

REGULATIONS

OF THE

BOARD OF REGISTRATION OF HAZARDOUS WASTE SITE CLEANUP PROFESSIONALS

309 Code of Massachusetts Regulations

(309 CMR)

Containing all amendments through April 2005

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Regulations

309 CMR 2.00: INTRODUCTORY PROVISIONS

Section

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2.01: Preamble

(1) 309 CMR is adopted by the Board of Registration of Hazardous Waste Site Cleanup Professionals, pursuant to its authority under M.G.L. c. 21A, §§ 16 and 19 through 19J, and M.G.L. c. 30A, §§ 2 and 3. The purpose of 309 CMR is to provide for the implementation, administration, and enforcement of M.G.L. c. 21A, §§ 16 and 19 through 19J, by establishing:

- (a) requirements which must be met by each individual to be licensed by the Board as a licensed site professional;
- (b) procedures for the issuance and renewal of licenses;
- (c) rules of professional conduct applicable to licensed site professionals;
- (d) procedures for the Board's issuance of advisory rulings interpreting the standards for professional conduct; and
- (e) procedures for the Board to take appropriate disciplinary action to enforce M.G.L. c. 21A, §§ 19 through 19J, and 309 CMR, and orders, licenses, and approvals issued or granted by the Board.

The Board deems 309 CMR 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, welfare and the environment.

(2) 309 CMR should be read together with M.G.L. c. 21A, §§ 16 and 19 through 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 through 19J, M.G.L. c. 21E, 310 CMR 40.0000, and 309 CMR,

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and expects that he or she will practice in accordance with them.

2.02: Definitions

As used in 309 CMR, the terms "waste site cleanup activity opinion" and "hazardous waste site cleanup professional" shall have the meanings ascribed to such terms by M.G.L. c. 21A, § 19.

For the purposes of 309 CMR, words and phrases shall have the meaning ascribed to such words and phrases by M.G.L. c. 21E, § 2, and/or 310 CMR 40.0000, unless the context clearly indicates otherwise.

In 309 CMR, 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, 801 CMR 1.00.

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 to the Board an application for licensure as a licensed site professional.

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

Civil Administrative Penalty and Penalty each means a civil administrative penalty that the Board seeks to assess pursuant to M.G.L. c. 21A, §§ 16 and 19G, and 309 CMR.

Client means any person, including, but not limited to an employer who has engaged a licensed site professional to provide professional services with respect to a particular site.

Department means the Massachusetts Department of Environmental Protection.

Good moral character means such character as will enable an individual to discharge the responsibilities of a licensed site 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 or could have a substantial connection to the professional responsibilities of a licensed site professional.

Imminent hazard means a hazard that would pose a significant risk of harm to health, safety, public welfare or the environment if it were present even for a short period of time, as described in 310 CMR 40.0321.

Informal conference means a conference not subject to those provisions of M.G.L. c. 30A governing adjudicatory proceedings.

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Laws means statutes, rules, regulations, codes, ordinances or bylaws.

License means approval 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.

Licensed Site Professional and LSP each means a "hazardous waste site cleanup professional" as defined in M.G.L. c. 21A, § 19.

Massachusetts Contingency Plan and MCP each means the regulations published at 310 CMR 40.0000 as amended from time to time.

Misconduct means any act or omission in noncompliance with M.G.L. c. 21A, §§ 19 through 19J or 309 CMR.

Noncompliance, Failure to Comply, and Violation each means 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 licensed site professional without being in possession of a valid license;
- (b) engaging in any activity prohibited by, or not in compliance with, any requirement;
- or
- (c) failure to comply with 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 309 CMR.

Notice of Noncompliance means a written notice given to a person by the Board which states that said person has failed to comply with certain requirement(s), as set forth therein.

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

Practical experience means the application of technical knowledge and skills within a field or fields of expertise during assessment, containment or removal projects. Such projects must have been conducted or supervised by the applicant, must encompass a variety of environmental and contaminant conditions, and must have included locations at which subsurface investigations were conducted. The Board may accept as practical experience projects which it determines to be equivalent to assessment, containment and removal projects.

Principal Decision Maker means an individual who regularly bears all or a significant portion of the responsibility and accountability for the overall conduct of one or more major

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components (site investigation, risk characterization, remediation) of response actions at disposal sites. In general, this denomination will not include individuals with responsibility and accountability only for sub-tasks (*e.g.*, field exploration program, groundwater modeling, air modeling, data manipulation) within the major components of response actions.

Professional Services means the rendering of waste site cleanup activity opinions, and services associated with the rendering of such opinions.

Proficiency means competence in assessment, containment or removal projects. Proficiency will be evaluated by the Board, in its discretion, based on evidence from references, Department comments, the application form, or other sources.

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 Accreditation or which is chartered to grant degrees by the state in which it is located. For the purposes of 309 CMR 3.02, such charter or accreditation must have been in effect at the time the claimed degree was granted to an applicant for licensure. Degrees from foreign institutions will be evaluated by the Board on a case by case basis.

Relevant Professional Experience means experience that the Board determines, separately for each position held by an applicant, is a concurrent combination of waste site cleanup decision making experience and practical experience, both performed with proficiency. The Board will consider the following criteria in evaluating whether an applicant's waste site cleanup decision making experience and practical experience constitute relevant professional experience: the range of methods evaluated and selected; the number of individuals and other disciplines of other professionals supervised or coordinated; the nature of conclusions reached and recommendations and opinions presented; the extent of review of conclusions, recommendations and opinions by supervisors; the nature of the applicant's relationship with waste site consultants and the manner in which the applicant's decision making responsibilities were differentiated from those of others; the duration of employment; the nature of work performed (including, but not limited to, whether such experience includes work at sites where subsurface investigations have occurred); the extent to which assessment, containment or removal responsibilities were exercised throughout each position; the nature of the employer's primary business interests and the relation of those interests to hazardous waste work; the relevance of the prior experience to the technical and regulatory knowledge, skills and abilities ordinarily required of licensed site professionals at the time of application; and any other factors the Board deems relevant. Relevant professional experience does not include experience involving only or primarily 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 309 CMR 4.00.

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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.

Total Professional Experience means all of an applicant's professional experience that is determined by the Board to be experience applying scientific or engineering principles in the environmental, scientific, or engineering fields where the resultant conclusions form the basis for reports, studies and other similar documents. The Board will consider the following criteria in evaluating an applicant's total professional experience: the description of work activities, the field or fields of activities, the duration of employment, the types of reports, studies and documents prepared and any other factors the Board deems relevant.

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

Waste site cleanup decision making experience means professional experience in positions in which:

- (a) an applicant's assessment, containment or removal responsibilities were an integral and substantial component of his or her position;
- (b) an applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments or removals at sites;
- (c) an applicant supervised or coordinated other professionals in the conduct of those scientific and technical tasks necessary to complete assessments, containments or removals; and
- (d) an applicant drew technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.

Waste site cleanup decision making experience must be gained through exercising a broad range of responsibilities within assessments, or containments, or removals, and may not be gained through exercising a narrow spectrum of responsibilities for parts and/or components of assessments, or containments or removals. Waste site cleanup decision making experience may consist of work which includes the contributions of others in reaching decisions on waste site cleanup activities; however, applicants must demonstrate that they have been an active participant and a principal decision maker. Waste site cleanup decision making experience does not include experience involving only or primarily non-scientific or non-technical activities associated with assessments, containments or removals, such as contract management, budget control, legal analysis, and other similar management activities. Waste site cleanup decision making experience also does not include experience with landfills, septic systems or similar non-hazardous material disposal facilities, water supply systems, or with the management of hazardous waste under M.G.L. c. 21C, Resource Conservation Recovery Act, 42 U.S.C. § 6901 *et seq.* or similar statutes unless the applicant clearly demonstrates to the Board that the assessment, containment and/or removal of oil or

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hazardous materials released to the environment was the subject of the applicant's decision making in such contexts, and that the other criteria of this definition are met.

2.03: Severability

It is hereby declared that the provisions of 309 CMR are severable. 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.

2.04: Scheduling and Conduct of Meetings

(1) Meetings. (Reserved)

(2) Decisions by the Board.

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

(b) Disciplinary Proceedings. A decision by the Board to take disciplinary action against an applicant, licensed site professional, or other person shall require the affirmative vote of at least a majority of those Board members who are not prohibited from voting due to favorable or unfavorable bias or prejudice, participation in the investigation of the matter, or a recognized conflict of interest as defined in M.G.L. c. 268A.

(c) Licenses. The affirmative vote of at least a majority of the Board members present at a meeting shall be required to approve or deny license applications.

(3) Robert's Rules of Order. Unless otherwise specified in 309 CMR, the most recent edition of Robert's Rules of Order will govern the conduct of business at Board meetings.

(4) 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, § 11A½.

2.05: Public Records and Personal Data

All documentary materials and data made or received by the Board or any employee of the Board, including documentary information concerning any applicant or licensed site professional, shall constitute public records unless such materials or data fall within one or more of the exemptions to the definition of public records in M.G.L. c. 4, § 7. Subject to the restrictions described in the following sentence pertaining to personal data, the Board may, in its discretion, release to the public documentary materials and data which does not constitute a public record. Neither the Board nor its employees shall permit access to any information which qualifies as personal data, as defined by M.G.L. c. 66A, § 1, to any person other than a Board member, an employee of the Board, or the data subject unless such access is authorized by statute or a regulation which is consistent with the purposes of M.G.L. c. 66A or is approved by the data subject whose personal data are sought.

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2.06: Submissions to the Board

Each submission to the Board shall be delivered by hand, mail delivery, or bonded delivery service, unless the Board provides otherwise.

2.07: Computation of Time

Any period of time prescribed or referred to in 309 CMR 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 until the end of the next day on which the Board's office is open.

2.08: Application Fee

The Board will accept applications for licensing only if the applicable fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00, has been paid. Payment shall be made in full by check or money order made payable to the Commonwealth of Massachusetts. The application fee is non-refundable.

2.09: Annual Fee

To maintain his or her license, each licensed site professional shall pay the applicable annual fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00. Payment shall be made in full by check or money order made payable to the Commonwealth of Massachusetts. Payment shall be made annually, including the initial year of licensure. The annual fee is non-refundable. If an LSP fails to pay the Annual Fee by the date specified on the payment invoice sent by the Board, the Board shall notify the LSP that his or her license will be suspended unless payment is made in full within 30 days. If payment is not made in full within this 30-day period, the LSP's license shall be suspended automatically for a period of 90 days. During this 90-day suspension period, the LSP may reinstate his or her license and terminate the suspension by paying the Annual Fee in full. The date of reinstatement shall be the date the Board receives verification of payment. If the LSP has not paid the Annual Fee within the 90-day suspension period, his or her license shall be revoked. Thereafter, the former LSP may reapply by submitting the following:

- (a) a limited licensure application in a form approved by the Board, and
- (b) the full application fee described in 309 CMR 2.08.

