the LSP perceives influence on his or her judgement due to a financial interest, arguing that the proposed regulation effectively prevents the use of in-house LSPs. Environmental managers advocate within a corporation for resources; they influence others and are themselves subject to influence on an ongoing basis. The suggestion was made to delete the requirement to resign; the Subcommittee did not agree to that change but did amend the language governing the circumstances under which an LSP must resign; the phrase "is influencing his or her judgement" was deleted and replaced by "renders him or her incapable of discharging his or her professional obligations under these regulations." Language in the draft legislation protecting the rights of employee LSPs appears to satisfy this concern and obviate the need for additional change to the draft regulations. Other members of the Subcommittee pointed out that the rule serves an important purpose: Clients will certainly want to know when an LSP has an ownership interest in a cleanup contractor or laboratory.

The Subcommittee and Advisory Committee recognized that, in order to promote public credibility, there must be a process by which such relationships as employment, ownership, and financial interests of LSPs are evidenced. If disclosures LSPs' financial relationships are not made at the outset of their professional engagements at sites, the subsequent disclosure of these relationships, particularly after LSPs have rendered their opinions, may contribute to a negative perception of LSPs' work. The suggestion was made that DEP should incorporate (into the form identifying the LSP to be engaged at a site) instructions for making such disclosures.

With the third rule, the Subcommittee recommends that the Board

prohibit LSPs from accepting consideration from material or equipment suppliers in return for specifying or endorsing their products (see 3.00(3)(c)). Consultants on the Subcommittee questioned the appropriateness of this proposal. They agreed that the regulations should prohibit kickbacks, but pointed to circumstances where currently accepted business practices run counter to the proposed rule. Consulting firms providing waste site cleanup services often hold patents or exclusive licenses for the use of materials, equipment, and procedures used during waste site cleanup activities. The Subcommittee asks that the Board reexamine the proposed language in light of this concern.

In a related matter, it was pointed out that the same language might prohibit LSPs from receiving a "finder's fee" for referring a client to an LSP with more appropriate expertise. The Subcommittee discussed the matter of finder's fees and reached no conclusion on prohibiting them. The Board should determine whether the regulation would actually prohibit such fees and whether it wishes to do so.

3.2.4 Contingent Fees

The Subcommittee recommends that the code of conduct flatly prohibit proposing or entering into agreements to offer professional services where an LSP receives no remuneration unless he or she attains a specified finding or result or where the fee is otherwise contingent upon findings or results (see 3.00(4)). The Subcommittee believes that contingent fees create the impression that LSP recommendations are "for sale" in a pejorative sense, whether or not that is, in fact, the case. Moreover, allowing contingent fees provides a temptation for unscrupulous individuals to exploit the business and damage the public esteem of the entire profession.

3.2.5 Compliance with Laws

The Subcommittee expects that many LSPs will hold licenses to practice other professions legally recognized by the Commonwealth, particularly the various branches of engineering. Occasions may arise where LSPs face the dilemma of following two conflicting codes of conduct. The Subcommittee recommends requiring the LSP to follow the more specific rule when confronted with a clash between the legal responsibilities of an LSP and those incumbent upon another profession of which the LSP is also a member.

The Subcommittee also recommends including in the regulations a requirement that LSPs comply with criminal laws and all pertinent professional registration laws while carrying out professional activities (see 3.00(5)). A minority view held that the need for

compliance with laws is self-evident and is not worthy of reiteration in the regulations. The Subcommittee did not accept this viewpoint, because it wants to empower the Board to revoke an LSP's license when an LSP has broken a law related to waste site cleanup activities; the Subcommittee is concerned that, without this provision, an LSP guilty of breaking such a law could retain his or her license.

3.3 Advisory Rulings

The Subcommittee believes that it is appropriate for the Board to provide LSPs with a vehicle for interpreting the Rules of Professional Conduct. Particularly at the outset of the program, LSPs may be uncertain about whether their proposed actions fall within the limits which the regulations set; the Subcommittee agreed that the Board should issue advisory rulings to help LSPs understand these matters. The Subcommittee prepared draft regulations regarding the granting of advisory rulings (see 4.01(1) through (5)). A minority view held that these regulations are not necessary, but that the Board should issue advisory rulings as a matter of policy.

The proposed process whereby members of the profession may obtain guidance from the Board on the interpretation of the Rules of Professional Conduct incorporates the seven recommendations stated below.

1. Rulings may pertain to interpretation of only the Rules of Professional Conduct. The Subcommittee believes that the Board should issue advisory rulings to clarify the Rules of Professional Conduct and not rule on matters such as contractual or payment disputes between parties or technical decisions. The Subcommittee discussed examples of situations, especially involving potential conflicts of interest, where LSPs would benefit from the availability of advisory rulings.

2. The Board should accept requests for rulings only from LSPs directly affected by a matter or from their attorneys.

3. The Board should provide rulings in response only to written requests regarding the application of the Rules of Professional Conduct to prospective, factual situations. Requests should be written, since the Board is expected to offer legal rulings that can properly come only in response to a formal presentation of facts. The Board should not permit LSPs to seek advisory rulings after-the-fact; granting retrospective rulings may place the Board in the position of adjudicating between parties. Requests for rulings must reflect factual situations, since responses to hypothetical queries could easily be misconstrued when applied to real situations and could prove so numerous as to overwhelm the Board.

4. The Board should have the authority to reject a request for an advisory ruling. The Subcommittee recognizes that the Board must have the option to avoid responding to frivolous, duplicative, or otherwise inappropriate requests. The Subcommittee foresees a strong need for the participation of legal counsel in drafting rulings; if the Board does not have an attorney available to assist it, it should have the option of refusing requests for advisory rulings.

5. Rulings should be confidential, but their substance should be made available, with identifying information stricken, to provide guidance to the LSP community. The Subcommittee's intent is that, over time, a body of advisory rulings would develop which would help guide the actions of the profession and relieve the Board of the necessity of responding to frequent requests for rulings.

6. Rulings of the Board should have legal standing. The Subcommittee strongly urges that an LSP acting in good faith and competently, who fashions his or her conduct in conformance with the guidance of the Board, should receive protection from the possibility of adverse court rulings.

7. Advisory rulings should be issued in a timely manner. The Board must recognize that LSPs are involved in business relationships and, consequently, there might exist a need for a rapid response on the part of the Board. The draft regulations address the question of time frame in connection with the Board's determining whether to agree to grant a request for a ruling, but do not address the matter of the time period for producing the ruling itself.

The Subcommittee realized that not all questions which the Rules of Professional Conduct will raise are best resolved through a formal process. For that reason, the group strongly urges that LSP's have available a second, informal channel through which they or their attorneys can direct questions to the Board or its staff for discussion and informal, non-binding advice. In addition, the Board might consider holding seminars for the LSP community on the application of the Rules of Professional Conduct.

3.4 Design and Use of LSP's Seal

The Subcommittee considers necessary the use of a seal to identify those documents which are Waste Site Cleanup Activity Opinions issued by an LSP. The Subcommittee noted that this is a common practice in other professions that deal with documents, for example, notary publics and professional engineers.

The proposed regulations (see Section 5.00) require that a Waste Site Cleanup Activity Opinion upon which the LSP uses his or her

seal "provides for the protection of the public health, safety, and welfare, and the environment and complies with the provisions of M.G.L. 21A Sections 19-19J, these regulations, M.G.L. 21E, the MCP, and all other applicable laws, regulations, orders, permits, and approvals." The regulations also require that the seal be used only on Waste Site Cleanup Activity Opinions prepared by the LSP or under his or her supervision.

3.5 Procedure Governing Disciplinary Proceedings

Paralleling the proposed legislation, the Subcommittee's draft regulations propose that the Board have the authority to suspend or revoke licenses, assess civil administrative penalties, issue public or private censure, and take other actions it deems appropriate. The draft regulations also provide the Board with authority to hold informal conferences with the person filing the complaint and/or the LSP who is the subject of the complaint prior to the start of an adjudicatory proceeding. The intent of this provision is to resolve as many complaints as possible in an early and informal manner, thereby reducing the Board's formal disciplinary workload.

The Subcommittee worked to clarify the meanings of the terms "suspension" and "revocation." The Subcommittee views revocation of a license as the appropriate response to the most serious violations of the regulations and views suspension of a license as appropriate in cases of lesser severity. In keeping with those views, the Subcommittee intends suspensions to be of much shorter duration than periods of revocation. The regulations reflect this intent by barring an LSP whose license is revoked from reapplication for five years, but giving the Board authority, on a case-by-case basis, to establish the time period for a suspension. Further, an LSP would need to reapply for a license following license revocation, but not following a suspension.

3.6 Administrative Penalty Regulations

The Administrative Penalty Regulations were drawn from existing DEP regulations governing administrative penalties. Two changes were added: provisions for informal conferences before assessing administrative penalties and a section allowing a course of remedial education in lieu of penalty.

