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April 3, 2024

The Honorable Michael J. Rodrigues, Chair
Senate Committee on Ways and Means
State House, Room 2
24 Beacon Street
Boston, MA 02133

Subject: *S. 470, An Act to improve notice requirements of hazardous waste release*

Dear Senator Rodrigues:

The LSP Association (LSPA) is submitting this letter regarding S. 470, *An Act to improve notice requirements of hazardous waste release* which was recently reported favorably to your committee from the Joint Committee on Natural Resources and the Environment. The LSPA opposes this bill.

The LSPA is the non-profit association for Licensed Site Professionals (LSPs) and related practitioners. LSPs are the scientists, engineers, and public health specialists licensed by the Commonwealth to work on behalf of property owners and other involved parties to oversee the assessment and cleanup of oil and hazardous materials released to the environment. These sites include multi-acre urban brownfields, roadside spills, “mom and pop” gas stations and dry cleaners, home heating oil spills, and everything in between.

The LSPA has approximately 800 members. Our members are consultants who work with institutional, non-profit, government, and private clients to remediate contaminated sites so these properties can be placed back into active and productive use. Together with the Massachusetts Department of Environmental Protection (“MassDEP”) and the Board of Registration of Hazardous Waste Site Cleanup Professionals, LSPs are the third “arm” of an innovative, privatized program, created by the legislature in 1993. In adherence with the hazardous waste site cleanup regulations at 310 CMR 40.0000, also known as the Massachusetts Contingency Plan (MCP), LSPs have helped bring over 40,000 sites to a condition where they safely meet regulatory standards for business, commercial/retail, industrial, institutional, open space or housing.

The LSPA would like to express its opposition to S. 470, *An Act to Improve Notice Requirements of Hazardous Waste Release*; two aspects of this bill are problematic.

The requirement to file notice of response actions with the registry of deeds or land court is redundant with existing regulations.

LSPs and others involved with this work regularly communicate with local officials and are supportive of public awareness and public involvement in the assessment and remediation of hazardous waste sites. In fact, under the regulatory framework of the MCP, which are the detailed regulations at 310 CMR 40.0000 that all LSPs must adhere as they do their work, the notification of hazardous waste site releases to local officials and the public is required.

Notice to Local Officials: The MCP (under 310 CMR 40.1400) contains very specific requirements for the conduct of Public Involvement Activities in connection with assessment and response actions. There are several milestones at which a written notice is required to be sent to the Chief Municipal Officer and the Board of Health in the community in which the site is located and in any other communities which are, or are likely to be, affected by the site. This written notice is required to include the contact information for the person conducting the response action, including their name, address, and telephone number, as well as instruction on how additional information relevant to the site may be obtained. These actions are required to occur at several key milestones, including but not limited to:

- Following Tier Classification or reclassification (when a site is officially classified or reclassified as an MCP site);
- Any sampling involving private drinking water supply wells, indoor air or surficial soils at any residential property at, adjacent to, or down-gradient from any contamination or suspected contamination from a release or threat of release;
- The use of respirators and other protective clothing by site workers;
- Any Immediate Response Action taken to prevent, control, abate or eliminate an Imminent Hazard;
- Prior to or concurrent with plans for implementing remedial abatement measures (RAM) Plans for oil or hazardous material releases;
- The availability of any Permanent or Temporary Solution Statements; and
- Within 30 days after recording and/or registering any original, amended, released or terminated Activity and Use Limitation (deed restriction).

310 CMR 40.1403(5) states that when issues of public safety are involved at a hazardous waste site, the Fire and Police Chief in the community(ies) in which the site is located and in any other communities which are, or are likely to be, affected by the site shall be notified about any threat to public safety prior to the implementation of remedial actions, unless prior notification is impracticable.

Notice to the Public and Property Owners: There are certain times when the MCP requires public notice, by way of publication of a notice in a newspaper of general circulation in the community in which the disposal site is located and in newspapers of general circulation in other communities which are, or are likely to be, affected by the disposal site. Tier Classification or reclassification is one of those times. If a site is a Public Involvement Plan Site, where 10 or more residents have petitioned MassDEP for greater involvement in the remediation process, the public notice requirements are more specific and include mandated public meetings.

310 CMR 40.1403(10) and 40.1406 also require periodic notification to owners of properties where an environmental investigation is being conducted by parties other than the owner.

Searchable Public Database: In terms of the availability of site-specific information, MassDEP also provides an easily accessible, public, electronic database, searchable by site address, of all hazardous waste sites, past and present, in the Commonwealth at: [Energy & Environmental Affairs Data Portal \(state.ma.us\)](http://energyandenvironmentalaffairs.state.ma.us).

Almost all correspondence issued to or by MassDEP, technical reports required under the MCP, and transmittal forms documenting cleanup milestones are promptly added to the database and available for public viewing. Real estate and environmental attorneys should be familiar with this database.

The LSPA believes that the regulations and resources cited above collectively ensure that the general public, municipal officials, and those with interest in a site are made aware of hazardous waste release conditions.

The requirement for MassDEP to file a notice of compliance is not consistent with the Commonwealth's privatized cleanup program. For 30 years, LSPs have been relied upon to lead the implementation of hazardous waste site cleanups, including determination of when cleanup projects have achieved compliance with the MCP. Formal notice of such determination is made by issuing a Permanent Solution Statement, which serves as certification from the LSP that cleanup at some or all of the site is complete and site conditions comply with pertinent regulations. Reliance upon the privatized program allows cleanup projects to proceed efficiently, along a predictable timeline, without delays caused by the need for MassDEP to issue approval letters. (These delays, which resulted in significant backlogs of MassDEP approvals and slowing of economic development, were the impetus for the privatized program thirty years ago). As a result of the streamlined, privatized program, over 40,000 hazardous waste release sites have been cleaned up to the point of regulatory closure since the program began. We feel that requiring notices of compliance to be issued by MassDEP and recorded in registry records will slow the cleanup process and introduce uncertainty with respect to progress and regulatory status.

Moreover, the MCP already requires that for certain types of regulatory closure, documents be submitted to the registry of deeds or the registry district of the land court. An Activity and Use Limitation (AUL) is a legal document that identifies site conditions that are the basis for maintaining a condition of No Significant Risk. The AUL outlines, among other things, site uses and activities that can and cannot occur on a property in order to maintain a condition of No Significant Risk. Included in these documents is an LSP opinion which explains the reason for the AUL, and the status of the waste site, in layman's terms, for anyone who chooses to look.

It is the opinion of the LSPA that this bill is redundant and unnecessary; the information sought is either already available to the public or required by current regulations, or both. We urge the Committee to take no further action on S. 470.

The LSPA is available for further discussion regarding our opposition to this bill if that would be of interest.

Respectfully,
The LSP Association, Inc.



Charles P. Young, LSP
President



Wendy Rundle
Executive Director

Cc: Commissioner Bonnie Heiple, MassDEP