2.10: Issuance of Notices

Each notice given by the Board to a person pursuant to M.G.L. c. 21A, §§ 16 and/or 19 through 19J, and/or 309 CMR 2.00 shall be deemed to be issued by the Board as follows:

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- (1) if served in hand, the notice shall be deemed to be issued on the date when delivered:
 - (a) personally to the person, or
 - (b) at the person's address last known to the Board:
- (2) if given by mail (either regular mail, overnight Priority Mail, or certified mail, return receipt requested) the notice shall be deemed to be issued on the date postmarked.

2.11: Receipt of Notices

Each notice given by the Board to a person pursuant to M.G.L. c. 21A, §§ 16 and/or 19 through 19J, and/or 309 CMR shall be deemed to be received by said person as follows:

- (1) if served in hand, the notice shall be deemed to be received when delivered:
 - (a) personally to the person, or
 - (b) at the person's address last known to the Board;
- (2) if given by certified mail, return receipt requested, the notice shall be deemed to be received either:
 - (a) when signed for by:
 1. the person, or
 2. the person's employee or agent; or
 - (b) when returned by the U.S. Postal Service to the Board as unclaimed or refused, 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.
- (3) 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.
- (4) If given by overnight Priority Mail or bonded delivery service, the notice shall be deemed to be received either:
 - (a) when a receipt is signed by the person or the person's employee or agent; or
 - (b) when records of the U.S. Postal Service or bonded delivery service indicate that the notice was delivered, unless the Board is persuaded that the notice was not delivered to the correct address.

2.12: Petitions for Waivers

Notwithstanding any of the requirements, limitations, provisions and/or deadlines set forth in 309 CMR 1.00 through 8.00, any licensee may petition the Board for good cause shown to waive any requirement, limitation or provision, or waive or extend any deadline, and the Board shall in its sole discretion, approve or deny any such petition. The Board shall require said licensee to demonstrate why the petition is within the spirit of the Board's

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regulations and is not contrary to the public interest. Under no circumstances shall the Board approve a petition allowing any of the following:

- (1) waiver of any fees; and
- (2) waiver of any rules of professional conduct set forth in 309 CMR 4.00.

The affirmative vote of at least a majority of the Board members shall be required to approve or deny such petitions.

REGULATORY AUTHORITY

309 CMR 2.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.

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309 CMR 3.00: LICENSING OF LICENSED SITE PROFESSIONALS

Section

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3.01: Licensing of Licensed Site Professionals

Applicants for licensure must provide such information and demonstration as the Board deems reasonably necessary to enable the Board to determine that applicants meet the qualifications in 309 CMR 3.02 and must achieve a passing score on an examination conducted by the Board in accordance with 309 CMR 3.04.

3.02: Qualifications for Eligibility to Take Licensing Examination

Applicants must demonstrate that they meet the following requirements for the Board to determine that they are eligible to take the licensing examination:

(1) Minimum Education Requirements. Applicants for licensure shall meet the requirements of one of the following tracks:

- (a) 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.
- (b) Alternate Track. Applicant has earned at least a high school diploma, but does not meet the requirements for the Standard Track.

(2) Minimum Experience Requirements. Each applicant shall demonstrate to the Board's satisfaction that he or she meets the requirements for total professional experience and relevant professional experience, determined separately for each position. Qualifying total professional experience and relevant professional experience must be work of a professional grade and character performed for a minimum average of 20 hours per week that indicates the applicant is competent to render waste site cleanup activity opinions. Total professional experience or relevant professional experience performed for less than a minimum average of

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20 hours per week will be applied toward the satisfaction of 309 CMR 3.02(2) on a *pro rata* basis.

(a) Standard Track applicants must have eight years of total professional experience, five years of which are relevant professional experience. At least three years of the relevant professional experience must have occurred within five years prior to submission of an application for licensure.

(b) Alternate Track applicants must have 14 years of total professional experience, seven years of which are relevant professional experience. At least three years of the relevant professional experience must have occurred within five years prior to submission of an application for licensure.

(c) Work performed during a period of full-time undergraduate study at an educational institution is considered part of the educational program and is not considered acceptable professional experience; provided, however, that the Board may accept work performed for periods of at least two and one half consecutive months per calendar year when not enrolled as a full-time student, during, or incidental to, undergraduate education as total professional experience if the applicant did not receive college credits for that work.

(3) Good Moral Character. Applicants shall demonstrate that they possess good moral character.

(4) Credits. Applicants who have earned degrees from recognized educational institutions in addition to those required to meet the minimum educational requirements set forth in 309 CMR 3.02 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:

(a) in the case of an applicant seeking a license via the Standard Track, one year credit for each master's degree, and two years credit for a doctorate degree, if the degrees are 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; or

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

The Board will grant to an applicant up to two years maximum credit for additional education.

3.03: Application for Licensure

(1) Filing Procedure. An individual desiring to be licensed as a licensed site professional shall fully complete a current application form approved by the Board and file such completed form, together with the application fee. Incomplete applications, and applications which are not legible, are not typed, are not completed according to the instructions, or are not accompanied by the requisite fee, may be denied by the Board if the applicant fails to correct deficiencies in the application in a timely manner. 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, experience, and any other information deemed appropriate by the Board. At any stage during the review of an

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application, the Board may require an applicant to provide additional information pertaining to his or her application.

(2) Documentary Evidence of Education. The applicant shall submit original transcripts or other documentation issued by the educational institution(s) from which the applicant earned the degree needed to demonstrate the minimum education requirement for licensure. The Board will retain the original documentation. The Board, at its discretion, may require the applicant to furnish additional documentation pertaining to his or her application.

(3) Review of Applications. The Board will consider each application separately. The Board will review each application, including the evidence of education and other required documentation, to determine the completeness of the application and the eligibility of the applicant for examination. In reviewing each application, the Board may also obtain information about the applicant from the Department, current and former employers, supervisors, and others. For total professional experience and relevant professional experience, the Board will review each position separately to determine if each position meets the requirements of total professional experience or relevant professional experience.

(4) Interviews. 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. However, the Board is under no obligation to require or hold such an interview. If an applicant twice fails to appear for a personal interview scheduled with the Board, the application shall be denied and the applicant shall be deemed ineligible to take an examination until a subsequent application is approved, unless the Board finds that such failure to appear was due to circumstances reasonably beyond the applicant's control.

(5) Notification of Applicants. Each applicant deemed eligible for examination by the Board will be notified promptly of the location(s) 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 promptly be sent a written decision explaining the reasons the Board has found the applicant ineligible. An individual whose application is denied may be barred from reapplying for a period of not more than five years.

(6) Reapplication. Each applicant found ineligible to take an examination may reapply at any time, unless the Board has barred the individual from reapplying for a period of not more than five years. Applicants who reapply within six months of the date the Board issued its notice of the denial of a prior application may utilize the references submitted with the prior application. Applicants who reapply need not submit transcripts or other educational documentation that were previously submitted. An application fee and a new set of application forms must be submitted with each reapplication.

3.04: Examination

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(1) Frequency and Scheduling. The Board shall administer a licensing examination at least once per year. Examinations shall be held at places and times set by the Board or its designee as directed by the Board.

(2) Examination Format/Content. Examinations shall be comprised of multiple choice questions and shall test the applicant's overall regulatory understanding and overall technical understanding. Overall technical understanding means an understanding of basic concepts and methods in those scientific and technical fields related to assessment, containment and removal actions sufficient to render competent waste site cleanup activity opinions. Overall regulatory understanding means an understanding of 309 CMR, 310 CMR 40.0000, and related written policies and other environmental regulations sufficient to render competent waste site cleanup activity opinions.

(3) Initial Eligibility. An applicant may not take an examination unless he or she has been deemed eligible for the examination pursuant to 309 CMR 3.03.

(4) Examination Fee. An applicant may take an examination only if the applicable examination fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00 has been paid. Payment shall be made in full by check or money order payable to the Commonwealth of Massachusetts or to the Board's designated examination contractor, as specified by the Board. The examination fee is non-refundable, except in the following circumstances: An applicant whose failure to appear for the examination is found by the Board to be due to circumstances beyond his or her reasonable control shall receive a refund or may request that his or her application be held open until he or she can take a subsequent examination that occurs within two years of the date the Board voted to approve the applicant's written application.

(5) Examination Procedures and Rules.

(a) The Board will require each examinee to present some form of identification containing a photograph of the applicant. The examinee may present:

1. a current motor vehicle operator's license or other government-issued identification document;
2. a passport; or
3. any other form of official identification that has been approved by the Board at the applicant's request prior to the examination.

(b) Unless the Board specifically permits examinees to bring equipment and materials to a given examination, examinees shall not be allowed to bring any books, notes, memoranda, scratch paper, computers or other equipment or materials into the examination room with the following exceptions:

1. Examinees may bring and utilize non-programmable calculators.
2. Examinees with disabilities shall be permitted to bring and utilize other equipment and/or materials when the use of said equipment and/or materials is either required by law or specifically permitted by the Board at the request of the examinees.

(c) The following examination rules shall be in effect during the examination, and violation of any rule shall be considered grounds for disqualification of the applicant:

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1. Examinees shall not copy examination questions or make notes relative thereto.
 2. Examinees shall not discuss the examination with anyone other than a proctor.

 3. Examinees shall not read or copy the answers of any other examinee and shall not permit their own answers to be read or copied.
 4. Examinees shall not remove copies of the examination from the examination room before, during or after the examination.
 5. Upon completing the examination, examinees shall not leave the examination room with anything except those items they brought into the room. All notes, scratch paper, and calculation sheets must be turned in to the proctors along with the examination and answer sheets.
- (6) Passing Score. Each time the examination is administered, the Board will establish the passing score. The Board shall establish that score based on its determination of the score that should be obtained by an individual who has the level of technical and regulatory knowledge that would reasonably be expected by an otherwise qualified applicant with five years of relevant professional experience.
- (7) Examination Results. The examinations shall be graded by the Board or its designees. The results of the examination shall be mailed to each applicant. Examination papers will not be returned to the applicant.
- (8) Exam Review and Challenges. Each applicant who takes an exam but does not pass will be given an opportunity to review the questions he or she answered incorrectly. The Board's exam contractor may charge the applicant a fee approved by the Board for facilitating this review. Each applicant who does not pass may also challenge one or more exam questions for which his or her answer was marked incorrect. Each challenge must be submitted in writing at the time of the review session or within ten days thereafter and must state all the reasons why the answer marked by the applicant is the best answer or, alternatively, why the answer marked is equally correct along with the nominal correct answer. The Board's exam contractor may charge the applicant an additional fee approved by the Board for each challenge filed. All challenges will be reviewed by a group of technical advisors selected by the Board.
- (9) Reapplication for Examination. Applicants who fail to achieve a passing score on the examination may take a subsequent examination subject to the following procedures.
- (a) Upon receipt by the Board of the following items, an applicant shall be allowed to take a subsequent examination that is scheduled to occur on a date not less than 90 days after the applicant last took an examination and not more than two years after the date the Board voted to approve that applicant's written application:
 1. a letter stating the applicant's intention to take the subsequent examination; and
 2. the examination fee described in 309 CMR 3.04(4).
 - (b) Applicants who seek to take a subsequent examination that is scheduled for a date that is greater than two years after the date the Board last voted to approve that applicant's

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written application must reapply to be deemed eligible to take the examination by submitting the following:

1. a limited licensure application in a form approved by the Board; and
2. the full application fee described in 309 CMR 2.08.
3. Each of these applicants must meet the eligibility requirements existing at that time for initial applicants. Each shall demonstrate in the limited licensure application that at least three years of his or her relevant professional experience occurred within five years prior to submission of the limited licensure application.