Provisions in the regulations give the Board discretion in setting the dollar amount of penalties. Penalties can range between \$100 and \$1,000 for each offense, with each day of noncompliance constituting a separate offense and subject to a separate penalty.

The Standards of Practice Subcommittee has not discussed this section of the proposed Regulations.

SECTION 4

Proposed Regulations

XXX CMR 1.00: INTRODUCTORY PROVISIONS

(1) Preamble

(a) These regulations are adopted by the Board of Waste Site Cleanup Professionals, pursuant to its authority under M.G.L. c. 21A, §§ 16 and 19-19J, and M.G.L. c.30A, §§ 2 and 3. The purpose of these regulations is to provide for the implementation, administration, and enforcement of M.G.L. c. 21A, §§ 16 and 19-19J, by establishing: (1) requirements which must be met by all individuals to be licensed by the Board as a waste site cleanup professional; (2) procedures for the issuance and renewal of licenses; (3) standards of professional conduct applicable to waste site cleanup professionals; (4) procedures for the Board's issuance of advisory rulings interpreting the standards for professional conduct; and (5) procedures for the Board to take appropriate disciplinary action to enforce M.G.L. c.21A, §§ 19-19J, and these regulations, and orders, licenses, and approvals issued or granted by the Board.

The Board deems these regulations 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, and welfare, and the environment.

(b) These regulations should be read together with M.G.L. c. 21A, §§ 16 and 19-19J. The Board presumes that an individual licensed by the Board has notice of the provisions of M.G.L. c. 21A, §§ 16 and 19-19J, M.G.L. c. 21E, the Massachusetts Contingency Plan, and these regulations, and expects that he or she will practice in accordance with them.

(2) Definitions

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

For purposes of these regulations, words and phrases shall have the meaning ascribed to such words and phrases by M.G.L. c. 21E, §2, and/or the MCP, unless the context clearly indicates otherwise.

For purposes of these regulations, 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.

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

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

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

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

Client means any person, including, but not limited to, a person acting in his capacity as an employer, who is or reasonably believes that he or she might be liable pursuant to M.G.L. c. 21E, §5, or is undertaking or intends to undertake a necessary and appropriate response action pursuant to M.G.L. c. 21E, §4, and has engaged a waste site cleanup professional for the provision of Professional Services with respect to a particular site.

Complaint means a communication filed with the Board which the Board determines to merit further consideration.

Department means the Massachusetts Department of Environmental Protection.

Full-time experience means experience during full-time

employment which extends over an uninterrupted period of three (3) months or more with a minimum of thirty-five (35) hours per week.

Good moral character means such character as will enable an individual to discharge the responsibilities of a waste site cleanup 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 a substantial connection to the professional responsibilities of a waste site cleanup professional.

Imminent hazard means a hazard which poses a significant risk of harm to health, safety, public welfare, or the environment if it were present even for a short period of time.

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 a certificate of registration 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.

Massachusetts Contingency Plan and MCP each mean the regulations published at 310 CMR 40.000.

Misconduct means any act or omission in noncompliance with M.G.L. c. 21A, §§ 19-19J or these regulations.

Noncompliance and Failure to Comply and Violation each mean 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 waste site cleanup professional without being in possession of a valid license;
- (b) engaging in any activity prohibited by, or not in compliance with, any Requirement.
- (c) not fully doing, or not doing in timely fashion, anything required by 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 these regulations.

Notice of Noncompliance means a written notice given to a person by the Board and which says that said person has failed to comply on any specified occasion with any described Requirement(s).

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

Professional Services means the rendering of waste site cleanup activity opinions, and services associated with the rendering of waste site cleanup activity opinions, including the management, supervision or performance of assessments*, containments, or removals, and the periodic observance of containments or removals.

Recognized educational institution means an institution which is accredited by a regional board or association of institutions of higher education approved by the Council on Post-Secondary Education of the United States Department of Education, or which is chartered to grant doctoral degrees by the Commonwealth of Massachusetts. Such charter or accreditation must have been in effect at the time the degree was granted.

Relevant Professional Experience means experience which includes selecting scientific or technical methodologies for conducting assessments, containments or removals at sites; conducting or coordinating other professionals in the conduct of those scientific and technical tasks necessary to complete assessments, containments or removals; and drawing technical conclusions, making recommendations, and rendering opinions based on the results of assessments, containments, or removals. Relevant professional experience does not

*Note: The draft legislation proposed by the Study Committee would allow LSPs to render Waste Site Cleanup Activity Opinions related to assessments if they manage, supervise, or actually perform the assessment. A proposed change to the draft legislation would broaden the field of professional services which could lead to such an Opinion by enabling LSPs to issue such Opinions if they "periodically review and evaluate the performance by others of the assessment." The Advisory Committee did not address that proposed change in the course of its deliberations.

include experience involving only 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.

Rules of Professional Conduct means the regulations set forth at XXX CMR 3.00.

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.

These regulations means the regulations set forth at XXX CMR.

Total Professional Experience means experience applying scientific or engineering methods or calculations in the environmental, scientific, or engineering fields where the resultant conclusions form the basis for reports, studies and other similar documents.

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

(3) Severability

It is hereby declared that the provisions of these regulations are severable and 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.

(4) Scheduling and Conduct of Meetings

(a) Meetings [Reserved].

(b) Decisions by the Board.

(i) Regulations. The affirmative vote of at least six (6) members of the Board shall be required for adoption, amendment or repeal of regulations.

(ii) Disciplinary Proceedings. The affirmative vote

of at least six (6) members of the Board shall be required to take disciplinary action against an applicant or waste site cleanup professional.

(c) Robert's Rules of Order. Unless otherwise specified in these regulations, Robert's Rules of Order will govern the conduct of business at Board meetings.

(d) 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, § 11A 1/2.

(5) Public Records and Personal Data. Documentary information obtained by the Board concerning an applicant or waste site cleanup professional is either a public record, as defined by M.G.L. c. 4, § 7, or personal data, as defined by M.G.L. c. 66A, § 1. The Board will not disclose personal data unless such disclosure is authorized by statute, including, but not limited to, M.G.L. c. 66A, § 2(c).

(6) Submissions to the Board. The Board's official mailing address is: [address]. Each submission to the Board should be delivered to that address either by hand or mail delivery, unless the Board provides otherwise.

(7) Computation of Time. Any period of time prescribed or referred to in these regulations 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 on the end of the next day on which the Board's office is open.

(8) Application, Examination and Renewal Fees. The Board will accept applications for licensing and license renewals only if they are accompanied by the applicable fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 C.M.R. 4.00. Payment shall be made in full by check or money order made payable to the Commonwealth of Massachusetts. The application fee is non-refundable.

(9) Issuance of Notices. Each notice given by the Board to a person pursuant to M.G.L. c. 21A, §§ 16 and/or 19-19J, and/or these regulations shall be deemed to be issued by the Board as follows:

(a) if served in hand, the notice shall be deemed to be issued on the date when delivered:

(i) personally to the person, or

(ii) at the person's last known home or business address;

(b) if given by mail (either regular mail or certified mail, return receipt requested) the notice shall be deemed to be issued when postmarked by the U.S. Postal Service.

(10) Receipt of Notices. Each notice given by the Board to a person pursuant to M.G.L. c. 21A, §§ 16 and/or 19-19J, and/or these regulations shall be deemed to be received by said person as follows:

(a) if served in hand, the notice shall be deemed to be received when delivered:

(i) personally to the person, or

(ii) at the person's last known home or business address;

(b) if given by certified mail, return receipt requested, the notice shall be deemed to be received either:

(i) when signed for by:

a. the person, or

b. the person's employee or agent; or

(ii) when returned by the U.S. Postal Service to the Board as unclaimed, 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.

(c) 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.

XXX CMR 2.00: LICENSING OF WASTE SITE CLEANUP PROFESSIONALS

(1) Licensing as Waste Site Cleanup Professional. No person shall be licensed as a waste site cleanup professional unless he or she meets the requirements for education and experience set forth in XXX CMR 2.00(3), achieves a passing score on an examination conducted by the Board in accordance with XXX CMR 2.00(4), and is found by the Board to be of good moral character.

(2) Application for Examination.

(a) Filing Procedure. An individual desiring to be licensed as a waste site cleanup professional shall fully complete a current application form approved by the Board

and file such completed form, together with the application fee, with the Board at least ninety (90) days prior to the date of the next scheduled examination. Applications filed after the deadline established for filing will be reviewed by the Board for the examination that follows the next scheduled examination. Incomplete applications, and applications which are either not legible or not accompanied by the requisite fee, will be returned to the applicant. The application form may require the applicant to submit, or cause to be submitted, references and information related to the applicant's moral character, employment history, education, and experience, and an identifying photograph and any other information deemed appropriate by the Board.

