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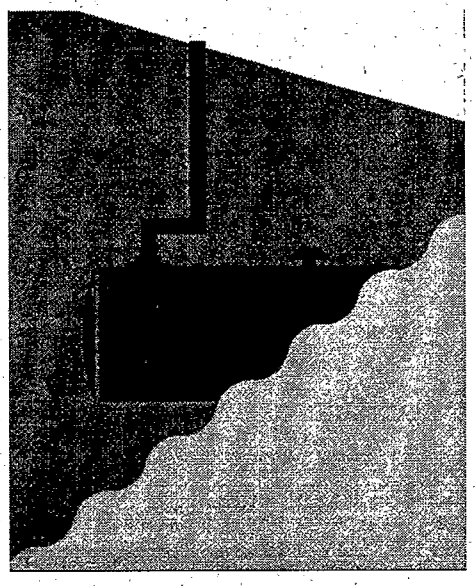
State Third-Party Service Provider Programs

Augmenting State Underground Storage Tank Programs



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State Third-Party Service Provider Programs

Augmenting State Underground Storage Tank Programs

U.S. Environmental Protection Agency
Office of Underground Storage Tanks

March 1997

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Part 1

Thinking About Third-Party Service Provider Programs

Introduction

Together, states and EPA have made tremendous progress toward ensuring that underground storage tanks (USTs) do not threaten human health and the environment. An estimated 40 to 50 percent or more of the one million USTs still in use already meet the December 1998 requirements for protection against corrosion, spills, and overfills. More than 130,000 contaminated sites have been cleaned up. Nevertheless, states still have a great deal of work to do, and the resources available to state UST programs are limited.

EPA's Office of Underground Storage Tanks (OUST) is now expanding its national program strategy to include a greater role for the private sector in bringing about the conditions under which good tank management is common business practice. OUST prepared this document to explain how states can use third-party service providers to increase their program's productivity without long-term increases in staffing or spending. Very briefly, third-party service providers are privately employed specialists who are paid by UST owners and operators to perform relatively routine tasks such as inspections or oversight of leaking underground storage tank (LUST) cleanups at low-risk sites. Third-party service providers perform such functions in lieu of states.

Third-party service providers are not state employees or contractors and do not have the legal authority of state employees.

The information presented here is the result of a collaborative effort between OUST, Pennsylvania's Department of Environmental Protection (PADEP), and Massachusetts' Department of Environmental Protection (MADEP). The document contains four parts followed by appendixes containing Pennsylvania and Massachusetts regulations, forms, and related information. Part 1 introduces initial concepts that states need to think about. Part 2 provides guidance on designing and running a third-party UST inspector program, based on Pennsylvania's experience. Part 3 provides guidance on designing and running a program in which third-party service providers oversee lower priority LUST cleanups, based on Massachusetts' experience. Part 4 summarizes the challenges facing state programs and reiterates how third-party programs can extend state capability.

There may well be other functions that could be performed by third-party service providers. OUST encourages states to consider other possibilities. OUST would like to thank everyone who contributed, either by offering technical assistance, reviewing drafts, or providing copies of regulations and other documents. OUST commends the Pennsylvania and Massachusetts programs for their innovative ideas and thanks staff members for sharing their experiences.

If you would like to learn more about Pennsylvania's third-party service provider inspector program, you may call their Customer Service Office, (717) 772-5599, during regular business hours. Or, visit DEP's HomePage at http://www.dep.state.pa.us/dep/deputate/watermgt/WC/WC_ST/wc_st.htm for general information about their UST program. To learn more about Massachusetts' third-party service provider Licensed Site Professional (cleanup) program, you may call Allan Fierce, Executive Director, Board of Registration of Hazardous Waste Site Cleanup Professionals, (617) 574-6870, or Eric Arvedon, Environmental Engineer, Bureau of Waste Site Cleanup, (617) 292-5887. You may also visit Massachusetts' DEP HomePage at magnet@state.ma.us.

Benefits

Using third-party service providers is potentially beneficial not only to state programs but also to UST owners and operators and the general public. Depending on how a third-party service provider program is designed, benefits generally can include:

✓ More UST facilities' being inspected or more UST cleanups' being accomplished than states could achieve with their own employees. With third-party service providers doing some of the routine field work, state UST staff can focus on work that is high-priority or requires legal status that third-party service providers would not have.

✓ UST owners' and operators' having the opportunity to work with third-party service providers instead of having to deal directly with regulators. For example, they may have flexibility in scheduling inspections which can lead to identifying and correcting deficiencies without incurring penalties. In addition, third-party service providers may be able to provide valuable information and advice about complying with UST technical standards and cleaning up contamination.

✓ The general public's gain when UST compliance is increased and LUST cleanups are accelerated without long-term increases in taxpayer funding of state UST programs.

General Considerations

This section identifies several concepts that states should consider when thinking about initiating or actually designing a third-party service provider program.

Identify work that can appropriately be done by third-party service providers. A third-party service provider program is appropriate for relatively routine functions that do not necessarily have to be performed by government employees. The service to be provided must be one that UST owners and operators are required to obtain (e.g., inspections for compliance with leak detection, upgrading, closure, installation, cleanup).