3.05: License Denial

The Board will deny a license to an applicant who fails to meet any of the requirements for licensing set forth in 309 CMR 3.00. The Board will inform the applicant in writing of the reason(s) why he or she was denied a license.

3.06: License Renewal

(1) A licensed site professional must renew his or her license every three years to maintain his or her license. Each license issued by the Board shall expire at the close of business on the expiration date assigned on the date of issuance unless it is renewed or extended by the Board. The initial expiration date assigned shall be the 30th of the month of January, April, July, or October three years from the date of issuance, whichever of said dates is or occurs soonest after three years from the date of issuance. As of June 30, 2002, the next license expiration date for each LSP whose existing license expiration date does not fall on a 30th of January, April, July, or October shall be extended to the 30th of January, April, July, or October, whichever date occurs soonest after each LSP's existing license expiration date.

(2) To apply to renew a license, a licensed site professional shall:

- (a) submit for approval to the Board prior to the date of expiration of his or her license a completed renewal application form setting forth such information as the Board may direct, including whether the licensee has since his or her last LSP license renewal been disciplined by other professional licensing or professional certifying authorities and, if so, an explanation of the circumstances;
- (b) include with such application form a check or money order made payable to the Commonwealth of Massachusetts in the full amount of the non-refundable license renewal processing fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00; and
- (c) demonstrate to the Board's satisfaction that he or she has fulfilled the continuing education requirements set forth in 309 CMR 3.09 or obtained a waiver of those requirements in accordance with 309 CMR 2.12.

(3) A licensed site professional whose license has been suspended shall be subject to the following additional license renewal requirements:

- (a) If the licensee's license expiration date has not been reached when the suspension period ends, the license expiration date does not change. The license renewal

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requirements remain as described in 309 CMR 3.06(2), except that the Board may, when issuing the suspension, require the licensee to obtain additional continuing education credits as a condition of license renewal.

(b) If the licensee's license expiration date would be reached before the suspension period ends, the license expiration date shall be extended to the end of the suspension period. The LSP must renew his or her license as a condition of having his or her license reinstated at the end of the suspension period. The Board shall not reinstate the license unless and until the licensee's license has been renewed. The license renewal requirements remain as described in 309 CMR 3.06(2), with the following exceptions:

1. The Board may, when issuing the suspension, require the licensee to obtain additional continuing education credits as a condition of license renewal; and
2. For each full year that the suspension extends beyond the LSP's nominal renewal date, the minimum number of credits required in each credit category shall be increased automatically by one-third (1/3) of the number specified in 309 CMR 3.09(3);
3. If the LSP renews his or her license and it is reinstated, the LSP's next license expiration date shall be the 30th of January, April, July, or October three years thereafter, whichever of said dates occurs soonest after three years from the date the license was reinstated; and
4. If the LSP fails to renew his or her license within 90 days after the date the term of suspension was scheduled to end, his or her license shall lapse and may not be renewed thereafter. In such instances, the individual may reapply in the manner specified in 309 CMR 3.06(4)(b).

(4) If a licensed site professional whose license is not suspended fails to renew his or her license in accordance with 309 CMR 3.06(2), his or her license shall lapse at the close of business on the date of expiration of his or her license. A person whose license has lapsed and not been renewed by the Board shall not act as, advertise as, hold himself or herself out to be, or represent himself or herself as being, a licensed site professional. A person whose license has lapsed may re-obtain a license to practice in the following manner:

(a) A person whose license has lapsed may renew his or her license at any time during the following year by meeting all the renewal requirements set forth in 309 CMR 3.06(2), including the payment of the applicable license renewal processing fee. A license that is renewed during the year after it has lapsed shall run for three years from the 30th of January, April, July, or October, whichever date is or occurs soonest after the date the Board approves the license renewal.

(b) A person who fails to renew his or her license within one year of the date of expiration of his or her license may thereafter reapply by submitting the following:

1. a limited licensure application in a form approved by the Board, and
2. the full application fee described in 309 CMR 2.08.

If the application is approved, the applicant must pay a full examination fee and pass a licensing examination within the following two years to obtain a full license, and he or she may not act as, advertise as, hold himself or herself out to be, or represent himself or herself as being, a licensed site professional until he or she has passed an examination.

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(5) Notwithstanding 309 CMR 3.06(4), if at the time he or she must submit a renewal application form a licensed site professional has obtained all but 12 or fewer of the continuing education credits required to renew his or her license, the licensed site professional may apply to the Board for a 90-day extension of his or her license expiration date for the purpose of obtaining the additional required continuing education credits.

(a) To apply for this 90-day extension, a licensed site professional must do both of the following prior to the date of expiration of his or her license:

1. submit a completed renewal application form demonstrating that the licensed site professional has earned all but 12 or fewer of the continuing education credits required to renew his or her license, and

2. remit the required applicable license renewal processing fee.

(b) After verifying that the licensed site professional has earned all but 12 or fewer of the continuing education credits needed to renew the license and that the license renewal processing fee has been paid, the Board will notify the licensed site professional that the 90-day extension has been allowed and how to submit documentation of the additional required credits once obtained. At the time the licensed site professional submits documentation of having earned the additional required credits, he or she must again pay a license renewal processing fee. A license that is renewed during the 90-day extension period shall be assigned the expiration date that would have been assigned if the applicant had renewed his or her license without requesting a 90-day extension.

(c) Only one extension will be granted to each LSP at the end of each three-year licensure period.

(d) If a licensed site professional who has been granted a 90-day extension fails to earn the additional required credits or fails to submit documentation thereof by the end of the extension period, his or her license shall lapse at the close of business on the last day of the extension period, and the late renewal and reapplication provisions of 309 CMR 3.06(4) shall apply; provided however, the one-year period for renewing his or her license without reapplying shall be deemed to have commenced on the original license expiration date and not at the end of the 90-day extension period.

(e) No portion of the credits for a continuing education course required to fulfill the requirements of one renewal period may be carried over into the subsequent renewal period.

(6) Notwithstanding 309 CMR 3.06(4), a licensed site professional who has submitted to the Board prior to the expiration of his or her license either a complete license renewal application or a complete application for a 90-day extension, has enclosed the required documentation demonstrating that he or she has fulfilled the applicable continuing education requirements, and has paid the proper renewal processing fee may continue to render waste site cleanup activity opinions until either:

(a) the Board renews his or her license; or

(b) the Board notifies such LSP that his or her application for license renewal or for a 90-day extension does not conform with the requirements set forth in 309 CMR 3.06 or, if a licensed site professional has a right to and requests an adjudicatory hearing, until the date the Board issues a final decision pursuant to that request.

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- (7) The Board in its discretion may renew a license provisionally or subject to such conditions as the Board deems appropriate.

3.07: Right to Adjudicatory Hearing

- (1) An applicant determined by the Board to be ineligible for examination or for license renewal, or whose license has been renewed provisionally or subject to conditions by the Board, may request an adjudicatory hearing by filing a written Notice of Claim for Adjudicatory Proceeding. The Notice shall state clearly and concisely the facts that are grounds for the proceedings and the relief sought. The Notice shall be filed with the Board within 21 days from the date that the applicant receives notice of the Board's determination.
- (2) A Notice shall be deemed to be filed with the Board as set forth herein:
- (a) If hand-delivered during regular business hours, it shall be deemed filed on the day delivered.
 - (b) If hand-delivered during non-business hours, it shall be deemed filed on the next regular business day.
 - (c) If mailed by placing in U.S. mail, it shall be deemed filed on the date so post-marked.
 - (d) A delivery by a bonded delivery service shall be treated as a hand delivery.

3.08: 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 309 CMR 3.07.

3.09: Continuing Education Requirements

- (1) Definitions. As used in 309 CMR 3.09, the following terms shall have the following meanings unless the context clearly indicates otherwise:

Approved Conference workshop means a Board-approved workshop, short course, or similar training session that occurs at a conference approved by the Board.

Continuing education means Board-approved courses of learning that are designed to further the professional competence of licensees. OSHA-required health and safety training courses shall not be considered acceptable for the purposes of meeting the continuing education requirements.

Continuing education credit and Credit each mean:

- (a) For Board-approved courses which are offered as part of a university or college curriculum, the units of continuing education that, pursuant to 309 CMR 3.09(8), are granted by the Board for each approved course completed by a licensee; and

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(b) For all other Board-approved courses, including Internet courses, the units of continuing education that are granted by the Board, generally on the basis of one credit for each hour of approved course instruction actually attended by a licensee.

(c) For Board-approved conferences and conference workshops, the units of continuing education that, pursuant to 309 CMR 3.09(9), are earned by licensees by attending approved conferences and conference workshops.

Courses Offered as Part of a University or College Curriculum mean courses offered by an institution accredited to issue associates, bachelors and/or graduate degrees, provided that the course:

- (a) meets on a regular weekly schedule on a semester or quarterly basis, and
- (b) the course may be taken for a grade.

DEP Course means a continuing education course that meets the requirements of 309 CMR 3.09, is taught in whole or in substantial part by Department of Environmental Protection personnel, and for which the Department has demonstrated, to the Board's satisfaction, that the course subject matter is directly focused on regulatory and/or technical topics that are reasonably likely to maintain or enhance the ability of LSPs to perform, supervise and/or coordinate response actions (i.e., assessments, containments and/or removals) in Massachusetts in compliance with applicable regulatory requirements. To be designated as a "DEP Course," a course must be taught in whole or in substantial part by Department personnel, must be proposed as a "DEP Course" by the Department, and must be approved as a "DEP Course" by the Board. The Board, in its discretion, may also classify as a "DEP Course" a course taught in whole or in substantial part by Board personnel.

Licensee(s) and LSP(s) each mean individuals holding an LSP license that is in full force and effect.

Regulatory means continuing education that is reasonably likely to maintain or enhance the licensee's ability to competently perform, supervise and/or coordinate response actions (i.e., assessments, containments and/or removals) in Massachusetts in compliance with applicable regulatory requirements. The term contemplates only continuing education that is directly focused upon an understanding of, and compliance with, the panoply of legal and regulatory requirements applicable to the licensee's provision of professional services in Massachusetts.

Technical means continuing education that is reasonably likely to maintain or enhance the licensee's ability to competently perform, supervise and/or coordinate the scientific and/or technical components of response actions (i.e., assessments, containments and/or removals) in Massachusetts. The term should not be narrowly construed so that it reaches only continuing education that is directly concerned with performing such activities; however, if the technical subject matter of the continuing education is more generally focused, it should at least be demonstrably relevant to the scientific and/or technical components of response actions at disposal sites in Massachusetts.