(b) Documentary Evidence. The applicant shall submit certified copies of official transcripts to verify that he or she meets the required educational qualifications. The Board, at its discretion, may require the applicant to furnish additional documentation pertaining to his or her application.

(c) Review of Applications. The Board will review applications and supporting evidence to determine the eligibility of an applicant for examination. Each applicant deemed eligible for examination by the Board will be notified of the location where the examination will be held, the materials he or she is permitted to bring to the examination and other necessary information. Each applicant found ineligible for examination by the Board will be sent a written explanation of the reasons the Board has found the applicant ineligible no less than thirty (30) days prior to the scheduled examination date. Applicants deemed ineligible for examination may reapply for examination in accordance with the procedures set forth in XXX CMR 2.00(2).

(d) Interviews. Each applicant shall have the burden of demonstrating to the Board's satisfaction that he or she meets the requirements for certification. The Board, in its discretion, may require an applicant to appear for a personal interview for the purpose of answering questions pertaining to an application.

If an applicant twice fails to appear for a personal interview scheduled with the Board, the applicant shall be deemed ineligible to sit for the next scheduled examination, unless the Board finds such failure to appear was due to circumstances beyond the applicant's reasonable control.

(3) Educational and Experience Qualifications for Admission to Examination.

(a) Minimum Requirements. Applicants for licensing shall

meet the requirements of one of the following tracks by the deadline established by the Board for filing an application to be eligible for the next examination:

(i) Standard Track. Applicant has earned a baccalaureate, masters or doctorate degree from a recognized educational institution in one of the curricula listed in Appendix A, or in a curriculum found to be equivalent by the board, and has eight (8) years of total professional experience, five (5) years of which are relevant professional experience.

(ii) Alternate Track. Applicant has earned a high school diploma, or the equivalent, and the equivalent of a minimum of one (1) academic year of post-high school course work from a recognized educational institution in environmental or related sciences, and has fourteen (14) years of total professional experience, seven (7) years of which are relevant professional experience.

(b) Experience Evaluation. Qualifying total professional experience and relevant professional experience must be work of a professional grade and character that indicates the applicant is competent to render waste site cleanup activity opinions. The Board will consider the following criteria in evaluating an applicant's experience: length of service, the nature of the work performed (including, but not limited to, whether such experience includes work at disposal sites where subsurface investigations have occurred), the professional level of that work, the degree of responsibility carried by the applicant, the applicable skills and knowledge, the types of judgments exercised, and any other factors the Board deems relevant.

Acceptable experience refers only to full-time experience or its equivalent, such as part-time experience, acceptable to the Board. Work performed during a period of full-time study at an educational institution is considered part of the educational program and is not acceptable professional experience.

Work periods of up to three (3) months during, or incidental to, undergraduate education are considered part of the educational program and are not acceptable as professional experience. However, the Board may accept work performed during such periods as total professional experience if the applicant did not receive college credits for that work.

(c) Credits. Applicants who have earned degrees from recognized educational institutions in addition to those required to meet the minimum educational requirements set

forth in XXX CMR 2.00(3) may request that the Board credit some or all of that additional education toward the requirements for total professional experience in accordance with the following:

(i) in the case of an applicant seeking a license via the Standard Track, one (1) year credit for each master's degree, and two (2) years credit for a doctorate degree, if the degrees are from a recognized educational institution in one of the curricula listed in Appendix A,

(ii) in the case of an applicant seeking a license via the Alternate Track, one (1) year credit for each associate's degree, and two (2) years credit for a baccalaureate or higher degree.

The maximum credit for total professional experience that the Board will grant to an applicant for such additional education is two (2) years.

Applicants who have experience teaching environmental or related sciences at a recognized educational institution may request that the Board credit some or all of that experience toward the requirements for total professional experience. The Board, in making its determination, will consider the length of service, the nature of the work performed, the professional level of that work, the degree of responsibility carried by the applicant, the applicable skills and knowledge, the types of judgments exercised and any other factors the Board deems appropriate.

The Board, in its discretion, may credit none, some, or all of an applicant's additional education or teaching experience toward the requirements for total professional experience or relevant professional experience.

(4) Examination.

(a) Scheduling. [Reserved]

(b) Examination Format/Content. [Reserved]

(c) Examination Fee. [Reserved]

(d) Examination Results. [Reserved]

(e) Passing Score. [Reserved]

(f) Reapplication for Examination. Applicants who fail to achieve a passing score on the examination may reapply for examination in accordance with the procedures set forth in

XXX CMR 2.00(2).

(5) Temporary Licensing

(a) Notwithstanding any requirement of these regulations to the contrary, the Board may issue a temporary license to applicants whom the Board deem eligible for examination prior to the date on which the Board formally adopts its first examination.

(b) Applicants issued a temporary license are eligible for the first scheduled examination. If an applicant who has been issued a temporary license fails to appear for the first examination scheduled for the applicant, or fails to receive a passing score on that examination, then the applicant's temporary license shall:

(i) in the case of failure to appear for examination, expire on the date of the next scheduled Board meeting; or

(ii) in the case of failure to receive a passing score, expire on the date the Board's Notice of Action is received by the applicant.

(c) Notwithstanding XXX CMR 2.05(b), an applicant who has been issued a temporary license whose failure to appear for examination was caused by circumstances beyond his or her reasonable control, may petition the Board to have his or her temporary license reissued pending the next scheduled examination. The Board, in its discretion, may reissue the applicant's temporary license pending the next scheduled examination. If the applicant fails to appear for the next scheduled examination, then the applicant's temporary license shall expire effective on the date of that examination. If the applicant fails to receive a passing score on the next examination, then his or her temporary license shall expire on the date the Board's Notice of Action is received by the applicant.

(d) Notwithstanding XXX CMR 2.00(8), the Board will not renew a temporary license issued pursuant to XXX CMR 2.00(5).

(e) Notwithstanding XXX CMR 2.00(4)(f), the Board will deem an applicant who has been issued a temporary license and fails to receive a passing score on either the first examination or a later examination, if his or her license has been reissued pursuant to XXX CMR 2.00(5)(c), whichever is applicable, eligible to sit for the next scheduled examination, provided the applicant submits an application for re-examination and pays the examination fee in full

prior to the date of the next scheduled examination.

- (6) Board Procedure. Each application will be considered separately by the Board. At any stage during the review of an application, the Board may require an applicant to provide additional information pertaining to his or her application.

- (7) License Denial.

The Board, after an adjudicatory hearing, will deny a license to an applicant who fails to meet any of the requirements for licensing set forth in these regulations. The Board will inform the applicant in writing of the reason(s) why he or she was denied a license. An individual denied a license may reapply for licensing in accordance with the procedures set forth in XXX CMR 2.00(2).

- (8) License Renewal.

(a) A waste site cleanup professional must renew his or her license every three years to maintain his or her license. Each license issued by the Board shall expire on the date stated on his or her license unless renewed by the Board.

(b) To renew a license, a waste site cleanup professional shall: (1) submit for approval to the Board a completed renewal application form and the proper renewal fee prior to the date of expiration of his or her license; and (2) demonstrate to the Board's satisfaction that he or she has fulfilled the continuing education requirements set forth in XXX CMR 2.00(11) or obtained a waiver of those requirements in accordance with XXX CMR 2.00(12).

(c) If a waste site cleanup professional fails to renew his or her license in accordance with XXX CMR 2.00(8)(b), then his or her license shall lapse on the date of expiration of his or her license and remain so until his or her license is renewed. A person who fails to renew his or her license within one (1) year of the date of expiration of his or her license shall reapply for licensing in accordance with the procedures set forth in XXX CMR 2.00(2). A person whose license has lapsed and not been renewed shall not be, act as, advertise as, or hold himself or herself out to be, or represent himself or herself as being, a waste site cleanup professional.

(d) Notwithstanding XXX CMR 2.00(8)(c), a waste site cleanup professional who in good faith believes he or she has submitted a completed renewal application to the Board, paid the proper renewal fee and fulfilled the continuing education requirements prior to the date of expiration of

his or her license may continue to render waste site cleanup activity opinions until the date the Board's Notice of Action is received by him or her informing him or her that his or her request for renewal does not conform with the requirements set forth in XXX CMR 2.00(8)(b) or, if a waste site cleanup professional has a right to, and requests an adjudicatory hearing, until the date the Board issues a final decision pursuant to that request.

(9) Right to Adjudicatory Hearing. An applicant deemed ineligible for examination or denied a license following examination may request an adjudicatory hearing. Each such request shall be filed with the Board in accordance with the Standard Adjudicatory Rules of Practice and Procedure within twenty-one (21) days from the date that the Board's Notice of Action is sent to the applicant.