Design the program to be viable for service providers. Third-party service providers must be able to charge prices that are reasonable for UST owners and operators but are sufficient to make the service-provider business viable. Whether or not it will be viable depends on how the service is defined. For example, performing inspections solely to determine compliance with tank registration requirements is not likely to be a viable business. The administrative tasks involved in qualifying to participate and in performing the work and reporting the results must be reasonable. And the service must be one that can be efficiently performed; an inspection process that is cumbersome for state UST staff may be too difficult for third-party service providers to carry out unless it is first streamlined.

Design the certification or licensing program to be self-supporting. Third-party service provider certification or licensing programs can be designed to be largely self-supporting. If service providers are required to take tests and obtain licenses, fees can be charged that cover the costs of administering the tests and of issuing and renewing licenses. This part of a third-party service provider program can even be administered by a private entity that derives its

income from fees paid by the service providers. It also may be possible to have licensing fees cover the cost of occasionally spot-checking service providers' performance or monitoring the program in some other fashion, but care must be taken to avoid making fees so high that the service-provider business is not viable.

Leave the choice of a service provider to UST owners or operators. If the service-provider business is financially viable, many providers likely will want to enter it. Thus, there can be competition based on price, timeliness, and quality of the services. Programs will work best if UST owners and operators are free to choose among the available service providers.

Assure accountability for results/outcomes. Where state agencies perform regulatory functions, they are accountable to the public through various mechanisms. When services are provided by a private entity paid by another private entity, accountability can become difficult to pin down. But without public accountability for its effectiveness, quality, and fairness, a third-party service provider program may fail. States can succeed by designing such programs to ensure that the public has continued access to information (e.g., compliance status of UST facilities) and by ensuring that there are ways to correct problems arising from a service provider's failure to do its work properly.

States should research and consider the following actions to help them achieve success:

Check statutory authority. To allow private industry profes-sionals to be certified or licensed for the purpose of overseeing regulated activities, states must have appropriate statutory authority and regulations governing all aspects of the program. Explicit authority for this type of program may be unnecessary, or it may already exist in state laws not relating specifically to the UST program.

Finding out whether state laws already provide needed authority is a key first step.

Involve stakeholders. One way to promote the success of a new program is to build consensus with stakeholders from the beginning of the process. Letting stakeholders know exactly what is going on at each step and soliciting their comments will increase the likelihood that they will support the program. Stakeholders in a third-party program may include tank owners and their represen-tative organizations, potential private industry professionals and their associations, state legislators, environmental groups, other state agencies that may be involved, and other business sectors with an interest in ensuring good tank management (e.g., bankers, property managers, commercial real estate brokers, insurance agents).

Informed stakeholders will support expedited programs because they mean more inspections and cleanups for less cost.

Set program goals. Establishing program goals is an essential early step. Goals may relate to many aspects of a third-party service provider program, but such programs are most likely to succeed if they are designed to accommodate the differing objectives of involved stakeholders. For example, states want active inspection and cleanup programs, tank owners want reasonable costs when meeting their regulatory requirements, and private industry professionals want viable work and clear guidance.

Publicize the program. Success also depends in part on keeping key participants (i.e., tank owners, third-party service providers, state staff, and the public) informed about the development of the program and their roles in it. Tank owners need to know they will be responsible for hiring and paying for third-party service providers. Citizens have an interest in being informed about the status of tanks in their neighborhoods or about nearby cleanup activities. Potential third-party service providers need to know when certification or licensing exams are being offered.

Develop regulatory checks and balances. A third-party inspection or cleanup program needs a series of checks and balances in the regulations to ensure that inspections are being done correctly and that contamination doesn't "fall through the cracks." Ideally, the regulations will clearly define the responsibilities of all participants and will be easy to understand and implement.

Ways To Ensure Competence, Effectiveness, And Integrity

Naturally, there are risks that should be anticipated when setting up third-party service provider programs. Some service providers may be technically weak. Some UST owners and operators might allow a low price to take precedence over quality when choosing a service provider. Or, UST owners and operators whose own technical knowledge is limited may rely too heavily on third-party service providers. Real or apparent conflicts of interest may undermine such programs. Ways of avoiding such problems as much as possible, and dealing with them if they arise, can be built into the design, implementation, and oversight of third-party service provider programs. Some ways of minimizing risks are described below.

Licensing or certification. To minimize the risk that incompetent or ineffective service providers might enter the business, states can require licensing or certification based on a review of applicants' credentials, test results, and other criteria. Licensing or certification can be implemented by either state agencies (which could be agencies already involved in such activities in other pro-fessional and technical fields) or private entities. In either case, licensing or certification can be made self-supporting through the collection of fees.

The differences between licensing, certification, and registration in a regulatory program need to be well understood.

Performance bonding. Licensing or certification might not prevent the entry of every incompetent or ineffective service provider; furthermore, even competent ones occasionally will make mistakes. One way to protect UST owners and operators from having to bear the cost of errors by service providers is to require service providers to obtain performance bonds. Performance bonding is a common practice in many businesses and can be a valuable supplement to licensing or certification. Bonding will be meaningful only if there are clear, binding definitions of the circumstances under which a bond would be activated.

Auditing performance. To ensure that third-party service providers perform in accordance with applicable requirements, it may be necessary for states to audit or otherwise monitor their performance. For example, Pennsylvania spot-checks the UST facilities that have been inspected by third-party inspectors, and Massachusetts annually audits 20 percent of the sites served by licensed site professionals. Such procedures can help states determine how well third-party service provider programs are working and can minimize the chance that service

providers or UST owners and operators might take shortcuts that compromise environmental protection.