(2) Basic Requirements.

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(a) Every three years following issuance of his or her license, each LSP shall demonstrate to the Board's satisfaction that he or she has earned a minimum of 48 continuing education credits. These credits can be earned only by attending Board-approved courses, conferences, or conference workshops. No person may apply continuing education credits earned during one license period toward another license period. However, applicants who have been approved to take the examination may take Board-approved courses and utilize the credits earned at their first license renewal. Subject to the attendance and other requirements set forth in 309 CMR 3.09, continuing education credits are considered to be earned at the completion of each Board-approved course or at the end of each Board-approved conference or conference workshop.

(b) All continuing education credits submitted by an LSP in fulfillment of the requirements of 309 CMR 3.09(2)(a) shall be earned by attending Board-approved courses, conferences, or conference workshops that are reasonably likely to maintain or enhance that LSP's ability to render competent professional services.

(c) An LSP may not repeat a course or conference workshop for credit during the same three-year license renewal period or during the following three-year license renewal period.

(3) Credit Minimums.

(a) The 48 continuing education credits earned every three years, as required in 309 CMR 3.09(2)(a), shall include not fewer than eight credits from Board-approved courses classified as Regulatory. In addition, at least 12 of the 48 credits must be earned at a Board-approved DEP Course or Courses. The balance of the 48 required credits may be earned by attending any Board-approved course, conference, or conference workshop.

(b) Credits earned by taking approved DEP Courses that are classified as Regulatory can be applied toward both the 12-credit DEP Course requirement and the eight-credit Regulatory requirement.

(c) Although, as described in (b) above, certain credits may be applied simultaneously to both the DEP Course requirement and the Regulatory requirement, no credits may be applied more than once toward the overall 48-credit requirement.

(d) The continuing education requirements set forth in 309 CMR 3.09(3)(a) through (c) are summarized for convenience in the following table.

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	Minimum Number of Credits Required
Total Credits	48
DEP Course(s)	12
Regulatory	8
Technical	no minimum requirement

(4) Board-required courses. The Board may from time to time require all LSPs to take a specific course. The Board will allow such a course to be counted toward the requirements of 309 CMR 3.09(2) and (3).

(5) General Course Requirements. To be considered by the Board for approval as a continuing education course, the licensee or course provider must demonstrate that:

- (a) adequate attendance records will be maintained;
- (b) for courses not offered as part of a university or college curriculum, at least one contiguous hour of instruction time will be provided;
- (c) the course will be taught by competent instructors knowledgeable in the subject matter to be presented; and
- (d) a written outline or syllabus will be followed.

(6) Requests for Approval of Continuing Education Courses.

(a) Either an LSP or the provider of a potentially qualifying course may seek Board approval for the course. The Board shall attempt to act upon a complete request within two months of receipt; however, the Board's failure to act within two months shall not constitute approval of the course. Requests for retroactive approval of continuing education courses (*i.e.*, courses already commenced or completed by the time the Board meets to review the requests for their approval) are disfavored but may be approved, at the Board's discretion, if the provider has maintained a record of attendance and the other requirements for course approval are met.

(b) A complete request for approval of a continuing education course must include the following information:

- 1. the date(s), time(s) and location(s) of the course, and the number of hours of continuing education credits requested;
- 2. a written course outline or syllabus;
- 3. a written statement describing the course and establishing its relevance to oil or hazardous materials assessment, containment or removal activities at disposal sites in Massachusetts;
- 4. the credentials of the instructors;

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5. a statement that the sponsoring organization will maintain a record of attendance and will follow the course outline or syllabus;
 6. the different credit options (if any) attending LSPs will have for earning continuing education credits;
 7. for all courses, including conference workshops, a statement that the sponsoring organization will, at the completion of the course, conduct, and retain for the Board's inspection for a period of a year, an evaluation of the course and the course instructor(s) using, at a minimum, evaluations prepared confidentially by the course attendees and maintained in such a manner that the identity of each evaluator is not disclosed to the course instructor or provider; and
 8. any other information which the Board requests of the licensee or course provider to demonstrate compliance with 309 CMR 3.09.
- (c) Once a course has been approved by the Board, if there are any substantive changes in the course outline or syllabus, or a change of instructor(s), the course will require separate, additional Board approval before LSPs can be given continuing education credit for taking the revised course.
- (d) In submitting a course for Board approval as continuing education, the licensee or course provider may suggest a division of the course into Regulatory and Technical components, and/or DEP Course and non-DEP Course components. Based on the information submitted, the Board may determine, in its discretion, whether to approve an allocation of continuing education credits based on the suggested division or decide upon a more appropriate allocation of credits.
- (e) In selecting Board-approved courses for continuing education credit, each licensee must also consider the criterion of 309 CMR 3.09(2)(b) as it applies to that individual licensee. While the Board will not routinely investigate whether an otherwise approved course meets the requirements of 309 CMR 3.09(2)(b) for a given individual, the Board reserves the right to do so. If the Board finds that this criterion has not been met, the Board may, without waiving any other remedy available to it, deny a licensee all or a portion of the credit sought and may take any other appropriate action including, but not limited to, requiring the licensee to obtain additional continuing education credits in the subsequent license period.
- (7) Attendance Requirements. For continuing education credit to be granted for attendance at Board-approved courses, the following attendance requirements must be met. These requirements are also summarized for convenience in the table in 309 CMR 3.00 *Appendix B*.
- (a) To receive continuing education credit for attendance at an approved course that is more than four hours in length, the licensee must attend a minimum of 75% of the course; however, in no event may attendance be less than four hours. In the event that an LSP attends at least 75% but less than 100% of a course that is more than four hours in length, the LSP will receive credit on a *pro rata* basis.
 - (b) To receive continuing education credit for attendance at an approved course that is one to four hours in length, the licensee must attend 100% of the course to receive any credit.
 - (c) The attendance requirements for conference workshops are set forth below in 309 CMR 3.09(0)(d).

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(d) Course instructors who are licensees may receive continuing education credit for a course once if they either teach the entire course or teach part of the course and attend, subject to the attendance requirements noted above, the remainder of the course.

(8) Maximum Credit for University or College Courses. Courses offered as part of a university or college curriculum may be approved by the Board for credit equivalent to 70% of the total number of hours of classroom instruction if the course is taken for a grade and the licensee passes, or 50% of the total number of hours of classroom instruction if the course is not taken for a grade by the licensee. If an LSP takes the course for a score or grade, the LSP must pass the course in order to receive continuing education credit. In determining whether the LSP has passed the course, the score or grade assigned by the course provider will ordinarily govern. Those LSPs who are taking an approved university or college course for a grade are not subject to the attendance requirements set forth in the 309 CMR 3.09(7).

(9) Conferences.

(a) LSPs may obtain credit on a one-for-two basis (*i.e.*, one credit for every two hours of attendance) for attending Board-approved conferences, and they may obtain credit on a one-for-one basis (*i.e.*, one credit for each hour of attendance) for attending approved conference workshops, subject to the requirements set forth below.

(b) Prior to the conference, the sponsor must submit a request for approval to the Board enclosing the following:

1. a full description of the conference, including a description and schedule for each of its sessions, workshops, short courses, and similar training sessions;
2. the date, time, and location of the conference;
3. a statement that the sponsor will comply with all the requirements set forth below in 309 CMR 3.09(9)(c) and 3.09(9)(e); and
4. if the provider is seeking one-for-one credit for any workshops, short courses, or similar training sessions, all the information required in 309 CMR 3.09(6) must be submitted for each such session. To be approved as an approved conference workshop, a workshop, short course, or similar training session must be at least one hour in length.

(c) A sponsor must comply with the following verification requirements when conducting an approved conference:

1. maintain a sign-in/sign-out log for each LSP to sign in and out each time he or she arrives at or leaves the conference premises;
2. maintain a separate sign-in/sign-out log for each approved conference workshop; and
3. check each LSP's photo I.D. and also enter the time of day next to the LSP's signature in the log on each occasion when an LSP signs a sign-in/sign-out log.

(d) The attendance requirements for obtaining one-for-one credit at approved conference workshops are as follows:

1. For approved conference workshops that are more than four hours in length, the LSP must attend at least 75% of the session; however, in no event may the attendance be less than four hours.

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2. For approved conference workshops that are at least one but no more than four hours in length, the LSP must attend 100% of the session.
 3. An LSP who attends an approved conference workshop but does not meet the foregoing attendance requirements shall obtain credit on a one-for-two basis based on the time attended.
 4. Instructors for approved conference workshops who are LSPs may receive one-for-one credit for the session once if they either teach the entire session or teach part of the session and attend, subject to the attendance requirements noted above, the remainder of the session.
 5. These attendance requirements are also summarized for convenience in the table in 309 CMR 3.00 *Appendix B*.
- (e) After an approved conference has concluded, a sponsor must comply with the following requirements for calculating and awarding continuing education credits to those LSPs who were in attendance:
1. Tally up separately the total number of hours each LSP attended
 - (a) approved conference workshops for which the LSP met the attendance requirements; and
 - (b) the remainder of the conference, not counting time spent in approved conference workshops for which the LSP met the attendance requirements.In calculating these hours, the sponsor shall count only those hours between the time the LSP signed in and the time the LSP signed out. An LSP must sign both in and out to receive attendance hours.
 2. After tallying the hours, award each LSP who has attended the conference an LSP Board Continuing Education Certificate showing how many credits the LSP has earned, based on the rules for calculating credits set forth above.
- (10) Internet Courses. Notwithstanding the specific requirements set forth in 309 CMR 3.09(1) through (9), the Board may, at its discretion, approve for continuing education credit courses offered over the Internet. The Board may, as it sees fit and on a course-by-course basis, impose special requirements and/or conditions on Internet course providers and/or LSPs taking said courses.

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APPENDIX A

STANDARD TRACK DEGREES

Degrees meeting the Standard Track curriculum requirement (309 CMR 3.02(1)(a)) include a bachelor's or advanced degree from an accredited college or university with a major or concentration in the following fields:

- Biochemistry
- Biology (including toxicology, microbiology, ecology, botany, zoology)
- Chemical Engineering
- Chemistry
- Civil Engineering
- Earth Science
- Environmental Engineering
- Environmental Sciences
- Epidemiology
- Forestry
- Geology
- Geotechnical Engineering
- Hazardous Waste Management
- Hydrogeology
- Hydrology
- Industrial Hygiene
- Medicine
- Physical Geography
- 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 Board shall consider whether sufficient course work has been completed in one or more of the fields listed above. The applicant has the burden of proof; the Board shall base its decision in part on official transcripts.

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APPENDIX B

MINIMUM LENGTH AND MINIMUM ATTENDANCE REQUIREMENTS
FOR APPROVED COURSES

Pursuant to 309 CMR 3.09, the Board may approve four different types of courses for continuing education credit for LSPs: DEP Courses, other courses, conference workshops, and college/university courses.

To be approved by the Board for continuing education credit for LSPs, 309 CMR 3.09 requires that each of these courses must meet a certain minimum length requirement. Courses that do not meet the applicable minimum length requirement cannot be approved for any LSP continuing education credit. In addition, an LSP must satisfy specific minimum attendance requirements for each type of course in order to obtain any continuing education credit for that course.