(10) Waiver of Right to Adjudicatory Hearing. An applicant will be deemed to have waived his or her right to an adjudicatory hearing unless the Board receives his or her written request for an adjudicatory hearing by the deadline set forth in XXX CMR 2.00(9), and the request is otherwise in full compliance with the applicable provisions of the Standard Adjudicatory Rules of Practice and Procedure.

(11) Continuing Education Requirements.

(a) Basic Requirements. Every three years following issuance of his or her license, each waste site cleanup professional shall demonstrate to the Board's satisfaction that he or she has completed a minimum of forty-eight (48) hours of acceptable continuing education. No person may apply continuing education completed during one three year period toward another period.

(b) Acceptable Programs. Continuing education refers to Board-approved programs of learning designed to further the professional competence of waste site cleanup professionals, such as:

(i) courses and seminars presented by national or state associations devoted to advancing their members' knowledge of waste site cleanup activities;

(ii) university or college courses;

(iii) seminars presented by the Department or the United States Environmental Protection Agency;

(iv) other educational programs approved by the Board.

(c) Other Requirements. To be considered by the Board, a

continuing education program must:

- (i) maintain a record of attendance;
- (ii) have classroom or field hours only;
- (iii) be at least one (1) hour in length;
- (iv) be conducted by a knowledgeable and experienced instructor; and
- (v) present a written outline or syllabus.

(12) Waiver of Continuing Education Requirements. The Board may waive or modify the continuing education requirements for a waste site cleanup professional if he or she is able to demonstrate to the Board's satisfaction that he or she is unable to complete the minimum requirements due to:

- (a) health reasons, as certified by a medical doctor; or
- (b) active service in the Armed Forces of the United States.

XXX CMR 3.00: RULES OF PROFESSIONAL CONDUCT

(1) Professional Competency.

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

(b) A waste site cleanup professional shall render a waste site cleanup activity opinion only when he or she, together with those whom the waste site cleanup professional may supervise, or may engage for specialized undertakings, is qualified by education, training and experience in the specific areas involved, and either, in the case of a waste site cleanup activity opinion related to an assessment, has managed, supervised or actually performed such action or, in the case of a waste site cleanup activity opinion related to a containment or removal action, has managed, supervised, actually performed, or periodically observed the performance by others of such action, to opine whether the completed work complies with M.G.L. c. 21E and the MCP.

(c) A waste site cleanup professional may render an Opinion which relies in part upon the advice of one or more

professionals in fields outside of his or her specific field or fields of professional practice, provided he or she engages professionals who are qualified by education, training and experience to perform those aspects of the services outside of his or her specific fields of practice.

(2) Professional Responsibility.

(a) In providing professional services, a waste site cleanup professional shall hold paramount at all times the protection of the public safety, health and welfare, and the environment.

(b) If a waste site cleanup professional, acting in accordance with XXX CMR 3.00(1)(a), identifies an imminent hazard at a particular site at which he or she is providing Professional Services, he or she shall: (1) immediately advise his or her client of the need to notify the Department of the imminent hazard; and (2) notify the Department of the imminent hazard no later than twenty-four (24) hours after identifying such, unless the client has provided such notice.

(c) In the event a waste site cleanup professional knows or has reason to know of an action taken or a decision made by his or her client with respect to a particular aspect of the waste site cleanup professional's Professional Services that significantly deviates from any scope of work, plan, or report developed to meet the requirements of M.G.L. 21E, the MCP, or an order of the Department, then the waste site cleanup professional shall promptly notify his or her client in writing of such.

(d) In providing Professional Services, a waste site cleanup professional shall:

(i) exercise independent professional judgment;

(ii) follow the standards and procedures set forth in applicable provisions of M.G.L. c. 21E, and the MCP, and the Department's policies;

(iii) make a good faith and reasonable effort to identify and obtain the relevant and material data, reports and other information evidencing conditions at a site that his or her client possesses or that is otherwise readily available, and identify and obtain such additional data and other information as he or she deems necessary to discharge his or her professional obligations under M.G.L. c. 21A, §§ 19-19J, and these

regulations; and

(iv) with regard to the rendering of waste site cleanup activity opinions, disclose and explain the material facts, data, other information, and qualifications and limitations known by him or her which may tend to support or lead to a waste site cleanup activity opinion contrary to, or significantly different from, the one expressed.

(e) If subsequent to the date a waste site cleanup professional renders a waste site cleanup activity opinion, he or she 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 waste site cleanup professional shall promptly notify his or her client in writing of such.

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

(g) A waste site cleanup professional shall not allow the use of his or her name by, or associate in a business venture with, any person or firm which he or she knows or should know is engaging in fraudulent or dishonest business or professional practices relating to the professional responsibilities of a waste site cleanup professional.

(h) Applicants and waste site cleanup professionals shall cooperate fully in the conduct of investigations by the Board by promptly furnishing, in response to orders or subpoenas issued by the Board, such information as the Board, or persons duly authorized by the Board, deems necessary to perform its duties under M.G.L. c. 21A, §§ 19-19J, and these regulations.

(i) A waste site cleanup professional possessing knowledge of conduct of another waste site cleanup professional he or she believes clearly to be in violation of the Rules of Professional Conduct shall promptly report such knowledge to the Board.

(3) Conflict of Interest.

(a) A waste site cleanup professional shall not accept compensation, financial or otherwise, for his or her 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 him or her with regard to that site.

(b) In the event a waste site cleanup 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 his or her judgment in connection with his or her performance of Professional Services pertaining to any site, the waste site cleanup professional shall fully disclose in writing to his or her client the nature of the business association, financial interest or circumstance.

(i) If the client or employer objects to such business association, financial interest or circumstance, the waste site cleanup professional shall offer to terminate, at his or her discretion, either the business association, financial interest or circumstance, or his or her engagement with regard to the site or sites.

(ii) If a waste site cleanup professional believes that his or her business association, financial interest or circumstance renders him or her incapable of discharging his or her professional obligations under these regulations in connection with his or her performance of Professional Services pertaining to a site, the waste site cleanup professional shall terminate his or her engagement with regard to that site.

(c) A waste site cleanup 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) Contingent Fees.

A waste site cleanup professional shall not offer or render Professional Services under an arrangement whereby no fee will be charged if a specified finding or result is attained, or where the payment of his or her fee in whole or in part, or the amount of the fee, is otherwise dependent upon a specified finding or result of such services.

(5) Compliance with Laws.

(a) In providing Professional Services, a waste site cleanup professional shall not knowingly violate any federal or state criminal law.

(b) After an adjudicatory hearing, the Board may suspend or revoke a waste site cleanup professional's license if it finds that any board of registration of examination in the Division of Registration of the Department of Civil Service has suspended, revoked, or canceled any certificate, registration, license, or authority issued by it to him or her and the actions or omissions which caused such board to take such action indicate that he or she is not of good moral character or otherwise incapable of discharging the professional obligations of a waste site cleanup professional.

(c) In the event there arises a conflict between the obligations of a waste site cleanup professional under (i) a provision of the Rules of Professional Conduct, M.G.L. c. 21E, the MCP or any other body of law governing the provision of services by waste site cleanup professionals exclusively, and (ii) a provision of any other code, regulation, or law of a profession, other than the waste site cleanup profession, to which a waste site cleanup professional is also subject, the more specific provision will apply.

XXX CMR 4.00: ADVISORY RULINGS

(1) General.

(a) A waste site cleanup 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 Practice.

(b) An advisory ruling rendered by the Board, until and unless amended or revoked, shall be a defense in a criminal action brought under M.G.L. c. 21A, §§ 19-19J, and shall be binding on the Board in any subsequent proceedings concerning the individual who requested the ruling and acted in good faith in reliance thereon, unless material facts were omitted or misstated in the request for an advisory ruling.

(c) Advisory rulings will be issued at the Board's discretion and only upon written request. The Board may decline to issue an advisory ruling for any reason the Board deems proper.

(2) Submission.

(a) Requests for advisory rulings shall be submitted to the Board in writing.

(b) Each request for an advisory ruling shall be submitted to the Board, together with ten (10) copies thereof, by either mail or hand delivery during normal working hours.

(c) The original request for an advisory ruling shall be signed and dated by the waste site cleanup professional submitting the request or by his or her attorney. This signature constitutes a certification by the signatory that he or she has read the request, knows the content thereof, and that the statements contained therein are true and correct to the best of his or her knowledge. If the request is submitted by a waste site cleanup professional's attorney, then the request shall state that he or she has been authorized by his or her client to submit the request.

(d) Each request for an advisory ruling shall include the name, address, license number and telephone number of the waste site cleanup professional seeking the ruling and, if the request is submitted by his or her attorney, the name, address and telephone number of his or her attorney, and state clearly and concisely the substance or nature of the request, including all relevant and material facts pertinent to the request. The request may be accompanied by supporting data, views or arguments.

