



January 31, 2014

Benjamin Ericson, Chair  
Beverly Coles-Roby, Executive Director  
Board of Registration of Hazardous Waste Site Cleanup Professionals  
One Winter Street, 3rd Floor  
Boston, MA 02108

**Subject:            Suggestions for amendments to 309 CMR 1:00 – 9:00, the regulations of the Board of Registration of Hazardous Waste Site Cleanup Professionals**

Dear Mr. Ericson and Ms. Coles-Roby:

The LSP Association (LSPA), the professional non-profit association of over 800 LSPs and other environmental professionals, is pleased to respond to the solicitation by the Board of Registration of Hazardous Waste Site Cleanup Professionals ("LSP Board") for comments on its regulations at 309 CMR 1.00-9.00. We appreciate the opportunity to be involved in the regulatory reform effort from the outset, and commend the LSP Board on this early outreach to stakeholders.

As you know, the LSPA has been gathering input from our members for several months. This process was spearheaded by our Technical Practices, Loss Prevention, and Regulations committees, and we also solicited comments and suggestions from LSPA members at large. The LSPA Board of Directors has discussed, contributed to, and reached consensus on our suggestions. Generally, comments focused on three key areas: revising continuing education requirements, refining the complaint review process, and clarifying the ways in which relevant professional experience is defined and interpreted.

This letter provides an overview of the LSPA's suggestions on the key topical areas that are of greatest concern to our members and which the LSPA thinks should be priorities as the LSP Board considers amendments to the current regulations. Attached to this letter is a separate document with our detailed comments, section-by-section, on 309 CMR 1:00 – 9:00.



### **Revise Continuing Education Credits**

#### *309 CMR 3.09 Continuing Education Requirements*

This is one of the three areas where LSPA members had the most feedback for the LSP Board. The majority of comments addressed the concern that the current requirements for continuing education credits were onerous compared to the requirements of other professional licensing programs in which our members participate. After careful consideration, the LSPA suggests a slight reduction in the overall number of credits needed for renewal, from 48 credits to 36 credits. The LSPA also suggests eliminating confusion and redundancy regarding the DEP credit and Regulatory credit designation. We suggest removing the DEP credit label and changing these credits to Regulatory credit. Either all Regulatory courses should be taught by MassDEP, or the Board may at its discretion on a case-by-case basis approve a limited number of Regulatory courses by non-MassDEP instructors.

The LSPA also suggests that a certain maximum number and type of credits be allowed to be carried over into the subsequent renewal period for an LSP. Sometimes LSPs find themselves needing to pay for an additional course when one they took just two months before might have qualified; this is particularly true for DEP/regulatory courses. While these consequences are clearly unintended, they do have a financial impact on LSPs.

Another area that LSPs feel strongly about is the opportunity to expand the ways in which continuing education requirements might be met. There are a variety of ways in which LSPs achieve professional development for themselves at the same time that they are advancing the profession in significant ways; this may include: writing technical articles and delivering presentations; teaching a relevant college or university course for the first time; holding a leadership position (co-chair, board) in the LSPA or other relevant association; submitting LSP Examination questions, which are approved for the exam; and providing service on the LSP Board.

In addition, the delivery of credits is no longer limited to in-person, face-to-face courses. We know that the LSP Board is in the process of developing policies for consideration of on-line courses, live streaming of courses to many locations, and other distance learning approaches. The continuing education portion of the regulations needs to acknowledge and provide rules for all types of electronic learning. This section also needs to be updated to identify the percentage of total credits in a renewal period that can be non-interactive electronic and interactive electronic. We also suggest that, rather than referring to courses, the regulations refer to the more broadly applicable term "credits."



### **Refine the Complaint Review Process**

#### *7.00 Types of Discipline and Other Dispositions*

This is the second key area in which LSPA members had the most feedback for the LSP Board. A June 2006 letter from the (then) LSPA Board to (then) Chairwoman Commerford (see attached) described serious concerns with the ways in which complaints are handled by the LSP Board; most of those are still of concern today. The LSPA continues to support the five suggested solutions proposed in this letter.

In addition to requesting a thorough review of and changes to the overall complaint review approach, the LSPA suggests, among other things:

- Issuing time limits on the interval between when a complaint is received by the Board and when the Board’s preliminary investigation is concluded;
- Providing the LSP notice and opportunity to be involved in the process;
- Disallowing the possible involvement of former members of the LSP Board;
- Disallowing the information which an LSP provides at an informal conference to be used against him or her by the LSP Board; and
- Requiring the LSP Board to identify the chosen disciplinary action in an order to show cause, so the LSP knows what the penalty might be.

