



COMMONWEALTH OF MASSACHUSETTS
**Board of Registration
of
Hazardous Waste Site Cleanup Professionals**

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Background and Technical Support Document

Draft Amendments

309 CMR 1.00-9.00

Regulations of the

Board of Registration of Hazardous Waste Site Cleanup Professionals

[INSERT DATE], 2024

For Policy Deliberations Only

REGULATORY AUTHORITY:

M.G.L. c. 21A, § § 16 and 19 through 19J

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.
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I. SUMMARY

The Board of Registration of Hazardous Waste Site Cleanup Professionals (“the Board”) is proposing to amend its regulations at 309 CMR 1.00-9.00. The proposed amendments include: changes to the continuing education credit requirements for Hazardous Waste Site Cleanup Professionals (often referred to as “LSPs”), changes to the requirements for continuing education courses to reflect that many courses are now offered online, amendments to reflect that the Board now accepts electronic submissions and payments, and other technical amendments.

II. BACKGROUND

The Board was established in 1993, pursuant to G.L. c. 21A, §§19 through 19J, to license Hazardous Waste Site Cleanup Professionals (often referred to as “LSPs”) to manage and/or oversee assessment and cleanup work at contaminated sites. Also in 1993, the Massachusetts Department of Environmental Protection (“MassDEP”) implemented the 21E program through a set of regulations known as the Massachusetts Contingency Plan or “MCP.” The MCP lays out the state’s rules for conducting cleanups of contaminated sites and requires people responsible for cleanups to hire an “LSP” to manage and/or oversee the required assessment and cleanup work. Prior to implementation of the LSP licensing program in 1993, those who conducted work at hazardous waste sites had to receive DEP’s approval of each phase of the work or a waiver of the approval requirement. DEP was unable to handle all of these requests, and backlogs developed. By licensing LSPs and allowing them to oversee work at sites, many government-related obstacles to prompt voluntary cleanups were eliminated. LSPs are scientists or engineers experienced in the assessment and cleanup of oil, gasoline, and hazardous material contamination.

The Board, whose members are appointed by the Governor, licenses LSPs to manage cleanups and provide formal, written opinions that cleanup work meets the requirements of the MCP. The Board oversees the licensing of LSPs by establishing application requirements, creates and administers a licensing examination, and sets requirements for LSPs to take continuing education courses in order to renew their licenses every three years. The Board has also established rules of professional conduct LSPs must follow, investigates complaints against LSPs and disciplines LSPs for violations of the Board’s regulations.

III. DESCRIPTION OF PROPOSED AMENDMENTS

1. Reducing the Number of Credits Needed to Renew a License

The Board proposes to amend 309 CMR 3.09(2) to reduce the total number of continuing education credits required for an LSP to renew an LSP license every three years from forty-eight (48) credits to thirty-six (36) credits, and to amend 309 CMR 3.09(3) to reduce the required number of credits an LSP must complete every three years in Board-approved courses offered by MassDEP from twelve (12) to nine (9). The Board is aware that LSPs have found acquiring

forty-eight total hours of required continuing education credits and twelve credits in MassDEP courses every three years to be challenging and believes the proposed thirty-six (36) total and nine (9) MassDEP credits are sufficient to allow LSPs to stay current with technical and regulatory updates relevant to the LSP profession. Reducing the required total number of continuing education credits to thirty-six (36) every three years would also match the number of continuing education credits needed to renew (i.e., effectively 12 credits per year) for both the Connecticut Licensed Environmental Professional Program and the New Jersey Licensed Site Remedial Professional Program, the two state programs similar to the Massachusetts LSP program.

In consideration of the proposed reduction in the overall number of continuing education credits needed to renew, the Board also proposes to amend 309 CMR 3.06(5) to alter the number of continuing education credits needed to apply for a ninety (90)-day extension of the deadline to renew a license from requiring an LSP to have obtained all but twelve (12) or fewer of the required credits to renew to an LSP has obtained all but nine (9) or fewer of the required credits.

Simplifying the Types of Continuing Education Credits Needed to Renew

In addition to reducing the number of continuing education credits needed to renew, the Board proposes to amend 309 CMR 3.09(3) to simplify the types of continuing education credits required. LSPs are currently required to obtain a minimum of eight (8) Regulatory, twelve (12) DEP and the remainder in Technical credits. The Board proposes to require an LSP to obtain a minimum of nine (9) DEP credits and the remainder in Non-DEP courses, eliminating the requirement to obtain Regulatory and Technical credits. Considering the Board proposes to remove the requirement for credits labeled as Regulatory or Technical, the Board proposes to remove the definitions for the terms Regulatory and Technical in 309 CMR 3.09(1) and to amend the definition of the term Continuing Education to clarify that Board-approved courses are those that either enhance an LSP's technical ability or understanding of regulatory requirements. The Board believes these proposed changes will make the LSP renewal process simpler without altering the requirement for LSPs to stay current regarding the technical advancements and regulatory changes that impact their practice.

2. Allowing Continuing Education Credits Earned Outside a Renewal Period to Count Toward Next Renewal In Some Situations

The Board proposes to amend 309 CMR 3.09(2) to allow LSPs to apply some credits earned outside a renewal period toward their next license renewal in some situations including: an LSP may apply up to six (6) continuing education credits earned during the last six months of a license renewal period toward their next license renewal provided those credits were not applied to the LSP's previous renewal; LSPs whose licenses have lapsed because they lacked the required amount of credits to renew may utilize at their next license renewal up to twelve (12) credits earned during the lapse period as long as those credits were not used toward the renewal that ended their lapse period; and LSPs who have qualified for a 90-day extension of the deadline to renew their license may apply any credits earned during the extension period toward their next license renewal as long as those credits were not used toward the renewal for which the LSP received the 90-day extension. The Board also clarifies in the proposed amendments that in no case may credits from a course be split between earlier and later renewal periods. These proposed amendments to allow LSPs in some situations to apply credits earned outside of renewal periods toward their next renewal is in recognition that a number of LSPs have asked over the years for this type of flexibility and because the Board wants to encourage LSPs to take continuing education courses of interest to them regardless of when they are offered.