(e) The Board may request additional written information as necessary to complete a factual background for its ruling.

(3) Disposition.

In the event the Board renders an advisory ruling, a copy of the Board's ruling will be sent to the person requesting the ruling.

(4) Availability to Public.

(a) All advisory rulings issued by the Board are public documents and will be 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.

(b) 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.

XXX CMR 5.00: DESIGN AND USE OF WASTE SITE CLEANUP

PROFESSIONAL'S SEAL

(1) For the purpose of certifying waste site cleanup activity opinions, each waste site cleanup 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 facsimile below, except for insertion of his or her own name and license number.

(2) The waste site cleanup 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.

(3) A waste site cleanup 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, §§ 19-19J, these regulations, M.G.L. c. 21E, the MCP, and all other laws, regulations, orders, permits, and approvals applicable to such response action or response actions. A waste site cleanup professional shall not allow or suffer his or her official seal to be affixed to any waste site cleanup activity opinion not prepared by him or her or under his or her personal supervision.

(4) A waste site cleanup professional, upon receipt of his or her seal, shall stamp or emboss it upon two (2) sheets of his or her letterhead, and send the impression to the Board as evidence that he or she has complied with the requirements for procurement of a seal.

XXX CMR 6.00: PROCEDURE GOVERNING DISCIPLINARY PROCEEDINGS

(1) General Provisions. In response to a complaint and after an adjudicatory hearing, the Board may:

(a) suspend or revoke any license issued by it for cause, including, but not limited to, fraud or misrepresentation in procuring a license or its renewal, felonious acts and acts involving dishonesty, fraud, or deceit which have a substantial connection to the professional responsibilities of a waste site cleanup professional, and noncompliance with any provision of M.G.L. c. 21A, §§ 19-19J, or any provision of these regulations;

(b) assess a civil administrative penalty on any person who is in noncompliance with any provision of any regulation, order, or license issued or adopted by the Board, or with any provision of M.G.L. c. 21A, §§ 19-19J, subject to the requirements of XXX CMR 7.00;

(c) issue a public or private censure to a waste site

cleanup professional for cause; and

(d) take any other action the Board deems appropriate.

Any person whose license is suspended or revoked shall be liable also to such other punishment as may be provided by law.

(2) Initiation. Any person or any member of the Board may file a complaint with the Board which charges a waste site cleanup professional with misconduct. A complaint may be filed in any form. The Board, in its discretion, may investigate anonymous complaints.

(3) Preliminary Investigation. The Board may conduct or arrange for the conduct of a preliminary investigation to determine the truth and validity of the allegations set forth in a complaint.

(4) Informal Conferences. To facilitate disposition of a complaint, the Board may request the person filing the complaint and/or the waste site cleanup professional who is the subject of the complaint to attend an informal conference at any time prior to the commencement of an adjudicatory proceeding. The Board will give timely notice of each informal conference scheduled to the person filing the complaint and/or the waste site cleanup professional who is the subject of the complaint. Such notice will include either a reference to the complaint or a statement of the nature of the issues to be discussed.

(5) Disposition by the Board. If the Board determines that it has sufficient grounds to initiate disciplinary action, the Board may take such action as it deems a complaint warrants, including, but not limited to, issuing an order, commencing an adjudicatory proceeding, or disposing of the complaint at an informal conference.

(6) Docket. If the Board determines that sufficient grounds exist to initiate disciplinary action, the Board will assign a docket number to the complaint. All papers subsequently filed with the Board which relate to a particular complaint should bear the same docket number as that assigned to the complaint.

(7) Suspension Prior to Hearing. In the event that the Board finds that an imminent threat to public health or safety or to the environment could result during the pendency of an adjudicatory hearing, the Board may issue an order suspending or revoking a waste site cleanup professional's license that is effective and enforceable immediately upon issuance, and may remain so notwithstanding and until the conclusion of the adjudicatory proceeding, unless the Board orders otherwise during the course of the adjudicatory proceeding. The Board will provide a hearing on the necessity for the summary action within seven (7) days of the date on which the Board issues such an

order.

(8) Board Action Without Hearing: Notwithstanding any provision of these regulations to the contrary, the Board may revoke, suspend or refuse to renew a license without affording an opportunity for an adjudicatory hearing if the revocation, suspension, or refusal to renew is based solely upon failure of the licensee to file timely applications or to pay lawfully prescribed fees, provided the Board gives notice of its intent to take such action to the licensee prior to taking such action.

(9) Reinstatement.

(a) Any person whose license is revoked may be barred by the Board from applying for reissuance of his or her license for a period of not more than five (5) years. The term during which reissuance is barred will be established by the Board as part of its decision in the revocation proceeding.

(b) Any person whose license is suspended may be barred by the Board from applying for reinstatement or renewal of his or his license until the suspension period established by the Board as part of its decision in the suspension proceeding has run.

XXX CMR 7.00: ADMINISTRATIVE PENALTY REGULATIONS

(1) Preconditions for Assessment of a Civil Administrative Penalty. A Penalty may be assessed only for a failure to comply that:

(a) meets the criteria set forth in XXX CMR 7.00(2), and

(b) was any of the following:

(i) the subject of a previous Notice of Noncompliance, as set forth in XXX CMR 7.00(3);

(ii) part of a pattern of noncompliance, as set forth in XXX CMR 7.00(4);

(iii) willful and not the result of error, as set forth in XXX CMR 7.00(5); or

(iv) a failure to comply that resulted in significant impact on public health, safety, or welfare, or the environment, as set forth in XXX CMR 7.00(6).

(2) Noncompliance with a Law, Regulation, Order, or License. A Penalty may be assessed only for a failure to comply that at the time it occurred constituted noncompliance with a Requirement:

- (a) which was then in effect;
- (b) to which that person was then subject; and
- (c) to which these regulations apply.

(3) Notice of Noncompliance.

(a) Criteria for Determining Whether Prior Issuance of a Notice of Noncompliance Is Required for Assessment of a Civil Administrative Penalty. A Penalty may be assessed only if either:

(i) a Notice of Noncompliance has been given to that person as set forth in XXX CMR 7.00(3); or

(ii) a Notice of Noncompliance has not been given to that person but the failure to comply was as set forth in XXX CMR 7.00(1)(b)(ii), (iii), or (iv).

(b) Content of a Notice of Noncompliance. A Notice of Noncompliance shall:

(i) describe one or more Requirement(s) in effect when the Notice of Noncompliance was given, and for each such Requirement, the occasion(s) that the Board asserts said person was not in compliance therewith; and

(ii) specify a reasonable deadline or deadlines by which the person shall come into compliance with the Requirement(s) described in the Notice of Noncompliance.

(c) Criteria to be Considered in Determining Whether a Civil Administrative Penalty May Be Assessed After a Notice of Noncompliance Has Been Given. The Board may assess a Penalty on any person when the criteria set forth in XXX CMR 7.00(2) and the following criteria are met:

(i) the Board has previously given that person a Notice of Noncompliance;

(ii) that person did not:

1. come into compliance, within the deadline specified in the Notice of Noncompliance, with the Requirement(s) described in the Notice of Noncompliance, or

2. submit, within the deadline specified in the Notice of Noncompliance, a written proposal setting forth how and when that person proposed to

come into compliance with the Requirement(s) described in the Notice of Noncompliance; and

(iii) noncompliance with the Requirement(s) described in the Notice of Noncompliance continued or was repeated on or after the deadline(s) specified in the Notice of Noncompliance.

(d) Additional Criteria to be Considered in Determining Whether a Civil Administrative Penalty May Be Assessed After a Notice of Noncompliance Has Been Given. In determining whether to assess a Penalty after a Notice of Noncompliance has been given, the Board may consider, but shall not be limited to considering, the following criteria:

(i) whether or not five (5) years or less have elapsed between the date of the most recent notice of noncompliance with the Requirement(s) for which a Penalty would be assessed and the date of the Penalty Assessment Notice;

(ii) what the person did to prevent the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice of Noncompliance(s);

(iii) what the person did, and how quickly the person acted, to come into compliance after the occurrence of the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance;

(iv) what the person did, and how quickly the person acted, to remedy and mitigate whatever harm might have been done as a result of the occurrence of the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance.

(v) the actual and potential damages suffered, and actual or potential costs incurred, by the Commonwealth, or by any other person, as a result of the occurrence of the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance.

(4) Pattern of Noncompliance.