Minimum course length and LSP attendance requirements are summarized in the table below. This table is for convenience only; in the event of a discrepancy between the table and the provisions of 309 CMR 3.00, the language within the text of the regulations will govern.

<u>Type of Course</u>	<u>Minimum Course Length</u>	<u>Minimum Attendance Requirements</u>
DEP Course	one contiguous hours	<ul style="list-style-type: none"> • For one- to four-hour course: 100% • For course longer than four hours: four hours or 75% of course, whichever is greater [If attendance requirement is not met, LSP receives no credit.]
Approved Conference Workshop	one hour	<ul style="list-style-type: none"> • For one- to four-hour workshop: 100% • For workshop longer than four hours: four hours or 75% of the workshop, whichever is greater [If attendance requirement is not met, LSP receives no credit.]
College/Univ. Course	Meets at least weekly for one quarter/term/semester	<ul style="list-style-type: none"> • If taken for grade: None • If not taken for grade: 75%

If an LSP attends for the minimum portion required but less than 100% of the course, the LSP will receive continuing education credit on a *pro rata* basis. For example, if the LSP Board has approved an eight-hour DEP Course for eight “DEP Course” credits, an LSP who attends 7½ hours of the course will receive 7.5 credits.

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309 CMR 3.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.

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309 CMR 4.00: RULES OF PROFESSIONAL CONDUCT

Section

- 4.01: Preamble
- 4.02: Professional Competency
- 4.03: Professional Responsibility
- 4.04: Conflict of Interest
- 4.05: Accepting Compensation

4.01: Preamble

In order to safeguard the public health, safety, welfare and the environment and to establish and maintain a standard of professional integrity, the Board has established 309 CMR 4.00 (Rules of Professional Conduct). 309 CMR 4.00 shall be binding on every person licensed by the Board to render waste site cleanup activity opinions within the meaning of M.G.L. c. 21A, § 19.

Any person who may become aware of the failure of a licensed site professional to comply with an obligation or prohibition imposed by 309 CMR 4.00 may file a complaint with the Board pursuant to 309 CMR 7.00. However, the availability of this right is not intended to subject an LSP to any liability in addition to any actions that may be taken by the Board, nor is it intended that a violation of 309 CMR 4.00 shall by itself give rise to a private cause of action or create any presumption that a legal duty to a party other than the Board or the Department has been breached.

All LSPs are charged with having knowledge of 309 CMR 4.00 and shall be deemed to be familiar with the provisions and to understand them.

4.02: Professional Competency

- (1) In providing Professional Services, a licensed site professional shall act with reasonable care and diligence, and apply the knowledge and skill ordinarily exercised by licensed site professionals in good standing practicing in the Commonwealth at the time the services are performed.
- (2) An LSP shall not provide Professional Services outside his or her areas of professional competency, where this competency is based on his or her education, training, and/or experience, unless that LSP has relied upon the technical assistance of one or more professionals whom the LSP has reasonably determined are qualified in such area or areas by education, training and/or experience.
- (3) In providing Professional Services, an LSP may rely in part upon the advice of one or more professionals whom the LSP reasonably determines are qualified by education, training and/or experience.
- (4) A successor hazardous waste site cleanup professional may render a waste site cleanup

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activity opinion regarding response actions performed under a previous hazardous waste site cleanup professional, and that opinion may be relied upon as sufficient to protect public health, safety, welfare, or the environment, only when the successor hazardous waste site cleanup professional has:

- (a) reviewed all reasonably available documentation known to the successor hazardous waste site cleanup professional that describes previous releases, site assessment activities and results, and work performed in connection with the assessment, containment or removal action that is the subject of the opinion;
- (b) conducted a site visit to observe current conditions and to verify the completion of as much of the work as is reasonably observable; and
- (c) concluded, in the exercise of his or her independent professional judgment, that he or she has sufficient information upon which to render the waste site cleanup activity opinion.

4.03: Professional Responsibility

- (1) A licensed site professional shall hold paramount public health, safety, welfare, and the environment in the performance of professional services.
- (2) A licensed site professional shall render a waste site cleanup activity opinion only when he or she has either:
 - (a) in the case of an opinion related to an assessment:
 - 1. managed, supervised or actually performed such assessment, or
 - 2. periodically reviewed and evaluated the performance by others of such assessment; or
 - (b) in the case of an opinion related to a containment or removal action:
 - 1. managed, supervised, or actually performed such action, or
 - 2. periodically observed the performance by others of such action.
- (3) In providing professional services, a licensed site professional shall:
 - (a) exercise independent professional judgment;
 - (b) follow the requirements and procedures set forth in applicable provisions of M.G.L. c. 21E, and 310 CMR 40.0000;
 - (c) make a good faith and reasonable effort to identify and obtain the relevant and material facts, 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 through 19J, and 309 CMR; and
 - (d) with regard to the rendering of waste site cleanup activity opinions, disclose and explain in the waste site cleanup activity opinion 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.
- (4) If a licensed site professional identifies a release or threat of release that in the LSP's professional judgment poses or could pose an Imminent Hazard as described in 310 CMR

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40.0321 at a particular site at which he or she is providing Professional Services, he or she shall:

- (a) immediately advise his or her client of the need to notify the Department of the Imminent Hazard; and
- (b) notify the Department of the imminent hazard no later than 24 hours after identifying such, unless the client has provided such notice.

(5) If, in the course of providing Professional Services, a licensed site professional obtains knowledge of a condition:

- (a) on a property, known by the LSP to be owned or operated by the client, that either
 1. contains all or a portion of the disposal site for which the LSP has been retained or
 2. is contiguous to a property, known by the LSP to be owned or operated by the client, that contains all or a portion of the disposal site for which the LSP has been retained, and
- (b) that the LSP, in the exercise of his or her professional judgment, considers to require notification to the Department within either two or 72 hours,

then the LSP shall promptly notify the client in writing of the existence of the condition.

(6) In the event a licensed site 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 licensed site professional's professional services that significantly deviates from any scope of work, plan, or report developed to meet the requirements of M.G.L. c. 21E, 310 CMR 40.0000, or an order of the Department, then the licensed site professional shall promptly notify his or her client in writing of such.

(7) An LSP shall not reveal facts, data or information obtained in his or her professional capacity without the prior consent of the client, except as authorized or required by law, if such facts, data, or information are claimed in writing to the licensed site professional to be confidential by the client and are not already in the public domain.

(8) If subsequent to the date a licensed site 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 licensed site professional shall promptly notify his or her client in writing of such.

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

(10) A licensed site 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

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professional responsibilities of a licensed site professional.

(11) Applicants and licensed site professionals shall cooperate fully in the conduct of investigations by the Board by promptly furnishing, in response to formal requests, orders or subpoenas, 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 through 19J. In connection with the investigation by the Board of applications or disciplinary complaints, an LSP shall not:

- (a) knowingly make a false statement of material fact;
- (b) fail to disclose a fact necessary to correct a material misunderstanding known by the LSP to have arisen in the matter;
- (c) knowingly and materially falsify, tamper with, alter, conceal, or destroy any document, data record, remedial system, or monitoring device that is relevant to the investigation, without obtaining the Board's permission; or
- (d) knowingly allow or suffer any of his or her employees, agents, or contractors to do any of the foregoing.

(12) An LSP who is involved in a management or review capacity at a disposal site will be considered responsible, along with a second LSP, for the second LSP's violation of the Board's Rules of Professional Conduct set forth in 309 CMR 4.00 if he or she:

- (a) orders, directs, or formally ratifies Professional Services or an Opinion being conducted or prepared by the second LSP;
- (b) recognizes that the Professional Services and/or Opinion violate an obligation or prohibition contained in the Rules of Professional Conduct; and
- (c) fails to take reasonable steps to attempt to avoid or mitigate this violation.

(13) An LSP shall comply with all conditions that are imposed on his or her license as a result of a disciplinary proceeding.

(14) In communicating with a client or prospective client, including but not limited to communications with respect to a proposed scope of services or proposed contract, it is the LSP's responsibility to inform his or her client or prospective client of the relevant and material assumptions, limitations, and/or qualifications that underlie the LSP's communication. Evidence that an LSP has provided his or her client or prospective client with timely written documentation of these assumptions, limitations, and/or qualifications shall be deemed by the Board to have satisfied the requirements of this section.

(15) In communicating with a client or prospective client, an LSP shall not state or imply, either as an inducement or a threat, an ability to improperly influence a government agency or official.

(16) In describing his or her qualifications, experience, or ability to provide Professional Services, an LSP shall not knowingly:

- (a) make a material misrepresentation of fact or law;
- (b) omit a fact necessary to make the description, when considered as a whole, not materially misleading; or

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(c) make a statement that in the Board's opinion is likely to create an unjustified expectation about results the LSP can achieve, or state or imply that the LSP can achieve results by means that violate the Massachusetts Contingency Plan, the Rules of Professional Conduct contained in 309 CMR 4.00, or other law.

(17) A licensed site professional who becomes obligated to make any of the notifications required by 309 CMR 4.03 shall make the required notification even if he or she is discharged by the client before doing so.

4.04: Conflict of Interest

(1) A licensed site 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.

(2) In the event a licensed site 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 licensed site professional shall fully disclose in writing to his or her client the nature of the business association, financial interest or circumstance. For the purposes of 309 CMR 4.04(2) receipt of salary or employee benefits by an LSP employed by his or her client on a full time basis is deemed not to be substantial.

(a) If the client or employer objects to such business association, financial interest or circumstance, the licensed site 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.

(b) If a licensed site 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 309 CMR 4.00 in connection with his or her performance of professional services pertaining to a site, the licensed site professional shall terminate his or her engagement with regard to that site.

(3) A licensed site professional shall not solicit or accept financial or other valuable consideration from material or equipment suppliers in return for specifying or endorsing their products.

4.05: Accepting Compensation

An LSP shall not let his or her ownership interest, compensation, or continued employment affect his or her Professional Services to the extent that said Professional Services do not meet the standards set forth in 309 CMR 4.00 and 310 CMR 40.0000.

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309 CMR 4.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.

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309 CMR 5.00: ADVISORY RULINGS

Section

- 5.01: General
- 5.02: Submission
- 5.03: Disposition
- 5.04: Availability to Public

5.01: General

- (1) A licensed site professional may at any time request an advisory ruling interpreting one or more of the Rules of Professional Conduct.
- (2) 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 through 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.
- (3) 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.

5.02: Submission

- (1) Requests for advisory rulings shall be submitted to the Board in writing.
- (2) The original request for an advisory ruling shall be submitted to the Board, together with 11 copies thereof.
- (3) The original request for an advisory ruling shall be signed and dated by the licensed site professional submitting the request. This signature constitutes a certification by the licensed site professional that he or she has read the request and knows the content thereof, and that the statements contained therein are true and correct to the best of his or her knowledge.
- (4) Each request for an advisory ruling shall include the name, address, license number and telephone number of the licensed site professional seeking the ruling. It shall 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.
- (5) The Board may request additional written information as necessary to complete a factual background for its ruling.