Minimizing conflicts of interest. Conflicts of interest--both real and perceived--have the potential to undermine public confidence in third-party service provider programs. One way to minimize that risk is to limit the extent to which service providers can inspect the facilities with which they have an ongoing business relationship. For example, an inspector should not be permitted to inspect the facility where he or she is employed, and a professional who oversees cleanups should not be permitted to endorse the products or services of environmental companies licensed to do business in the state.

Identifying and dealing with deficiencies. Detecting and discouraging errors by third-party service providers requires some vigilance. The state can audit or otherwise monitor a service provider's performance (including critically reviewing at least a sample of inspection reports or inspecting facilities or cleanup sites already visited by the third-party service provider). The state must, however, be willing to suspend or revoke the licenses or certification of those who are found to have engaged in questionable behavior. Suspension or revocation of licenses or certification can be a time-consuming and complex process that might best be handled by a state agency that already has experience with such procedures.

Consumer information. As customers or clients of third-party service providers, UST owners and operators need access to information that will help them make wise choices. Such information might include lists of service providers who are licensed or certified, as well as guidance on comparing the services that various providers offer, getting and comparing cost estimates, and understanding what service providers can and cannot do. States also may want to provide, on request, information about a specific service provider's performance, based on state audits or comments from UST owners and operators.

How to Get Started

The two most productive steps state UST managers can take before making any decisions on starting third-party service provider programs are to examine the experience of states with programs and to consult UST stakeholders. OUST urges state managers interested in setting up such programs to consult their peers in Pennsylvania and Massachusetts in order to benefit from lessons they have learned.

Early consultation with stakeholders can make a big difference in a state's efforts to implement a successful third-party service provider program.

Part 2

Developing A Third-Party Inspection Program

Background

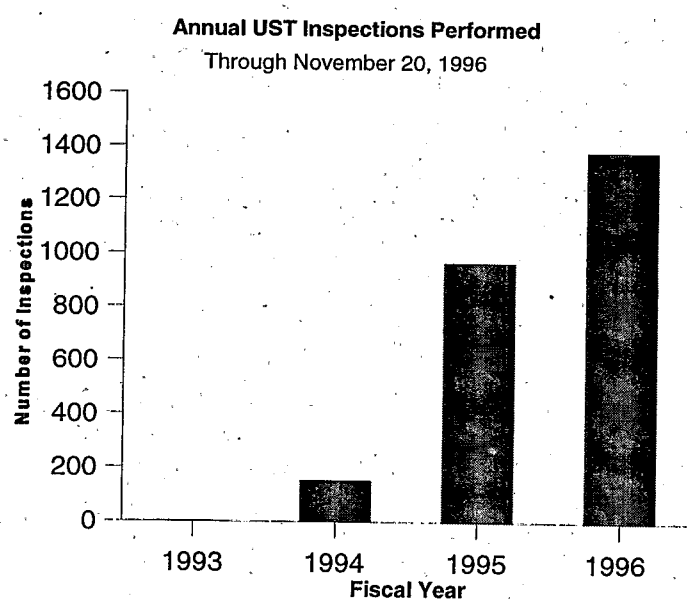
History

Using non-government personnel to perform inspections can reduce the public cost of UST programs by shifting some costs to the private sector--specifically to private entities that may derive benefits from either providing or receiving inspection services. When state tank programs operate in this manner, they can leverage resources and attain compliance levels that they might not otherwise achieve.

This section is based on Pennsylvania's third-party underground storage tank inspection program, which was initiated in 1994 by the Department of Environ-mental Protection (DEP). It is intended to provide guidance on developing and implementing a third-party inspection program to complete facility inspections traditionally performed by regulatory agencies.

DEP's third-party UST inspection program was broadly modeled after Pennsylvania's Sewage Enforcement Office program created in 1970 in which municipalities hired inspectors that were certified by the state. The program requires owners and operators of USTs to contract with, and pay, certified privately employed inspectors to conduct operations inspections at their facilities. Before initiating the third-party inspection program, Pennsylvania did not have an active field presence and performed compliance inspections primarily in response to complaints from the public.

As seen in the chart, the number of UST inspections rose dramatically after the program was implemented. Between June 1994 and mid-November 1996, third-party inspectors conducted nearly 2500 inspections. Plus, since most private inspectors are also certified installers, tank owners are benefitting from a higher level of technical expertise than was possible with state inspectors.



Statutory Authority

One of the first things to consider before setting up a third-party inspection program is whether or not existing state law allows the operation of this type of program. A state's Attorney General can determine whether the necessary authority can be inferred from existing law. If not, authority will have to be established through the state legislature.

Pennsylvania's statutory authority to develop and implement a third-party inspection program comes from its 1989 Storage Tank and Spill Prevention Act. The Act gives the state and its employees or agents the authority to conduct inspections. The Act also gives the state the

authority to establish an inspector certification program and requires that only certified inspectors conduct inspections. Regulations governing the inspector certification program were adopted in September 1991; they established program requirements and standards of performance. A copy of Subchapters A and B containing the regulations for the certification program may be found in Appendix A.