(a) Criteria to be Considered in Determining Whether Instances of Noncompliance Constitute a Pattern of Noncompliance for which a Civil Administrative Penalty May

Be Assessed. A Penalty may be assessed without the prior issuance of a Notice of Noncompliance if the criteria set forth in XXX CMR 7.00(2) are met and the violation thus being penalized is not an isolated instance but part of a pattern of noncompliance. In determining whether the violation to be thus penalized is not an isolated instance but part of a pattern of noncompliance, the Board shall consider, but shall not be limited to considering, the following criteria:

(i) whether the person who would be assessed the Penalty was given by the Board, on at least one (1) previous occasion during the five-year period prior to the date of the Penalty Assessment Notice, a Notice of Noncompliance asserting violation(s) of the Same Requirement(s) as the Requirement(s) for violation of which the person would be assessed the Penalty;

(b) whether the person who would be assessed the Penalty was given by the Board, on at least two (2) previous occasions during the four-year period prior to the date of the Penalty Assessment Notice, a Notice of Noncompliance asserting violation(s) of Requirement(s) different from the Requirement(s) for violation of which the person would be assessed the Penalty;

(c) whether the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance occurred at the same facility;

(d) whether the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance, considered together, indicate:

1. a potential threat to public health, safety, or welfare, or the environment;

2. an interference with the Board's ability to efficiently and effectively administer its programs; or

3. an interference with the Board's ability to efficiently and effectively enforce any Requirement to which these regulations apply.

(b) Additional Criteria to be Considered in Determining Whether Instances of Noncompliance Constitute a Pattern of Noncompliance for which a Civil Administrative Penalty May Be Assessed. In determining whether the violation to be penalized is not an isolated instance but part of a pattern

of noncompliance, the Board may consider, but shall not be limited to considering, the following criteria:

(i) what the person did to prevent the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance;

(ii) what the person did, and how quickly the person acted, to come into compliance after the occurrence of the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance;

(iii) what the person did, and how quickly the person acted, to remedy and mitigate whatever harm might have been done as a result of the occurrence of the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance; and

(iv) the actual and potential damages suffered, and actual or potential costs incurred, by the Commonwealth, or by any other person, as a result of the occurrence of the violation for which the person would be assessed the Penalty and the other violation(s) described in the prior Notice(s) of Noncompliance.

(5) Willful Noncompliance. A Penalty may be assessed without the prior issuance of a Notice of Noncompliance if the criteria set forth in XXX CMR 7.00(2) are met and the violation thus being penalized was willful and not the result of error.

(6) Noncompliance Resulting in Significant Impact on Public Health, Safety, or Welfare, or the Environment. A Penalty may be assessed without the prior issuance of a Notice of Noncompliance if the criteria set forth in XXX CMR 7.00(2) are met and the violation thus being penalized resulted in significant impact on public health, safety, or welfare, or the environment.

(7) Determining the Money Amount of a Civil Administrative Penalty. The money amount of each Penalty assessed shall be determined in accordance with the criteria set forth in XXX CMR 7.00(7) through 7.00(11).

(8) Minimum Permissible Penalty. No Penalty assessed shall be less than one hundred dollars (\$100.00).

(9) Maximum Permissible Penalty. Subject to the provisions of XXX CMR 7.00(10) and 7.00(11), for each noncompliance except Unauthorized Practice, the full amount of the Penalty assessed

shall not exceed one thousand dollars (\$1,000). The maximum penalty for Unauthorized Practice shall not exceed one thousand dollars (\$1,000) for each offense.

(10) Penalizing Continued and/or Repeated Noncompliance. Subject to the provisions of XXX CMR 7.00(11), each day during which each noncompliance occurs or continues shall constitute a separate offense and shall be subject to a separate Penalty.

(11) Calculating the Duration of Continued and/or Repeated Noncompliance. The number of days which shall constitute a separate offense and shall be subject to a separate Penalty shall be calculated as set forth below. If noncompliance occurs or continues during any part of a day, that day shall be included in the calculation.

(a) When a Notice of Noncompliance Has Previously Been Given. If the Penalty would be assessed in accordance with XXX CMR 7.00(3), the number of days shall be the sum of:

(i) each day during which noncompliance occurred or continued,

1. commencing with the day on which the Notice of Noncompliance was received by the person on whom the Penalty would be assessed [see XXX CMR 1.00(10)], and

2. ending on the date of the Penalty Assessment Notice, and

(ii) each day calculated pursuant to XXX CMR 7.00(11)(c).

(b) When a Notice of Noncompliance Has Not Previously Been Given. If the Penalty would be assessed in accordance with XXX CMR 7.00(4), (5), or (6), the number of days shall be the sum of:

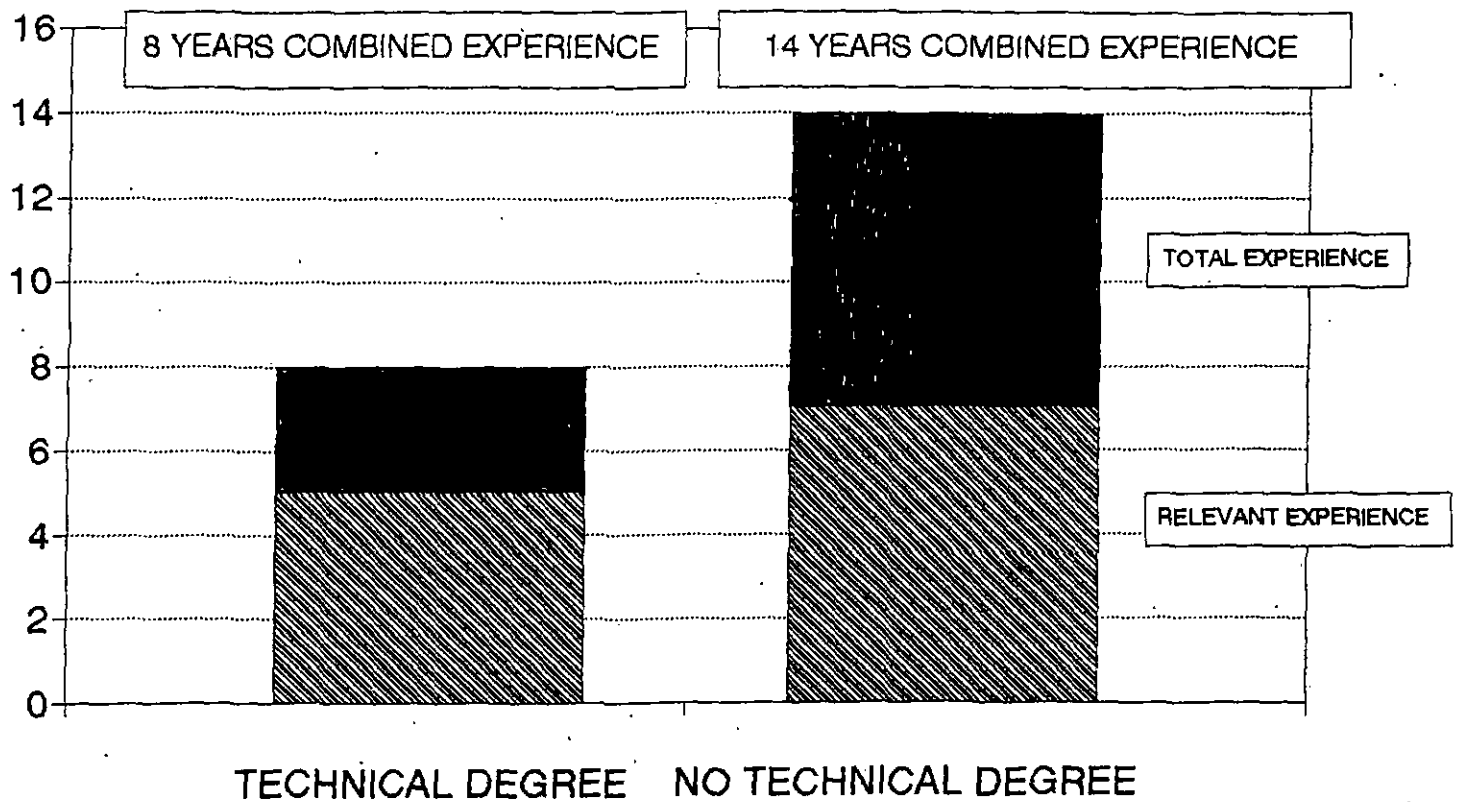
(i) one day, and

(ii) each day calculated pursuant to XXX CMR 7.00(11)(c).

(c) After a Penalty Assessment Notice Has Been Issued. If, after receiving a Penalty Assessment Notice, the person who would be assessed the Penalty does not come into compliance with any Requirement(s) described in said Penalty Assessment Notice, and does not make reasonable efforts to come into compliance with said Requirement(s), the Board may, subject to the provisions of XXX CMR 7.00(19), assess a Penalty for each day during which such noncompliance occurs or

TWO WAYS TO BECOME AN LSP

STANDARD TRACK ALTERNATE TRACK



continues,

(i) commencing with the day on which the Penalty Assessment Notice was issued by the Board [see XXX CMR 1.00(9)], and

(ii) ending on the earliest of the following days:

1. the day when the Person comes into compliance with said Requirement(s), or

2. the day when the adjudicatory proceeding on the Penalty Assessment Notice is ended [see XXX CMR 5.19(d)] after the filing of the statement described in XXX CMR 7.00(18).