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5.03: 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.

5.04: Availability to Public

(1) 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.

(2) 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.

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309 CMR 5.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.

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309 CMR 6.00: DESIGN AND USE OF LICENSED SITE PROFESSIONAL'S SEAL

Section

6.00: Design and Use of Licensed Site Professional's Seal

6.00: Design and Use of Licensed Site Professional's Seal

(1) For the purpose of rendering waste site cleanup activity opinions, each licensed site professional shall procure and use a rubber stamp for a seal, the design, arrangement, size and working of which shall conform to the Board's specifications. An LSP may also submit electronically a waste site cleanup activity opinion that:

- (a) is allowed by the Department to be submitted electronically; and
- (b) contains an electronically inserted seal, the design, arrangement, and size of which shall conform to the Board's specifications for electronic seals.

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

(3) The licensed site professional's seal shall only be used in connection with waste site cleanup activity opinions for which he or she will be responsible. Use of a seal is not transferable.

(4) A licensed site 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.

(5) A licensed site professional, upon receipt of his or her rubber stamp seal, shall stamp it upon two sheets of his or her letterhead, and submit the impression to the Board as evidence that he or she has complied with the requirements for procurement of a seal.

(6) A licensed site professional who is issued or selects one or more Personal Identification Numbers (PINs) or Passwords for the purpose of electronically submitting waste site cleanup activity opinions to the Department shall not disclose these PINs or Passwords to any other individual.

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309 CMR 6.00: M.G.L. c. 21A, §§ 16 and 19 through 19J

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309 CMR 7.00: PROCEDURE GOVERNING DISCIPLINARY PROCEEDINGS AND OTHER
DISPOSITIONS

Section

- 7.01: General Provisions
- 7.02: Types of Discipline and Other Dispositions
- 7.03: Initiation
- 7.04: Preliminary Investigation
- 7.05: Informal Conferences
- 7.06: Initial Disposition by the Board
- 7.07: Initiation of Formal Adjudicatory Proceedings
- 7.08: Conduct of Formal Adjudicatory Proceedings
- 7.09: Suspension Prior to Hearing
- 7.10: Final Decision of the Board
- 7.11: Board Action Without Hearing
- 7.12: Voluntary Surrender of License by Those Under Disciplinary Investigation
- 7.13: Discipline or Other Disposition By Agreement
- 7.14: Reinstatement
- 7.15: Client Notification Requirements after Revocation or Suspension

7.01: General Provisions

(1) Any licensed site professional or other person who acts as, advertises as, or holds himself or herself out to be a licensed site professional shall be subject to the disciplinary authority of the Board.

(2) A licensed site professional who, individually or in concert with another person, violates any provision of M.G.L. c. 21A, §§ 19 through 19J, or any provision of 309 CMR, including but not limited to the Rules of Professional Conduct in 309 CMR 4.00, shall be subject to the disciplinary authority of the Board.

(3) It shall constitute misconduct, and may be grounds for appropriate discipline, for a licensed site professional to engage in conduct that results in his or her conviction for:

- (a) any felony;
- (b) a misdemeanor committed in the course of providing Professional Services;
- (c) a misdemeanor which contains as a necessary element fraud, misrepresentation, deceit, bribery, extortion, misappropriation, theft, false swearing, or willful failure to file income tax returns;
- (d) a misdemeanor involving acts that reveal a sufficient lack of good moral character such that the Board no longer is persuaded that the LSP will be in compliance routinely and on a continuing basis with all standards and requirements applicable to LSPs.

The following shall be deemed to be a conviction within the meaning of this section, whether or not sentence has been imposed: a guilty verdict or finding of guilt, any admission

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to or finding of sufficient facts, and any plea of guilty or nolo contendere which has been accepted by the court.

(4) It shall also constitute misconduct, and be grounds for appropriate discipline, for an applicant to engage in fraud, misrepresentation, deception, or concealment of a material fact:

- (a) in applying to the Board for a license or a renewal license; or
- (b) in taking any examination administered by the Board or its exam contractor.

(5) It shall also constitute misconduct, and be grounds for appropriate discipline, for a licensed site professional to engage in acts that:

- (a) involve dishonesty, fraud, deceit, lack of good moral character, assault, threats, intimidation, or coercion; and
- (b) have a substantial connection to the professional responsibilities of a licensed site professional.

(6) It shall be grounds for the Board to take any action allowed by law for any non-licensee to act as, advertise as, hold himself or herself out to be, or represent himself or herself as being a licensed site professional.

(7) Regardless of whether misconduct has occurred, the Board may take any action allowed by law, including but not limited to suspending or revoking a license, if the Board finds that a licensed site professional is unable to perform the essential functions of a licensed site professional in accordance with the requirements of 309 CMR.

7.02: Types of Discipline and Other Dispositions

(1) Discipline of licensed site professionals may be by revocation of license, suspension of license for a period of up to five years, public censure, or private censure.

(2) The Board may also 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. 21A, §§ 19 through 19J, subject to the requirements of 309 CMR 8.00.

(3) The Board may also take any other action as allowed by law, including but not limited to issuing orders imposing such restraints on or requiring action by licensed site professionals as the Board deems necessary to abate a hazard or the violation of any provision of M.G.L. c. 21A, §§ 19 through 19J, or any provision of 309 CMR.

(4) If the Board determines that a licensed site professional is unable to perform the essential functions of a licensed site professional in accordance with the requirements of 309 CMR, the Board may place the licensed site professional on inactive status or take other appropriate action, including but not limited to suspending or revoking the licensed site professional's license. If the Board places a licensed site professional on inactive status, the Board shall

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promptly remove his or her name from the Board's official list of active licensed site professionals and take all other actions specified in 309 CMR 9.01.

(5) Any person who is disciplined by the Board shall also be subject to such other penalties as may be provided by law, including but not limited to actions for civil injunctive relief and civil or criminal penalties.

7.03: Initiation

- (1) Any person or any member of the Board may file a complaint with the Board charging:
 - (a) a licensed site professional with misconduct;
 - (b) a licensed site professional with being unable to perform the essential functions of a licensed site professional in the manner described in 309 CMR 7.01(7); or
 - (c) a non-licensee with acting as, advertising as, holding himself or herself out to be, or representing himself or herself as being a licensed site professional.
- (2) The Board, in its discretion, may investigate anonymous complaints.

7.04: Preliminary Investigation

- (1) The Board may appoint a Complaint Review Team to conduct or arrange for the conduct of a preliminary investigation to determine the truth and validity of all or a portion of the allegations set forth in a complaint. The Board may also request that a Complaint Review Team investigate matters that are not alleged in a complaint but which, if established, may constitute grounds for discipline or other disposition as described in 309 CMR 7.02.
- (2) A Complaint Review Team shall be comprised of one member or former member of the Board who is an LSP and was appointed to fill one of the five positions specified by G.L. c. 21A, § 19A, for hazardous waste site cleanup professionals, one member or former member who is or was one of the other members of the Board, and one of the attorneys on the Board's staff. The Complaint Review Team shall investigate the issues designated by the Board and prepare a report to the Board summarizing the findings of the investigation and providing a recommendation to the Board with respect to the presence of sufficient grounds for disciplinary action or other disposition as described in 309 CMR 7.02. If the Complaint Review Team recommends that the Board find sufficient grounds for disciplinary action or other disposition, it must also prepare a supplemental memorandum that recommends what type of discipline or other disposition, as described in 309 CMR 7.02, the Board should impose and explains the basis for this recommendation. In making these recommendations, each member of the Complaint Review Team, including the attorney, shall have one vote.
- (3) If, upon investigation of the complaint, the Complaint Review Team has reason to believe that:
 - (a) the licensed site professional who is the subject of the investigation is unable to perform the essential functions of 309 CMR;
 - (b) such failings are a result of an addiction to or excessive use of controlled substances,

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any dangerous drug or combination of drugs, or alcohol, or are due to a disability; and
(c) a medical or other appropriate examination or examinations would aid the Board in its decision,

the Complaint Review Team may recommend to the Board that it direct the licensed site professional, as a condition of retaining his or her license, to be examined by a qualified medical or other applicable expert or experts designated by the Board at the licensed site professional's expense. The Board shall thereupon determine whether to direct such examination.

7.05: Informal Conferences

To facilitate disposition of a complaint, the Board may request the person filing the complaint and/or the licensed site professional who is the subject of the complaint, and/or any other person, to attend an informal conference at any time prior to or after the commencement of an adjudicatory proceeding.

7.06: Disposition by the Board

(1) The members of each Complaint Review Team shall present their report summarizing the findings of their preliminary investigation to the other Board members at a quasi-judicial session of the Board. The members of the Board who did not serve on the Complaint Review Team shall then either recommit the matter to the Complaint Review Team for further investigation or determine whether there are sufficient grounds to initiate disciplinary action or other disposition as described in 309 CMR 7.02.

(2) If the Board determines that based on the preliminary investigation it has sufficient grounds to initiate disciplinary action or other disposition as described in 309 CMR 7.02, the Board shall review the Complaint Review Team's supplemental memorandum and take such action as it deems appropriate, including, but not limited to, issuing an order, commencing an adjudicatory proceeding, imposing discipline or other disposition by agreement, or disposing of the matter at an informal conference.

(3) If the Board determines that it does not have sufficient grounds to initiate disciplinary action or other disposition as described in 309 CMR 7.02, it shall dismiss the complaint. In dismissing a complaint, the Board may issue the respondent a warning or admonition, that is not considered a disciplinary action, not to engage in certain conduct. Both the complainant and the respondent shall promptly be notified of the dismissal of a complaint and the basis for the dismissal. A complainant shall have 30 days to petition the Board to reconsider the dismissal of the complaint for good cause shown.

7.07: Initiation of Formal Adjudicatory Proceedings

If the Board determines that, based on the preliminary investigation, sufficient grounds exist to initiate disciplinary action or other disposition as described in 309 CMR 7.02, the Board may commence a formal adjudicatory proceeding by providing the respondent with an

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order to show cause why disciplinary action or other disposition as described in 309 CMR 7.02 should not be taken. The order shall state the grounds for taking disciplinary action or other disposition, including the specific facts relied upon and the statute(s) and/or regulations authorizing the Board to take disciplinary action or other disposition. It shall also explain the respondent's right to request an adjudicatory hearing to contest the grounds for discipline or other disposition set forth in the order. The order shall direct the respondent to file an answer within 21 days of receipt or notice of the order. The order shall also advise the respondent that failure to file a timely answer to the order shall be deemed an admission of the charges contained therein. Such admission shall permit the Board to proceed to impose discipline or other disposition pursuant to 309 CMR 7.10.