Program Publicity

During both the development and implementation phases of a new program, it is important to communicate with interested stakeholders. To inform stakeholders about its new program, Pennsylvania did mass mailings to tank owners and operators, prospective third-party inspectors, and various trade associations. In addition, the DEP started a newsletter and sent out press releases to the media. Appendix B contains a copy of the Public Information Request form published by the Bureau of Water Quality Management, Division of Storage Tanks.

Program Goals

Goals may relate to many aspects of a third-party inspection program, ranging from the proficiency of the inspectors and the quality of inspections to the frequency with which UST facilities will be inspected. Pennsylvania's primary goal is to have the 9,359 facilities in operation before 1989 inspected by the end of 1998. A secondary goal is getting information to facility owners which will help them prepare for upcoming inspections as well as help them bring their tanks into compliance with the 1998 requirements.

Program Participants

Three groups play major roles in, and derive major benefits from, a third-party inspection program: State regulatory agencies, tank owners and operators, and private industry inspectors.

State Regulatory Agency

A state UST regulatory agency establishes and enforces the rules under which a third-party inspection program operates. It oversees the activities of third-party inspectors and takes necessary action to deal with problems, such as poor performance by inspectors. And while third-party inspectors may do most of the routine work of assessing compliance with UST requirements, **the state UST agency retains its responsibility for verifying violations and taking enforcement actions.**

Third-party inspectors do not have legal authority.

Third-party inspection programs can increase both the amount of time inspectors are in the field and the number of inspections they perform. They also make use of technical skills readily available in the private sector. Using third-party inspectors frees up state resources so that emphasis can be placed on those parts of the UST program where state involvement is most important and most needed (e.g., ensuring clean closures, taking enforcement actions).

Tank Owners And Operators

Tank owners and operators hire and pay inspectors from the private sector and tank owners and operators are responsible for correcting violations found during an inspection. They can benefit from a third-party inspection program in three ways:

- ✓ Inspections are performed by someone who has the qualifications and experience for such work but is not a "regulator."
- ✓ Correcting violations identified by a third-party inspector generally will be less costly than waiting until the state issues a violation notice and imposes penalties.
- ✓ Tank owners can schedule inspections at their convenience, within state-prescribed time limits, and select a certified inspector.

Private Industry Inspectors

Third-party inspectors are hired and paid for their services directly by tank owners. They are finders of facts, not enforcers of laws. After an inspection, the inspector documents the results and submits a copy of the report to the tank owner and to the state. A third-party inspection program creates jobs in the private sector. It does not guarantee work to anyone, but it does make opportunities available to qualified individuals, including opportunities to assist owners and operators in coming into compliance, where the state allows such activity by third-party inspectors.

Program Design

Structuring The Program

Setting up a program structure generally involves defining the work to be done and deciding who will do it. Possibilities range from a highly centralized approach to one in which responsibility is divided among many groups. A division of responsibilities that takes advantage of capabilities that already exist within the state government is potentially the most effective approach.

In Pennsylvania, the responsibilities of DEP headquarters include:

- ✓ Managing the program,
- ✓ Developing the regulations,
- ✓ Communicating the program's mission and goals,
- ✓ Identifying training needs and coordinating training,
- ✓ Providing technical assistance and guidance to regional staff,
- ✓ Overseeing development and administration of certification exams (by the private sector),
- ✓ Reviewing and approving applications of potential inspectors,
- ✓ Issuing guidance,
- ✓ Evaluating the effectiveness of the program, and
- ✓ Distributing information to inspectors (such as regulatory changes).

Responsibilities of the Regional Offices include:

- ✓ Working with inspectors,
- ✓ Reviewing inspection reports and other paperwork,
- ✓ Conducting follow-up activities to achieve compliance,
- ✓ Performing joint inspections,
- ✓ Maintaining standards of performance of the inspectors, and
- ✓ Initiating enforcement actions against facility owners and inspectors.

Minimizing Conflicts Of Interest

In establishing a third-party service provider program, a state must determine who will be eligible to perform inspections and under what circumstances. Facing these issues early can avoid potential conflicts of interest (both actual and perceived). Questions to consider include:

- ✓ Can an inspector be an employee of the facility he or she is inspecting or must he or she be an unrelated third party?

- ✓ Can someone who has installed an UST system also inspect it for compliance with regulatory requirements?

- ✓ Can an inspector provide the services necessary to bring a facility into compliance?

In Pennsylvania, inspectors are prohibited from being an employee of the owner of the facility being inspected. However, an inspector can assist the owner in correcting deficiencies (such as, leak detection violations or problems with the installation) discovered during the inspection, as long as the inspector also has the appropriate installer certification.

Establishing A Pool Of Qualified Inspectors

To make a third-party inspection program viable and to maintain the quality and integrity of the program, a state needs to have means of determining which prospective inspectors are qualified to perform the work. There are various ways to do that, including:

- ✓ Requiring inspectors to be trained or certified by existing professional organization(s),

- ✓ Establishing an inspector certification or licensing program (run by either the state or a private third-party), or

- ✓ Requiring inspectors to meet minimum requirements for education and experience.

What a state does to ensure that it has qualified inspectors may depend on the resources available. If a state has neither the staff nor the funding to set up a certification or licensing program, it could charge fees for certification or licensing to make the program self-sufficient, or it could rely to some extent on external resources. Professional organizations, universities, or other state agencies are among the external groups that might offer training or play a role in the certification process.