(12) Factors to be Applied in Determining the Money Amount of a Civil Administrative Penalty. In determining the amount of each Penalty, the Board shall consider each of the following:

(a) the actual and potential impact on public health, safety, and welfare, and the environment, of the failure(s) to comply that would be penalized;

(b) the actual and potential damages suffered, and actual or potential costs incurred, by the Commonwealth, or by any other person, as a result of the failure(s) to comply that would be penalized;

(c) whether the person who would be assessed the Penalty took steps to prevent the failure(s) to comply that would be penalized;

(d) whether the person who would be assessed the Penalty took steps to promptly come into compliance after the occurrence of the failure(s) to comply that would be penalized;

(e) whether the person who would be assessed the Penalty took steps to remedy and mitigate whatever harm might have been done as a result of the failure(s) to comply that would be penalized;

- (f) whether the person being assessed the Penalty has previously failed to comply with any regulation, order, or license issued or adopted by the Board, or any law which the Board has the authority or responsibility to enforce;
- (g) making compliance less costly than the failure(s) to comply that would be penalized;
- (h) deterring future noncompliance by the person who would be assessed the Penalty;
- (i) deterring future noncompliance by persons other than the person who would be assessed the Penalty;
- (j) the financial condition of the person who would be assessed the Penalty;
- (k) the public interest; and
- (l) any other factor(s) that reasonably may be considered in determining the amount of a Penalty, provided that said factor(s) shall be set forth in the Penalty Assessment Notice.

(13) Procedures for Assessment of a Civil Administrative Penalty. Each Penalty assessed shall be assessed in accordance with the procedures set forth in XXX CMR 7.00(13) through 7.00(20). In every proceeding involving assessment of a Penalty, except a proceeding concerning Unauthorized Practice, the person being assessed the Penalty shall have the right to choose to either pay the full amount of the Penalty in accordance with XXX CMR 7.00(20) or attend and successfully complete a course of remedial education prescribed by the Board within a reasonable deadline specified by the Board.

(a) Waiver of Right to Choose Remedial Education. Whenever the Board seeks to assess a Penalty on any person, such person shall be deemed, effective twenty-one (21) days after the date of issuance of a final decision approved by the Board, to have waived his or her right to choose to attend and successfully complete a course of remedial education prescribed by the Board in lieu of paying the full amount of the Penalty, unless such person files with the Board (i.e. the Board receives) a written statement that states he or she elects to attend the course of remedial education as prescribed, and within the deadline specified, in the Board's final decision.

(14) Notice of Intent to Assess a Civil Administrative Penalty.

(a) Whenever the Board seeks to assess a Penalty, the Board shall issue to the person on whom the Penalty would be

assessed a notice of intent to assess a civil administrative penalty, the content of which shall be as set forth in XXX CMR 7.00(15), and which shall be served as set forth in XXX CMR 7.00(16).

(b) Notwithstanding XXX CMR 7.00(14)(a), prior to issuing a Notice of Intent to Assess a Civil administrative Penalty to the person on whom the penalty would be assessed, the Board will provide such person an opportunity to informally discuss the alleged noncompliance with the Board at an informal conference, except where the noncompliance concerns Unauthorized Practice.

(15) Content of Notice of Intent to Assess a Civil Administrative Penalty. Each Penalty Assessment Notice shall include all of the following:

(a) a concise statement of the alleged act or omission for which such Penalty would be assessed;

(b) each law, regulation, order, or license which has not been complied with as a result of such alleged act or omission;

(c) the money amount which would be assessed as a Penalty for each alleged act or omission for which the Penalty would be assessed, and a concise statement of the factors considered by the Board in determining this amount;

(d) a statement that the person on whom the Penalty would be assessed has a right to an adjudicatory hearing on such assessment;

(e) a statement of the requirements that must be complied with by the person on whom the Penalty would be assessed in order for said person to avoid being deemed to have waived said person's right to an adjudicatory hearing; and

(f) a statement of how and by when the Penalty must be paid if the person on whom the Penalty would be assessed waives said person's right to an adjudicatory hearing.

(16) Service of Notice of Intent to Assess a Civil Administrative Penalty. Each Penalty Assessment Notice shall be served, by one or more of the following methods, on the person on whom the Board seeks to assess the Penalty:

(a) Service in hand at the person's last known address in the Commonwealth or at the last known address of any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service.

(b) Service in hand personally to the person, or to any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service.

(c) By certified mail, return receipt requested, addressed to the person's last known address in the Commonwealth, or to the last known address of any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service.

(17) Right to Adjudicatory Hearing. Subject to the provisions of XXX CMR 7.00(18), whenever the Board seeks to assess a Penalty on any person, such person shall have the right to an adjudicatory hearing.

(18) Waiver of Right to Adjudicatory Hearing. Whenever the Board seeks to assess a Penalty on any person, such person shall be deemed, effective twenty-one (21) days after the date of issuance of the Penalty Assessment Notice [see XXX CMR 1.00(9)], to have waived the right to an adjudicatory hearing unless, within twenty-one (21) days of the date of issuance of the Penalty Assessment Notice, such person files with the Board (i.e. the Board receives) a written statement that does either or both of the following, and does so subject to and in compliance with applicable provisions of the Standard Adjudicatory Rules of Practice and Procedure:

(a) denies the occurrence of the act(s) or omission(s) alleged by the Board in the Penalty Assessment Notice;

(b) asserts that the money amount of the proposed Penalty is excessive.

(19) Conducting the Adjudicatory Hearing.

(a) Every adjudicatory hearing conducted pursuant to the Act and these regulations shall be conducted in accordance with all applicable provisions of M.G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, provided that to the extent such provisions are inconsistent with M.G.L. c. 21A, §§ 16 and/or 19G, and these regulations, the provisions of M.G.L. c. 21A, §§ 16 and/or 19G, and these regulations shall apply.

(b) The Board shall not be required to prove the occurrence of the act(s) or omission(s) alleged by the Board in the Penalty Assessment Notice and not denied in the statement filed pursuant to XXX CMR 7.00(18) (as may be amended in accordance with 801 CMR 1.01(6)(g)).

(c) If, in the statement filed pursuant to XXX CMR 7.00(18), the person who would be assessed the Penalty

denies the occurrence of the act(s) or omission(s) alleged by the Board in the Penalty Assessment Notice, the Board shall, by a preponderance of the evidence, prove the occurrence of the act(s) or omission(s) denied in said statement.

(d) If the person assessed the Penalty files the statement required pursuant to XXX CMR 7.00(18), the subsequent adjudicatory proceeding shall be ended either by:

(i) a written agreement, which shall take effect only upon written approval by the requisite number of Board members, or

(ii) a final decision, which shall take effect only upon written approval by the requisite number of Board members.

(20) Paying a Civil Administrative Penalty.

(a) How Payment Shall Be Made. Each Penalty shall be paid by certified check, cashier's check, or money order payable to the order of the Commonwealth of Massachusetts. No other form of payment shall be accepted.

(b) When Payment Shall Be Made.

(i) Except as provided in XXX CMR 7.00(20)(b)(ii), each Penalty shall be paid in full as follows unless the person on whom the penalty is assessed files with the Board the written statement for which the Board has provided in XXX CMR 7.00(13)(a):

1. If the person assessed the Penalty waives the right to an adjudicatory hearing pursuant to XXX CMR 7.00(18), the Penalty shall be due, and shall be paid in full, when such waiver takes effect (i.e. no later than twenty-one (21) days after the date of issuance of the Penalty Assessment Notice [see XXX CMR 1.00(9)]).

2. If the person assessed the Penalty files the statement required pursuant to XXX CMR 7.00(18), and if the subsequent adjudicatory proceeding is ended by a written agreement pursuant to XXX CMR 7.00(19)(d)(i), the Penalty shall be due, and shall be paid in full, no later than twenty-one (21) days after the date the Board approves said agreement in writing.

3. If the person assessed the Penalty files the statement required pursuant to XXX CMR 7.00(18),

and if the subsequent adjudicatory proceeding is ended by a final decision approved and signed by the Board [see XXX CMR 7.00(19)(d)(ii)], and if a Penalty is assessed pursuant to said final decision, and if a civil action for judicial review is not commenced, pursuant to M.G.L. c. 30A, within thirty (30) days of the date said final decision is approved and signed by the Board, the Penalty shall be due, and shall be paid in full, no later than thirty (30) days after the date the Board approves and signs said final decision.