### **Clarify Minimum Experience Requirements and Relevant Professional Experience**

#### *309 CMR 3.02 Qualifications for Eligibility to Take Licensing Exam*

This is the third area of key importance. The LSPA shares the concerns presented in the August 2013 letter by Wesley Stimpson regarding the importance of further clarifying the definition and interpretation of the term “relevant professional experience.” As a key factor in determining if an applicant possesses the qualifications for taking the LSP licensing exam, this issue warrants careful consideration to ensure that Board standards are understood by applicants and consistently upheld by the Board.

In addition, the LSPA does not see the need for the portion of the rules that requires “At least 3 years of the relevant professional experience must have occurred within five years prior to submission...” Given the other mechanisms the Board has available for approving someone to take the exam, this seems unnecessarily restrictive. By the time a professional has the required eight years of experience it is entirely possible that an applicant may have taken a break to raise or care for a family member, participate in military service, and other responsibilities.



**Account for Electronic Communication for Administrative Tasks, including Taking the LSP Exam**

*309 CMR 2:00 Introductory Provisions, and throughout*

LSPs are accustomed to electronic communication, whether for administrative tasks and questions or substantive tasks such as report submittals. This is the commonly used means of communication with MassDEP. The LSP Board needs to upgrade, to the extent possible, its electronic capabilities to conduct business via email and through its website. The regulatory language needs to provide flexibility for traditional and electronic communication in the areas of license application, renewal, fee payment, and taking the LSP exam.

**Describe the Application Review Panel (ARP) Process**

*309 CMR 3.03 Application for Licensure*

The forum used by the LSP Board for reviewing applications for the LSP exam is the Application Review Panel (ARP). There is no mention at all in the regulations of the ARP, the ARP decision-making process, or appropriate timeframes for communications with applicants. This omission must be rectified and included in the regulations for transparency, so the ARP process can be conducted fairly and consistently to all applicants and other stakeholders.

**Clarify Meeting Procedures**

*309 CMR 2.04 Scheduling and Conduct of Meetings*

The LSPA would like to see the LSP Board provide more clarity and detail in identifying the types of decisions the LSP Board makes, and how those decisions are formalized through voting. This would entail more transparent language regarding the requirements for quorums and the voting requirements necessary for approving each type of decision.

**Clarify Examination Rules and Procedures**

*309 CMR 3.04 Examination*

This is an area where LSPA members would like to see more predictability from the LSP Board, including: the frequency, scheduling, and locations of exams; arrangements for paper and/or electronic exams; and length of time and the procedures for LSP Board decisions on exam challenges. The latter area is one where more transparency is especially needed, including length of time for notification about the status of exam challenges, and whether the reviewers' recommendation(s) must be accepted by the Board or voted on by the Board.



The LSPA has provided these suggestions in response to an open solicitation by the LSP Board. The LSPA has a finger on the pulse of the profession and a keen interest in further beneficial refinements to the functioning of this innovative privatized program. We believe that some of the current rules require the sort of fine-tuning for updating, precision, and transparency that comes after twenty years of real, on-the-ground experience. Other areas, such as the Complaint Review Process, will benefit from a more holistic review to ensure that the needs of all stakeholders are being met. The LSPA is committed to working with the LSP Board in whatever ways are necessary to further explore and discuss our suggestions during the development of the draft package of regulatory amendments.

The LSPA is appreciative of the continued dedication and hard work of the LSP Board's volunteer members and staff. Thank you once again; we appreciate this opportunity to offer our suggestions and to participate in the process of regulatory reform.

Sincerely,

**LSP Association, Inc.**

A handwritten signature in black ink that reads 'Matthew E. Hackman'.

Matthew Hackman, P.E., CHMM, LSP  
President

A handwritten signature in black ink that reads 'Wendy Rundle'.

Wendy Rundle  
Executive Director

Attachments:

- January 31, 2014, LSPA Suggestions on 309 CMR Regulations of the Board of Registration of Hazardous Waste Site Cleanup Professionals
- June 22, 2006 LSPA letter to Ms. Janine Commerford, Chair, LSP Board of Registration