Most certification and licensing programs require a minimum level of education and experience, a specified level of achievement on a test, and some mandatory training. The test can be written, oral, practical, or some combination of these. Another option is to develop a simple screening program in which prospective inspectors submit data on their education and experience. Based on these data, the state or an independent entity would decide whether the applicants are qualified to perform inspections.

In Pennsylvania, prospective inspectors are tested and certified to perform operations inspections. Interested persons submit an application describing their education and technical experience (see Appendix C). Applicants meeting basic requirements must then take and pass a two-part (i.e., administrative and technical) examination administered by a testing contractor. Pennsylvania also certifies inspection companies. Appendix D is an inspection company certification application form.

Maintaining A Pool Of Qualified Inspectors

Once a state's program has a pool of people qualified to perform inspections, ensuring that these people stay current on all aspects of the inspection process is critical. Aspects of inspection practices that may change over time include procedures, testing protocols, or the use of new and emerging technologies. A state can't afford to let its qualified inspectors' knowledge become obsolete. Here are some ways to keep inspectors qualified and up-to-date.

- ✓ Set a specific length of time that certification is valid
- ✓ Require continuing education/training,
- ✓ Distribute informational materials,
- ✓ Have state staff available to answer questions,
- ✓ Hold periodic inspector meetings,
- ✓ Conduct joint inspections periodically, and
- ✓ Provide performance feedback to inspectors.

Limiting the time for which a certification is valid and requiring continuing education to ensure that inspectors are up-to-date before recertifying them increases the chances that quality work will be done in the field. If a state decides to do this, charging a renewal fee can help support the process. A state can distribute materials that keep inspectors up-to-date on technical and regulatory issues. Examples might include booklets on particu-larly complex leak detection methods, such as Statistical Inventory Reconciliation, or on how to complete a process (e.g., determining whether or not suction piping meets regulatory requirements.

Pennsylvania requires inspectors to renew their licenses every three years. Each inspector must submit a renewal application at least 120 days prior to the renewal date and must successfully complete any training that DEP deems appropriate. Pennsylvania also provides technical educational materials to ensure that inspectors' knowledge is up-to-date.

As of September 1996, Pennsylvania had certified 205 UST inspectors.

Targeting Facilities For Inspection

Deciding which UST facilities are to be inspected and when the inspections are to be conducted is a state function. There are many possible targeting schemes. Any targeting scheme that can be used in a traditional state inspection program can also be used in a third-party inspection program. Accordingly, there is no need for a detailed discussion of targeting in this document. The key point is that having a third-party inspection program does not require the state to surrender its role in selecting UST facilities for inspections and determining the focus of the inspections (e.g., registration, leak detection, financial responsibility).

The Pennsylvania DEP targets facilities for inspection by looking at tank system age, type of product stored, number of tanks, and history of environmental or regulatory problems. These targeted inspections include ensuring that all paperwork--financial responsibility information, tank registration, detailed tank system information--is in proper order; checking that each tank meets regulatory requirements, including leak detection; and, if necessary, checking for proper closure.

Pennsylvania allows owners to voluntarily have an inspection conducted.

Initiating Inspections

To initiate inspections, a state needs to notify facility owners, tell owners what they must do to prepare for inspections, and schedule the inspections. In Pennsylvania, UST owners are responsible for selecting an inspector and are encouraged to get cost estimates from several inspectors. They also must get the inspection done within a specified time. DEP sends owners an information packet containing a certified letter notifying them that an operations inspection is due within 45 days from receipt of the packet; a list of certified inspectors and a list of certified inspection companies; information on the inspection and how to prepare for it; a facility operations inspection form, which the inspector completes and submits to DEP, and a postcard to be returned to the DEP giving the inspection date, facility name and identification number, and inspector's name. Appendix E contains a sample information packet with the exception of the lists of certified inspectors and inspection companies.

Standardizing Inspections

Consider adapting existing procedures and forms to save money.

Standardizing inspections is important to the integrity of the program. Standardization ensures that all inspectors check for the same things during an inspection. If, for example, an inspector finds that an owner has a leak detection system, a standardized form ensures that he will also check to see if it is working properly. Without standardization, one inspector may see an automatic tank gauge system on the wall and assume it is working, while another will ask the owner to perform a leak detection test. Required refresher training will help inspectors follow standard procedures. Standard-ized tools can be developed either by the state or by a contractor. Materials that could be developed include: Standard operating procedures, checklists, inspection forms, and inspection reports.

Pennsylvania uses a standardized inspection form that contains an overall compliance status rating for each tank on the first page followed by several pages of checklists to assist the inspector in making the status determination. A comments section is included so that unique occurrences not listed on the inspection form can be noted.

Receiving Inspection Reports

Either during or following an inspection, the inspector will need to prepare some type of inspection report. It can be a standardized inspection form as Pennsylvania uses or a separate document. The report is what the state uses to determine whether or not a facility is in compliance. The owner or the inspector can submit the inspection report to the state within a specified time; the state has to decide who should submit the report and when it should be submitted. A state may choose to have the inspector submit a copy of the report to both the owner/operator and the state, or a state might decide that it wants the owner to submit the report directly. In either case, it may be worthwhile to have the inspection report signed by both the inspector and the facility owner before it is submitted to the state.