4. If the person assessed the Penalty files the statement required pursuant to XXX CMR 7.00(18), and if the subsequent adjudicatory proceeding is ended by a final decision approved and signed by the Board [see XXX CMR 7.00(19)(d)(ii)], and if a Penalty is assessed pursuant to said final decision, and if a civil action for judicial review is commenced, pursuant to M.G.L. c. 30A, within thirty (30) days of the date said final decision is approved and signed by the Board, and if the Court upholds the assessment of the Penalty in whole or in part, the Penalty shall be due, and shall be paid in full, no later than twenty-one (21) days after the date of the Court's decision, or by such other deadline as the Court may prescribe.

(ii) The Board may authorize payment of a civil administrative penalty at a time or times later than those prescribed pursuant to XXX CMR 7.00(20)(b)(i). No such authorization shall be valid unless made expressly and in writing. In the absence of any such express written authorization, the provisions of XXX CMR 7.00(20)(b)(i) shall apply. If the Board gives any such express written authorization, the civil administrative penalty shall be paid in full at the time or times specified therein.

(iii) If the person assessed the penalty files the statement for which the Board has provided in XXX CMR 7.00(13)(a) but does not attend and successfully complete the course of remedial education prescribed by the Board by the deadline specified by the Board, that person shall pay the full amount of the Penalty, plus interest calculated from the date such person filed such statement with the Board.

(c) Consequences of Failure to Make Payment When Due. Each person who fails to pay a Penalty in full and on time in

compliance with XXX CMR 7.00(20)(b) shall be liable to the Commonwealth for up to three times the amount of the Penalty, together with costs, plus interest from the time the Penalty became final, and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. This is in addition to any other remedy authorized by any Requirement.

ATTACHMENT A

Membership Lists and Biographies

21E Licensed Site Professional Advisory Committee

Marcia Benes, Executive Director
Massachusetts Association of Health Boards
56 Taunton Street
Plainville, MA 02672 (508) 643-0234

Ms. Benes has worked with local health boards for the past 11 years. She served on the Plainville health board for six years and currently directs the work of the Massachusetts Association of Health Boards. Ms. Benes is also the founder of MassClean, an educational forum for a network of local environmental groups. Ms. Benes is a member of the Study Committee for Waste Site Cleanup Program Improvements and Long Term Funding.

Larry Feldman, Senior Associate
GZA, Inc.
GEO Building
Newton Upper Falls, MA 02158 (617) 969-0050

Mr. Feldman has been with GZA since 1979. He has had extensive experience with hazardous waste site remediation and currently directs GZA's Site/Environmental Services. He has chaired the Sites Subcommittee of the DEP Superfund Advisory Committee. Prior to 1979, Mr. Feldman was a Planner with the MEPA Unit at the Executive Office of Environmental Affairs. Mr. Feldman is a member of the Study Committee for Waste Site Cleanup Program Improvements and Long Term Funding.

David Floreen, Senior Vice President of Government Affairs
Massachusetts Bankers Association
Prudential Tower, Suite 550
Boston, MA 02199 (617) 437-1801

Mr. Floreen is responsible for coordinating government affairs for the Massachusetts Bankers Association at the State House in Boston and directs the Massachusetts Bankers PAC. He also manages the trust division activities for the Association. Prior to joining the Association, Mr. Floreen was Assistant Director of the Rental Housing Association in Boston and served as an assistant to former Governor Francis Sargent and to former House Minority Leader Francis Hatch, Jr. Mr. Floreen is an Associate member of the Study Committee for Waste Site Cleanup Program Improvements and Long Term Funding.

Larry Goldman, President
Goldman Environmental Consultants, Inc.
15 Pacella Park Drive
Randolph, MA 02368-1755 (617) 961-1200

Mr. Goldman has 20 years of experience administering and managing air, water and hazardous waste environmental programs for industry and government. Prior to co-founding GEC, Mr. Goldman served as the Director of Enforcement of EPA Region I. Mr. Goldman is a member of AIM, the Water Pollution Control Association, Air and Waste Management Association, and is the Vice Chair of the Environmental Committee for the Small Business Association of New England.

David Hatem, Attorney
Posternak, Blankstein & Lund
100 Charles River Plaza
Boston, MA 02114 (617) 367-9595

Mr. Hatem is an attorney who represents engineers and serves as counsel to the American Consulting Engineers of New England. He has written several articles and lectures on the subject of Risk Management and Professional Liability for Engineers. Mr. Hatem represents the American Consulting Engineers Council of New England on the Advisory Committee.

Garrett Hollands, Vice President
Fugro-McClelland
6 Maple Street
Northborough, MA 01532 (508) 393-8558

Mr. Hollands is Vice President of Fugro-McClelland (East) and manages the Environmental Sciences and Planning Division. Mr. Hollands has been project manager for over 1,000 wetlands cases throughout New England and other states which has involved close working relationships with private developers and municipal, state, and federal agencies. He is presently Chair of the MA DEP Wetlands Delineation Subcommittee and serves on the Governor's Watershed, Lands Preservation Committee.

Gregg Jordan, President
Hunneman Investment Management
70-80 Lincoln Street
Boston, MA 02111 (617) 426-4260

Mr. Jordan has been President of Hunneman's property management company, and has encountered 21E requirements in financing, sales, and other property-development activities. Last year, Mr. Jordan was President of the Building Operators and Managers Association. This year, he chairs the Government Affairs Committee of the Greater Boston Real Estate Board, and sits on the Realtors' Public Policy Committee. Mr. Jordan is a member of the Study Committee for Waste Site Cleanup Program Improvements and Long Term Funding.

Daniel LaGatta, Ph.D., President
GEI Consultants
1021 Main Street
Winchester, MA 01890 (617) 721-4000

Dr. LaGatta is a founding Principal of GEI Consultants, Inc. and over the past 21 years has accumulated extensive experience in geotechnical and geoenvironmental engineering. He is a Director of the American Consulting Engineers Council of New England and was Chair of the ACEC Ad Hoc Committee on 21E Legislation formed to work with the Massachusetts DEP. Dr. LaGatta represents the ACEC on the Advisory Committee.

Joel Loitherstein, P.E., Vice President
EnviroCorp, Inc.
313 Boston Post Road - West
Marlborough, MA 01752 (508) 460-6100

Mr. Loitherstein has more than fifteen years of experience in the areas of environmental engineering, site assessment and remediation, groundwater flow and plume migration analyses, sewerage system design, hydraulic analyses, and computer modeling. A registered engineer in five states, he chairs ACEC's Membership Committee and Solid and Hazardous Waste Subcommittee and serves as vice-chair of the BSCE's Geotechnical Executive Committee and the Ashland Conservation Commission. Mr. Loitherstein is a representative of ACEC to the Advisory Committee.

William Rizzo, Jr., President
Rizzo Associates, Inc.
235 West Central Street
Natick, MA 01760 (508) 651-3401

Mr. Rizzo founded Rizzo Associates, an environmental engineering consulting firm, in 1983. Prior to starting Rizzo Associates he worked as Assistant Secretary of Transportation for the Commonwealth of Massachusetts and Project Manager at Metcalf & Eddy. He is a member of the Board of Directors of the American Council of Engineering Consultants of New England. Mr. Rizzo is a representative of the ACEC to the Advisory Committee.

Robert Ruddock, Vice President
Associated Industries of Massachusetts
222 Berkeley Street
Boston, MA 02116 (617) 262-1180

Robert Ruddock is Vice President -- Energy & Environment Programs for the Associated Industries of Massachusetts (AIM). He has more than 17 years of experience in public policy issues, and in business and industry government relations. Mr. Ruddock is a member of the Bars of the Massachusetts Supreme Judicial Court and the United States Supreme Court. Mr. Ruddock is a member of the Study Committee for Waste Site Cleanup Program Improvements and Long Term Funding.

Judy Shope, Legislative Director
Environmental Lobby of Massachusetts
3 Joy Street
Boston, MA 02108 (617) 742-2553

Ms. Shope has served as Legislative Director of the Environmental Lobby of Massachusetts for the past eight years. In addition, she is a member of the Study Committee for Waste Site Cleanup Program Improvements and Long Term Funding, Permit Fees Advisory Committee, and the Low-Level Radioactive Waste Management Board.

Interested Parties

Mr. Reginald Achilles
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Mr. Charles Ahern
Mr. Michael R. Ainsworth
Mr. John Ankiewicz
Mr. Robert Atwood
Mr. Eric Axelrod
Mr. Jim Baggio
Mr. Bill Baird
Mr. Stephen Barbanel
Mr. Eric Bazzett
Mr. Mark Begley
Mr. Edmund B. Beyer
Mr. Robert H. Bird
Mr. William Blatchley
Ms. Elaine Bleau-Richards
Ms. Angela Boggs
Mr. Robert J. Bouchard
Mr. Steve Boynton
Mr. David Bramley
Mr. Mark Brazell
Mr. Keith E. Brown
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