7.08: Conduct of Formal Adjudicatory Proceedings

(1) Procedure Generally. The conduct of formal adjudicatory proceedings shall be governed by the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00. Upon receipt of the respondent's answer requesting a formal adjudicatory proceeding, the proceeding shall be conducted by a presiding officer appointed by the Board. The staff attorney member of the Complaint Review Team shall serve as the prosecuting attorney. The adjudicatory proceeding shall serve to finalize the Board's investigation of the facts and grounds for discipline or other disposition as described in 309 CMR 7.02. At the conclusion of the proceeding, in accordance with the provisions of 801 CMR 1.00, the presiding officer shall file a recommended decision with the Board and promptly provide the parties with a copy. This recommended decision shall contain the presiding officer's recommended findings of fact and rulings of law concerning the charges set forth in the order to show cause. It shall not be the role of the presiding officer to recommend the form of discipline or other disposition to be taken by the Board.

(2) Written Direct Testimony. Notwithstanding anything to the contrary in 801 CMR 1.00, all parties shall file within a reasonable time in advance of the hearing the full written text of the testimony of their witnesses on direct examination, including all exhibits to be offered in evidence. The presiding officer shall establish a schedule for the filing of this direct testimony and exhibits. A party may by motion seek permission for good cause shown to present the direct testimony of a witness by oral examination. Good cause in this context includes, but shall not be limited to, persuasive evidence that the witness is an adverse witness, hostile, or otherwise unwilling to prepare his or her direct testimony in writing. The presiding officer may exclude direct testimony offered at the hearing that was not included in the previously filed, written direct testimony but was reasonably obtainable at the time it was filed. The presiding officer may also require the filing of written rebuttal testimony within a reasonable time after the filing of the direct testimony. All witnesses whose testimony is filed in writing shall appear at the hearing, attest under the penalties of perjury to the accuracy of their written testimony, and be available for cross-examination. If a witness is not available for cross-examination at the hearing, the written testimony of the witness shall be excluded from the record unless the parties agree otherwise. Notwithstanding the foregoing, the requirement to file written direct testimony can be waived by stipulation of the parties.

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7.09: 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 proceeding, the Board may issue an order suspending or revoking a licensed site professional's license. This order shall be 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 shall provide an opportunity for a hearing on the necessity for the summary action within seven days of the date on which the Board issues such an order.

7.10: Final Decision of the Board

(1) Objections to Recommended Decision. If either the respondent or the prosecuting attorney files objections within 30 days to the presiding officer's recommended decision, the Board shall allow the other party 20 days to submit a response. The Board may allow the parties to argue orally.

(2) Board's Final Findings of Fact and Rulings of Law. The Board members who served on the Complaint Review Team shall not participate in making the final decision. The Board may affirm and adopt the presiding officer's recommended decision in whole or in part, and it may recommit the recommended decision to the presiding officer for further findings as it may direct. If the Board does not accept the whole of the recommended decision, it shall provide an adequate reason for rejecting those portions of the recommended decision it does not affirm and adopt. The Board shall endeavor to issue final findings of fact and rulings of law within 90 days of the filing or re-filing with the Board of the recommended decision. Notwithstanding anything to the contrary in the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, the findings of fact and rulings of law shall not become final until the Board votes and issues its final findings of fact and rulings of law.

(3) Board's Decision on Form of Discipline or Other Disposition. If the Board's final findings of fact and rulings of law conclude with a finding that sufficient grounds exist for disciplinary action or other disposition as described in 309 CMR 7.02, or if the respondent has failed to file a timely answer to the order to show cause, the prosecuting attorney shall file with the Board a memorandum containing a final recommendation, with supporting reasons, concerning the form of discipline or other disposition, as described in 309 CMR 7.02, the Board should impose in light of the Board's final findings of fact and rulings of law. The prosecuting attorney shall also serve a copy of this memorandum upon the respondent. Thereupon, the respondent shall have 21 days to submit a memorandum in opposition to the prosecuting attorney's final recommendation and to present an alternative recommendation. If the respondent submits a memorandum in opposition, the prosecuting attorney shall have 14 days to submit a response. The Board may allow the parties to argue orally.

(4) Final Decision. The final decision of the Board shall contain both the Board's final

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findings of fact and rulings of law and its final order of discipline or other disposition as described in 309 CMR 7.02.

7.11: Board Action Without Hearing

Notwithstanding any provision of 309 CMR 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 seven days prior to taking such action. If the licensee files the necessary application, or pays the prescribed fee within the time period, the Board shall terminate the revocation, suspension or refusal proceedings.

7.12: Voluntary Surrender of License by Those Under Disciplinary Investigation

A licensed site professional may not voluntarily surrender his or her license during the course of a disciplinary investigation or adjudicatory proceeding without the consent of the Board.

7.13: Discipline or Other Disposition By Agreement

At any point during the course of a disciplinary investigation or adjudicatory proceeding, the parties may present a proposed agreement for discipline or other disposition to the Board for its review and approval. The Board may approve or reject the proposed agreement. If the proposed agreement is accepted, the respondent shall waive his or her right to further administrative proceedings or judicial review pertaining to the matters that are subject to the agreement.

7.14: Reinstatement

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

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

(3) A licensed site professional placed on inactive status pursuant to 309 CMR 7.02(4) shall be entitled to request transfer from inactive status to active status in accordance with 309 CMR 9.04.

7.15: Client Notification Requirements after Revocation or Suspension

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(1) In every case where an LSP's license has been revoked or suspended for a period of 90 days or more as a result of a disciplinary action, the LSP shall document to the Board, in the manner described below, that he or she has notified his or her current clients in writing that his or her license has been revoked or suspended. The term "current clients" means all clients for whom the LSP is serving as an LSP-of-Record or is otherwise engaged to provide Professional Services on the date of the revocation or suspension order. This documentation requirement also applies when an LSP's license is suspended during the pendency of an adjudicatory proceeding pursuant to 309 CMR 7.09; however, if the LSP requests a hearing on the necessity of such action, this documentation requirement shall apply only after that hearing if the suspension order is reaffirmed. For LSPs whose license is suspended during the pendency of an adjudicatory proceeding, the term "current clients" means all clients for whom the LSP was serving as an LSP-of-Record or was otherwise engaged to provide Professional Services on the date of the original immediate suspension order.

(2) The Board shall provide written notification of this documentation requirement to each LSP to whom this documentation requirement applies. This notification shall accompany each final order of revocation, suspension of 90 days or more, or reaffirmation of a suspension order issued pursuant to 309 CMR 7.09. Upon receipt of this notification, the LSP shall take the following steps:

(a) Within 14 day from the date of notification the LSP shall notify all of his or her current clients by certified mail, return receipt requested, that his or her license has been revoked or suspended, whichever is the case, and that he or she can no longer serve as the LSP for the client's site or sites.

(b) Within 21 days from the date of notification, the LSP shall submit a signed affidavit to the Board attesting that all his or her current clients have been notified of the revocation or suspension. The LSP shall attach to the affidavit a copy of each notification sent to the LSP's current clients and all return receipts or returned mail received up to the date of the affidavit. The LSP shall file supplemental affidavits covering subsequently received return receipts and returned mail.

(3) Any LSP subject to the terms of this rule who fails to notify one or more of his or her current clients shall be subject to any action allowed by law, including but not limited to a separate disciplinary proceeding and/or the assessment of an administrative penalty pursuant to 309 CMR 8.00. It shall be considered to be a separate violation each time the LSP fails to notify one current client.

REGULATORY AUTHORITY

309 CMR 7.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.

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309 CMR 8.00: ADMINISTRATIVE PENALTY REGULATIONS

Section

- 8.01: Preconditions for Assessment of A Civil Administrative Penalty
- 8.02: Noncompliance with a Law, Regulation, Order, or License
- 8.03: Notice of Noncompliance
- 8.04: Pattern of Noncompliance
- 8.05: Willful Noncompliance
- 8.06: Noncompliance Resulting in Significant Impact on Public Health, Safety, Welfare or the Environment
- 8.07: Determining the Money Amount of a Civil Administrative Penalty
- 8.08: Minimum Permissible Penalty
- 8.10: Factors to be Applied in Determining the Money Amount of a Civil Administrative Penalty
- 8.11: Procedures for Assessment of a Civil Administrative Penalty; Remedial Education Option
- 8.12: Notice of Intent to Assess a Civil Administrative Penalty
- 8.13: Content of Notice of Intent to Assess a Civil Administrative Penalty
- 8.14: Service of Notice of Intent to Assess a Civil Administrative Penalty
- 8.15: Right to Adjudicatory Hearing
- 8.16: Waiver of Right to Adjudicatory Hearing
- 8.17: Conducting the Adjudicatory Hearing
- 8.18: Paying a Civil Administrative Penalty

8.01: Preconditions for Assessment of a Civil Administrative Penalty

A penalty may be assessed only for a failure to comply that:

- (1) meets the criteria set forth in 309 CMR 8.02, and
- (2) was any of the following:
 - (a) the subject of a previous Notice of Noncompliance, as set forth in 309 CMR 8.03;
 - (b) part of a pattern of noncompliance, as set forth in 309 CMR 8.04;
 - (c) willful and not the result of error, as set forth in 309 CMR 8.05; or
 - (d) a failure to comply that resulted in significant impact on public health, safety, welfare or the environment, as set forth in 309 CMR 8.06.

8.02: Noncompliance with a Law, Regulation, Order, or License

A penalty may be assessed only for a failure to comply which, at the time it occurred, constituted noncompliance with a requirement:

- (1) which was then in effect; and
- (2) to which that person was then subject.

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8.03: Notice of Noncompliance

(1) 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:

- (a) a Notice of Noncompliance has been given to that person as set forth in 309 CMR 8.03; or
- (b) a Notice of Noncompliance has not been given to that person but the failure to comply was as set forth in 309 CMR 8.01(2)(b), (c) or (d).

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

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

(3) 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 309 CMR 8.02 and the following criteria are met:

- (a) the Board has previously given that person a Notice of Noncompliance;
- (b) 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 proposes to come into compliance with the requirement(s) described in the Notice of Noncompliance; and
- (c) 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.

(4) 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:

- (a) whether or not other notices of non compliance have been issued to the same person within the preceding five years;
- (b) 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);
- (c) 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;

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- (d) 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
- (e) 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.

8.04: Pattern of Noncompliance

(1) 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 309 CMR 8.02 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:

- (a) whether the person who would be assessed the penalty was given by the Board, on at least one 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 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, 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 309 CMR applies.

(2) 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:

- (a) 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;

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(b) 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;

(c) 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

(d) 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.

8.05: Willful Noncompliance

A penalty may be assessed without the prior issuance of a Notice of Noncompliance if the criteria set forth in 309 CMR 8.02 are met and the violation was willful and not the result of error.

8.06: Noncompliance Resulting in Significant Impact on Public Health, Safety, Welfare or the Environment

A penalty may be assessed without the prior issuance of a Notice of Noncompliance if the criteria set forth in 309 CMR 8.02 are met and the violation thus being penalized resulted in significant impact on public health, safety, welfare or the environment.

8.07: 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 309 CMR 8.07 through 8.09.

8.08: Minimum Permissible Penalty

No penalty assessed shall be less than \$100.00.

8.09: Maximum Permissible Penalty

For each noncompliance except unauthorized practice, the full amount of the Penalty assessed shall not exceed \$1,000. The maximum penalty for unauthorized practice shall not exceed \$1,000 for each offense.