In Pennsylvania, once an inspection is conducted, inspectors have 60 days to submit the standardized inspection report to the Department of Environmental Protection. During this 60-day period, inspectors can work with facility owners to bring their facilities into compliance. Should inspectors submit incomplete or inaccurate inspection reports, DEP Regional personnel will contact them to obtain the missing information and discuss proper ways to prepare the report and standardize the inspection.

Tracking Inspections And Compliance

To maintain program integrity, the state must perform tasks such as tracking compliance levels and taking enforcement actions. Program staff will need information about the inspections and other facility data that the state deems important. Information that a state's tracking system might contain include:

- ✓ Name and location of facilities inspected, date of the inspection, and name of the inspector;
- ✓ Violations noted and the dates on which they were corrected;
- ✓ History of facility compliance; and
- ✓ Status of compliance with regard to leak detection and 1998 requirements.

The UST-Access database, which many states are already using, has a compliance and enforcement module capable of maintaining this type of information.

At its Headquarters, Pennsylvania maintains a computerized database that tracks information such as tank and piping system components, leak detection methods, facility compliance status, follow-up actions needed, and comments. At the Regional level, tracking is accomplished both manually and electronically.

Overseeing Inspector Performance

Inspector oversight is an important component of a third-party inspection program.

Inspector oversight is an important part of a third-party inspection program. A state needs to know that inspectors are doing their jobs properly. If problems are identified, they must be promptly corrected. Correcting a problem could involve phone conversations, letters, face-to-face meetings, or suspension or revocation of an inspector's license.

Documenting an inspector's performance is critical. It is useful to keep a file on each inspector and put everything, whether positive or negative, in the file. Such documen-tation will provide a state with valuable information which could be used as support for suspension or revocation of an inspector's certification, license, or authority to perform inspections. A state can oversee the performance of inspectors in a variety of ways.

Reviewing inspection reports. It is helpful to target specific inspection reports for review because of human health or environmental considerations. Some reports should be randomly selected for review. In this way, inspectors will know that all sites are important.

Conducting random spot inspections. Having regulators inspect facilities that have already been visited by third-party inspectors is another way to check the work of inspectors. Spot inspections can be accomplished with or without an inspector's advance knowledge.

Pennsylvania uses a combination of oversight methods.

Conducting joint inspections. Joint inspections can be an effective oversight tool for both inspectors and regulators, in that each can learn from the other. Joint inspections also tell a state whether inspectors know what they are doing and whether inspections are being conducted properly. A state may want to consider conducting joint inspections extensively in the early stages of implementing a third-party inspection program, or conducting joint inspections when newly qualified inspectors begin work, or both.

Soliciting owner/operator comments. Another oversight method is soliciting opinions from facility owners regarding inspectors and/or the inspection process. It is, of course, necessary to separate opinion from fact.

When questions arise about inspectors' performance, a review of some, if not all, of the inspection reports will help the state determine whether action has to be taken. If the reports indicate inaccuracies or inadequacies, contacting the inspectors as soon as possible and discussing the situation may get problems resolved without need for further action. Documenting such discussions is important.

In Pennsylvania, joint inspections were conducted frequently in the beginning of program implementation to ensure that both regulators and inspectors knew what was involved in a compliance inspection. In at least one of its regions, the DEP continues to perform joint inspections with new inspectors to be sure they are doing the work satisfactorily and filling out the inspection form correctly. Pennsylvania currently relies primarily on the review of forms to ensure that they are filled out properly. This review also reveals whether facilities are in compliance and if any further actions are required. The cornerstone of Pennsylvania's oversight process is legal authority to suspend or revoke inspector certification. Revocation of a

certification by the state is a permanent action; a suspended certification, however, may be reinstated. Circumstances under which these actions can occur are listed in Pennsylvania's regulations.

Compliance And Enforcement Options

In third-party programs as in regulatory programs, states have to be assiduous when dealing with uncooperative tank owners. For example, in third-party inspection pro-grams, states need a plan for dealing with the following situations:

- ✓ A tank owner fails to respond to an inspection notification,
- ✓ A tank owner refuses to have an inspection conducted,
- ✓ An inspection report identifies violations, or
- ✓ A tank owner fails to take action to come into compliance.

Strategies for dealing with these situations can be as simple or intricate as a state deems necessary. If, for example, an owner fails to respond to an inspection notification, a phone call may be sufficient to correct the problem. If an owner refuses to have an inspection conducted, a state could have state regulatory personnel perform the inspection or even close the facility (if the state has authority to take such action) until the owner agrees to an inspection.

In Pennsylvania, the following strategy is used:

Pennsylvania's enforcement strategy gives owners several options.

- ✓ An inspector has 60 days following an inspection to submit the inspection report to DEP. During this time, the inspector may work with the owner or operator to bring the facility into compliance.
- ✓ If the facility comes into compliance during this time, then the inspector notes this in the comments section of the inspection report prior to submitting it.
- ✓ If the facility is not in compliance after the inspection form is submitted, the owner or operator is sent a Notice of Violation providing a timetable and a method for the facility to come into compliance.
- ✓ If the facility owner fails to come into compliance during this time, then state personnel will visit the facility to conduct an inspection. If violations noted in the inspector's report are confirmed, then further enforcement actions will be taken, including the assessment of a civil penalty. **DEP does not take enforcement actions based solely upon a third-party inspector's report.**

Effectiveness

Determining how well a state's third-party program is working and/or how to improve it are keys to long-term success. There are several ways a state can evaluate program effectiveness: Periodic surveys, interviews with regulatory staff and inspectors, and documentation reviews.