The Board also proposes to amend 309 CMR 3.09(2) that allows applicants who have been approved to take the LSP examination to utilize credits earned by taking Board-approved courses toward their first license renewal to clarify that the credits must have been earned in the time between the Board approving them to take the examination and the applicant passing it, and to limit the number of credits earned during that period that may be applied toward the applicant's first renewal to twelve (12).

3. Updated Requirements for Online Continuing Education Courses

The Board's proposed amendments include requirements for online courses to reflect that many continuing education courses are now offered online. The proposed amendments include adding definitions to 309 CMR 3.09(1) for two types of online courses: "live webinars" that are defined as courses or conference workshops offered on the internet in real time that include live instruction and "on-demand courses" that are defined as pre-recorded courses or conference workshops offered on the internet that do not include live instruction. The Board proposes amending 309 CMR 3.09(5),(6) and(7) to add the following requirements for live webinars: the organization sponsoring the course will include polling questions at periodic intervals appropriate to the length of the course, with a minimum of two questions for a one-hour course and at least one additional question per hour for classes longer than one hour; and the attendee must answer all questions posed during the time the attendee is in attendance in order to get credit. The Board also proposes amending 309 CMR 3.09(5),(6) and (7) to add the following requirements for on-demand courses: the organization sponsoring the course will include an assessment of learning that the course attendee must pass with a score of at least seventy percent (70%) in order to get credit for the course; the sponsoring organization will allow the attendee to retake the assessment of learning until the attendee achieves a score of at least seventy percent (70%); and an attendee must attend the entirety of the on-demand course to get credit.

The Board proposes to amend 309 CMR 3.09(5) and (6) to add new requirements for course providers including that they will retain the following documentation for a minimum of five years: attendance records, records demonstrating attendees for live webinars completed polling questions, and records demonstrating attendees for on-demand courses passed an assessment of learning with a score of at least seventy percent.

The Board also proposes to add a new regulation at 309 CMR 3.09(11) allowing the Board to conduct audits or request information from any course provider or sponsoring organization and, if the Board determines a course provider or sponsoring organization is not meeting the standards set forth in the Board's regulations, to deny approval of future courses offered by that provider or sponsoring organization.

4. Amendments to Reflect the Board Now Accepts Electronic Submissions and Electronic Payments

Amend 309 CMR 2.06, 2.08, 2.09, 3.04, 3.06(4) and (9), 3.06(2) and 8.18(1) to reflect that applicants are now able to submit applications and register to take the licensing exam electronically and to pay all fees by electronic payment, and licensees are now able to submit all renewal documentation and pay all fees electronically. The amendments to 309 CMR 2.10, 2.11, and 3.04(7) reflect that the Board now issues many notices to applicants and licensees electronically. In addition, the Board proposes to amend 309 CMR 8.14 to clarify that the Board may issue notices of intent to assess a civil administrative penalty electronically if exigent

circumstances require it or when the person declines to accept service by other methods or materials served by other means are returned, and to amend 309 CMR 2.06 and 3.07 to allow the Board to receive requests for adjudicatory appeals electronically.

5. Miscellaneous Amendments

The Board also proposes the following miscellaneous amendments:

- Amend the definition of “recognized educational institution” at 309 CMR 2.02 to remove reference to the Council for Higher Education Accreditation which no longer exists and replace it with a requirement that the institution be accredited “by a regional board or association of institutions of higher education approved by a nationally recognized regional accrediting association or the United States Department of Education (DOE)”;
- Amend the annual fee regulation at 309 CMR 2.09 to underscore that both active LSPs as well as LSPs on inactive status must pay an annual fee;
- Amend the petition for waiver regulation at 309 CMR 2.12 to allow applicants as well as licensees to petition the Board for good cause shown to waive a Board requirement in consideration that applicants have historically sought waivers of some application and examination requirements;
- Amend the application for licensure regulation at 309 CMR 3.03(2) to clarify that an applicant shall have educational institutions forward transcripts and other documentation to the Board rather than the applicant supplying the records themselves, and to require educational institutions to submit “official” rather than “original” transcripts or other documentation to allow educational institutions to submit such documents electronically;
- Amend the submission requirements for requests for advisory rulings at 309 CMR 5.02 to remove the requirement that an original request be submitted to the Board together with eleven (11) copies in recognition that any such request may be emailed and that Board staff can scan any paper request to provide it electronically to all Board members; and
- Replace all references to gender in the regulations with genderless language.

IV. IMPACTS OF PROPOSED AMENDMENTS

Economic Impacts

The only economic impact the proposed amendments will have is to reduce the amount of money LSPs will be required to spend on continuing education courses because the proposed amendments will require them to obtain less continuing education credits to renew their licenses every three years.

V. Impacts on Massachusetts Municipalities

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth’s municipalities. The proposed amendments will have a neutral impact on municipalities.

VI. PUBLIC HEARING AND COMMENT

The Board will hold a public hearing on the proposed amendments in accordance with M.G.L. c. 30A. The Board will accept written comments for 10 days after the public hearing.

The public hearing notice and proposed amendments are available on the Board's website at: [Licensed Site Professional \(LSP\) Statutes and Regulations | Mass.gov](#). For further information, please contact terry.wood@mass.gov.