8.10: 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:

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- (1) the actual and potential impact on public health, safety, and welfare, and the environment, of the failure(s) to comply that would be penalized;
- (2) 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;
- (3) whether the person who would be assessed the penalty took steps to prevent the failure(s) to comply that would be penalized;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) making compliance less costly than the failure(s) to comply that would be penalized;
- (8) deterring future noncompliance by the person who would be assessed the penalty;
- (9) deterring future noncompliance by persons other than the person who would be assessed the penalty;
- (10) the financial condition of the person who would be assessed the penalty;
- (11) the public interest; and
- (12) 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.

8.11: Procedures for Assessment of a Civil Administrative Penalty; Remedial Education Option

- (1) Each penalty assessed shall be assessed in accordance with the procedures set forth in 309 CMR 8.11 through 8.18.
- (2) Right to Choose Remedial Education Instead of Penalty. 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 309 CMR 8.18 or attend and successfully complete a course of remedial education prescribed by the Board within reasonable deadline specified by the

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Board.

(3) Waiver of Right to Choose Remedial Education. Whenever the Board seeks to assess a penalty on any person, such person shall be deemed, effective 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 the Board receives from that person 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.

8.12: Notice of Intent to Assess a Civil Administrative Penalty

(1) 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 309 CMR 8.13, and which shall be served as set forth in 309 CMR 8.14.

(2) Notwithstanding 309 CMR 8.12(1), 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 shall provide such person an opportunity to discuss the alleged noncompliance with the Board at an informal conference, except where the noncompliance concerns unauthorized practice.

8.13: Content of Notice of Intent to Assess a Civil Administrative Penalty

Each Penalty Assessment Notice shall include all of the following:

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

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

(3) 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;

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

(5) 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

(6) 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.

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8.14: 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:

- (1) Service in hand at the person's address last known to the Board 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.
- (2) 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.
- (3) By certified mail, return receipt requested, addressed to the person's address last known to the Board 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.

8.15: Right to Adjudicatory Hearing

Subject to the provisions of 309 CMR 8.16, whenever the Board seeks to assess a penalty on any person, such person shall have the right to an adjudicatory hearing.

8.16: Waiver of Right to Adjudicatory Hearing

Whenever the Board seeks to assess a penalty on any person, such person shall be deemed, effective 21 days after the date of issuance of the Penalty Assessment Notice pursuant to 309 CMR 2.10, to have waived the right to an adjudicatory hearing unless, within 21 days of the date of issuance of the Penalty Assessment Notice, the Board receives from that person a written statement that does either or both of the following, and does so subject to and in compliance with applicable provisions of 801 CMR 1.00:

- (1) denies the occurrence of the act(s) or omission(s) alleged by the Board in the Penalty Assessment Notice;
- (2) asserts that the money amount of the proposed Penalty is excessive.

8.17: Conducting the Adjudicatory Hearing

- (1) Every adjudicatory hearing conducted pursuant to M.G.L. c. 21A, §§16 and/or 19G and 309 CMR 8.17 shall be conducted in accordance with all applicable provisions of M.G.L. c. 30A and 801 CMR 1.00, provided that to the extent such provisions are inconsistent with M.G.L. c. 21A, §§ 16 and/or 19G, and 309 CMR 8.17, the provisions of M.G.L. c. 21A, §§ 16 and/or 19G, and 309 CMR 8.17 shall apply.
- (2) The Board shall not be required to prove the occurrence of the act(s) or omission(s)

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alleged by the Board in the Penalty Assessment Notice and not denied in the statement filed pursuant to 309 CMR 8.16 (as may be amended in accordance with 801 CMR 1.01(6)(g)).

(3) If, in the statement filed pursuant to 309 CMR 8.16, 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.

(4) If the person assessed the penalty files the statement required pursuant to 309 CMR 8.16, the subsequent adjudicatory proceeding shall be ended either by:

- (a) a written agreement, which shall take effect only upon written approval by a majority of Board members; or
- (b) a final decision, which shall take effect only upon written approval by a majority of Board members.

8.18: Paying a Civil Administrative Penalty

(1) 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.

(2) When Payment Shall Be Made.

(a) Except as provided in 309 CMR 8.18(2)(b), each penalty assessed and for which remedial education is not elected as a substitute pursuant to 309 CMR 8.11, shall be paid in full as follows:

- 1. If the person assessed the penalty waives the right to an adjudicatory hearing pursuant to 309 CMR 8.16, the penalty shall be due, and shall be paid in full, when such waiver takes effect (*i.e.* no later than 21 days after the date of issuance of the Penalty Assessment Notice pursuant to 309 CMR 2.10).
- 2. If the person assessed the penalty files the statement described in 309 CMR 8.16 and if the subsequent adjudicatory proceeding is ended by a written agreement pursuant to 309 CMR 8.17(4)(a), the penalty shall be due, and shall be paid in full, no later than 21 days after the date the Board approves said agreement in writing.
- 3. If the person assessed the penalty files the statement described in 309 CMR 8.16, and if the subsequent adjudicatory proceeding is ended by a final decision approved and signed by the Board pursuant to 309 CMR 8.17(4)(b), 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 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 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 309 CMR 8.16, and if the subsequent adjudicatory proceeding is ended by a final decision approved and signed by the Board pursuant to 309 CMR 8.17(4)(b), and if a penalty is assessed pursuant to said final decision, and if a civil action for judicial review is

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commenced, pursuant to M.G.L. c. 30A, within 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 21 days after the date of the entry of the Court's judgment, or by such other deadline as the Court may prescribe.

(b) The Board may authorize payment of a civil administrative penalty at a time or times later than those prescribed pursuant to 309 CMR 8.18(2)(a). No such authorization shall be valid unless made expressly and in writing. In the absence of any such express written authorization, the provisions of 309 CMR 8.18(2)(a) 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.

(c) If the person assessed the penalty files the statement for which the Board has provided in 309 CMR 8.11 but does not attend or does not 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 at the rate set forth in M.G.L. c. 231, § 6C, calculated from the date such person filed such statement with the Board.

(3) Consequences of Failure to Make Payment When Due. Each person who fails to pay a penalty in full and on time in compliance with 309 CMR 8.18(2) 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, including, but not limited to, suspension or revocation of license.

REGULATORY AUTHORITY

309 CMR 8.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.

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309 CMR 9.00: INACTIVE STATUS

Section

9.01: General

9.02: Two-year Limit

9.03: Fees and Reactivation

9.04: Reinstatement After Being Placed On Inactive Status Pursuant To 309 CMR 7.02(4)

9.01: General

(1) Any licensed site professional may advise the Board in writing that he or she desires to be placed on inactive status and to discontinue the performance of Professional Services. Upon the filing of such notice, the licensed site professional, for each site for which he or she is an LSP-of-Record:

- (a) shall notify the Department pursuant to 310 CMR 40.0169(2) that he or she is no longer an LSP-of-Record for that site; and
- (b) shall no longer be eligible to act as, advertise as, or hold himself or herself out to be a licensed site professional.

(2) Any licensed site professional who is placed on inactive status pursuant to 309 CMR 7.02(4) shall be subject to all applicable rules set forth in 309 CMR 9.00 for inactive LSPs.

(3) Whenever a licensed site professional is placed on inactive status, either voluntarily or pursuant to 309 CMR 7.02(4), the Board shall promptly:

- (a) remove his or her name from the Board's official list of active licensed site professionals and place his or her name on the list of inactive licensed site professionals; and
- (b) notify the Department that this action has been taken.

(4) The names of licensed site professionals who voluntarily assume inactive status and those placed on inactive status pursuant to 309 CMR 7.02(4) shall appear together, without distinction, on the public list of inactive licensed site professionals.

(5) The provisions of 309 CMR 9.01(1) through (4) shall also apply to any LSP whose license has lapsed pursuant to 309 CMR 3.06 prior to August 20, 1999, and who advises the Board by November 20, 1999, that he or she desires to be placed on inactive status.

9.02: Two-year Limit

(1) A licensed site professional may remain on inactive status for no longer than two years. In no case shall a licensed site professional be allowed to maintain inactive status for a period extending more than two years beyond the date the licensed site professional last maintained an active license.

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(2) A licensed site professional who was on inactive status and whose license has lapsed may reapply at any time thereafter by submitting a limited licensure application in a form approved by the Board and the full application fee established for applicants for licensure. Each such applicant shall meet the eligibility requirements, including the examination requirements, existing at that time for initial applicants, except that with respect to relevant professional experience the applicant need demonstrate only that he or she has obtained three years of relevant professional experience within the five-year period occurring prior to the submission of the limited application. When reapplying, an individual who was placed on inactive status pursuant to 309 CMR 7.02(4) and whose license has lapsed shall also comply with any requests made by the Board pertaining to the individual's ability to perform the essential functions of a licensed site professional in accordance with the requirements of 309 CMR.

9.03: Fees and Reactivation

(1) An inactive licensed site professional shall pay the annual fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00, for inactive licensed site professionals.

(2) Within two years of assuming inactive status, a licensed site professional who was not placed on inactive status pursuant to 309 CMR 7.02(4) may resume active status by filing a notice with the Board stating his or her intention to resume active status.

(3) A licensed site professional who has been placed on inactive status pursuant to 309 CMR 7.02(4) who seeks within two years to return to active status may do so by meeting the requirements for reinstatement set forth in 309 CMR 9.04.

(4) Whenever a licensed site professional resumes active status after being inactive, the Board shall assign him or her a new license expiration date such that, not counting the period on inactive status, when that new expiration date is reached the licensed site professional will have been on active status for a total of approximately three years since the date his or her license was issued or last renewed.

(5) A licensed site professional who has resumed active status and seeks to renew his or her license after being on inactive status may utilize any continuing education credits earned during the period the licensed site professional was on inactive status.

9.04: Reinstatement After Being Placed On Inactive Status Pursuant To 309 CMR 7.02(4)

(1) A licensed site professional who has been placed on inactive status pursuant to 309 CMR 7.02(4) shall be entitled to request transfer to active status when the licensed site professional can demonstrate to the satisfaction of the Board that he or she can perform the essential functions of a licensed site professional in accordance with the requirements of 309 CMR, provided that the Board may reasonably determine and set minimum

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intervals between such transfer requests. If the Board does not reinstate the licensed site professional to active status within two years from the date that he or she was placed on inactive status pursuant to 309 CMR 7.02(4), his or her license shall lapse.

(2) In any case in which the Board acts pursuant to 309 CMR 9.04 to reinstate a licensed site professional from inactive status to active status, the Board may impose such conditions or qualifications as it deems necessary or appropriate, including but not limited to requiring that medical or other appropriate testing be conducted on a periodic basis when the Board reasonably determines that such periodic examination or testing is necessary to ensure that the licensed site professional is and will remain capable of performing the essential functions of a licensed site professional in accordance with the requirements of 309 CMR.

REGULATORY AUTHORITY

309 CMR 9.00: M.G.L. c. 21A, §§ 16 and 19 through 19J.

[END OF REGULATIONS]