Once the program has been up and running for a period of time, a state could check the level of facility compliance statewide to determine whether or not the program is making a difference. Examples of other before-and-after measures of program effectiveness that could be used include numbers (or percent) of facilities inspected, numbers (or percent) of violations corrected without initiation of enforcement action, and numbers of complaints per hundred facilities inspected.

Pennsylvania makes adjustments to improve the program and increase its effectiveness when needs arise. In addition, DEP is evaluating its third-party inspection program at the two-year point by visiting each Regional Office. During these visits, staff and managers are interviewed, samples of the records are reviewed, and discussions with inspectors that perform work in the region are conducted. Once completed, the Commonwealth will evaluate the information it has obtained and make adjustments as necessary.

Pennsylvania reviewed its program at the two year point.

Costs

Overview

Costs to the state for a third-party inspection program can be in the form of staff time, dollars (for contracts or interagency agreements), or both. When considering the cost to develop and implement a third-party inspection program, a state should recognize that the resources needed will diminish over time. Although start-up costs could be significant, once the program is up and running, maintaining it generally takes less staff time and fewer dollars.

Start-up costs can be high, but long-term benefits are also high.

While it is difficult to predict costs, Pennsylvania reported the following areas in which program costs were significant.

- ✓ Determining whether a state has adequate legal authority and, if necessary, obtaining it;
- ✓ Establishing an inspector certification program including developing regulations, developing and administering a certification exam, reviewing inspector applications, and, approving training classes required for renewing certification;
- ✓ Developing and printing a standardized inspection form for use by private sector inspectors;
- ✓ Developing and mailing outreach materials/information packets to tank owners;
- ✓ Developing or adapting a currently-used tracking system/database; and
- ✓ Performing inspector oversight and program implementation tasks.

Other program components such as involving stakeholders and publicizing the program also may require an investment of staff time, money, or both.

Some of the costs associated with developing and implementing a third-party inspection program may be substantial, but the long-term benefits may also be substantial. Third-party inspection programs can greatly increase the number of facilities a state inspects with fewer state staff than are needed by traditional state inspection programs. More inspections will likely mean greater compliance with regulatory requirements.

Pennsylvania's Costs

Costs To The State Agency

In Pennsylvania, the UST program, including the third-party inspection program, is funded through tank registration fees. Here are estimates provided by the Pennsylvania UST program staff of the costs to develop and implement the third-party inspection program.

Developing authority and regulation. The 1989 Storage Tank and Spill Prevention Act gives the state the authority to conduct inspections, establish an inspector certification program, and require that only certified inspectors conduct inspections. The certification program regulations, adopted in September 1991, establish program requirements and standards of performance. Developing these regulations involved considerable time and effort (approximately two years) on the part of the Headquarters staff.

Setting up and maintaining the certification program. Pennsylvania certifies both inspectors and installers to conduct inspections and tank handling activities (e.g., installation, modification, removal, tightness testing) on USTs and aboveground storage tanks (ASTs). At this time, the state doesn't charge inspectors or installers fees to participate in its certification program.

The inspector and installer certification exams were developed, under contract, by a professional examination company. This first contract for initial exam development and administration of the certification program (including giving and grading exams) was approximately $150,000. The second contract for exam administration, awarded for three years, is slightly less than $100,000. Management of the entire certification program by the state (covering UST and AST inspectors and installers) requires approximately three man-years of work.

Providing the inspection form. Pennsylvania purchases its inspection forms from a private company at a cost of $5.00 each. The custom-made form is five pages long and includes an original and three carbon copies: one for the state, one for the inspector, and one for the tank owner.

Mailing to owners. The cost, in terms of staff time and money (for postage), of mailing the inspection notification letter and several attachments to more than 9300 facilities is significant because Pennsylvania's goal is to inspect all facilities in operation prior to 1989 (9,359 facilities) by the end of 1998.

Developing a tracking system. The Headquarters office staff developed a system that required significant programming time.

Implementing the program and overseeing inspectors. Pennsylvania is expending approximately 2.0 - 2.5 man-years of work in the Headquarters office and 6-8 man-years of work through its six Regional Offices to implement the inspection program. Existing staff have taken on third-party oversight and implementation tasks; the state has not hired additional staff.

Costs To Tank Owners And Operators

In Pennsylvania's program, tank owners are responsible for hiring and paying a certified private sector inspector. The cost of inspections currently averages about $100 per tank. Some inspectors offer discounts if a facility has multiple tanks. Market forces set the price. Pennsylvania doesn't ask inspectors what they charge or publish rates, but does encourage tank owners to shop around for the best price.

Costs To Private Sector Inspectors

Costs to conduct inspections (travel, equipment, preparation time) should be covered by the price inspectors charge tank owners for the service. If private inspectors must pay certification and licensing fees, their charges may also reflect these costs of participation in the program.

Part 3

Developing A Third-Party Cleanup Program

Background

History

More and more often, states are facing environmental cleanup demands that they are having difficulty meeting. Whether the problem stems from cutbacks in resources, greater-than-anticipated numbers of sites requiring cleanups, or other factors, the result is the same--too much cleanup work and not enough staff. In harvesting expertise already available in the marketplace, a third-party cleanup program can help solve the problem of a state's cleanup backlog.

Part 3 contains a description of Massachusetts' Licensed Site Professional (LSP) program, a component of the state's Waste Site Cleanup Program. In the late 1960's, a limited program for responding to oil spills was launched. In 1983, broader authority to aggressively target contaminated sites and spill emergencies was established when Massachusetts enacted its Superfund statute, Chapter 21E of the General Laws. Three years later, citizens approved a ballot question giving the Department of Environmental Protection (DEP) specific deadlines and quotas for finding and assessing pre-existing oil and hazardous material release sites, ensuring their timely cleanup, and increasing public participation in the process. The program was predicated on DEP providing direct oversight of assessment and cleanup work. DEP was, however, not given the funding or staffing to carry out these mandates.

By 1990, the number of known and suspected sites with oil and hazardous material releases surpassed DEP's ability to oversee responses. Fewer than one-quarter of the 4,200 sites were being actively addressed, and in any given year, only a few cleanups were completed. Sites languished under the existing program with no clear way out of the cleanup process. Adding to the burden, DEP was responding to more than 2,000 new spills and emergencies each year.

To address the problem, in 1990 DEP convened a study committee to begin the process of revising the Chapter 21E program. The members developed a new vision--one ultimately shared by all major stakeholders--and a comprehensive set of recommendations for increasing the number of cleanups without compromising environmental standards. In the early discussion phase, the study committee decided the new program should be predicated on five essential elements:

A study committee debated the question of what government and the private sector each did best.

- ✓ DEP must know about releases to the environment,
- ✓ DEP must ensure that assessment and cleanup are done properly,
- ✓ Sites should be permanently cleaned up in a timely manner,
- ✓ Those legally responsible should pay their fair share of cleanup costs, and
- ✓ Citizens should be informed of and involved in cleanup decision-making.

The committee's work resulted in a set of proposed amendments to Chapter 21E, which included revision of the regulations for site assessment and cleanup of oil and hazardous material releases contained in the Massachusetts Contingency Plan (MCP).

A key component of these changes was a recommendation to license environmental professionals to oversee and coordinate response actions at most disposal sites. The redesigned statute was approved by the Legislature, signed into law by the Governor in 1992, and went into effect on October 1, 1993.

The LSP program changed DEP's mission from *providing direct oversight* of all site assessments and cleanups to *ensuring timely oversight* of all assessments and cleanups. The program also placed greater responsibility for cleaning up sites in the private sector. The state would oversee the work of LSPs only at the most serious sites. LSPs would oversee the others without DEP oversight.

Statutory Authority

Massachusetts' statutory authority for the LSP program began with amendments to Chapter 21E of the General Laws (i.e., its Superfund statute) which included passage of enabling legislation to create the Board of Registration of Hazardous Waste Site Cleanup Professionals (Chapter 21A, §§19-19J). Following this, DEP and the Board promulgated regulations revising the Massachusetts Contingency Plan (originally published in 1988) as well as regulations for the LSP program (309 CMR). The LSP Board regulations appear as Appendix F.

Stakeholders

By forming the public/private 21E study committee, which Involved stakeholders from each of the major groups that would be affected by the new program, Massachusetts gave all stakeholders representation in the design of the LSP program. By working with each group, the committee was able to reach compromises that were integral to the success of this program. According to DEP, the overhaul of the 21E program was a collaborative effort from the beginning; without stakeholder buy-in, it is unlikely that a program such as this could have been created.

Informed citizens will support an expedited program because it means more cleanups at a faster pace and with less cost.

Program Goals

Massachusetts designed a program that satisfied the objectives of all stakeholders. DEP's objectives were to expand the role of the private sector for lower risk sites and to focus limited government resources on high risk sites and on those tasks that only government can perform. Site owners wanted permanent solutions to their cleanup problems, a speedy process, and lower cleanup costs. Licensed site professionals wanted clear guidance upon which they could base their opinions.

Regulatory Checks and Balances

A third-party cleanup program needs a series of checks and balances in the regulations to protect against abuse and to ensure that contamination does not "fall through the cracks." Massachusetts developed three very important regulatory processes in the LSP program that help the program work as intended. One of these is

the audit program: 20 percent of the cleanups coordinated by LSPs are audited for compliance with the regulations. Another is aggressive disciplinary procedures for LSPs who fail to follow the MCP regulations. In addition, the Waste Site Cleanup Program's Numerical Ranking System (risk ranking process) ensures that the worst sites are monitored by the state.

The Massachusetts LSP Program

LSPs Defined

Massachusetts law defines an LSP as an individual who, by reason of appro-priate education, training and experience, is qualified, (i.e., licensed) to render waste site cleanup activity opinions that can be relied upon as sufficient to protect health, safety, public welfare and the environment. LSPs are required to have at least five years of relevant professional experience (seven years without an appro-priate degree), appropriate technical background, and good moral character. They undergo rigid evaluation, testing, and performance monitoring and must meet continuing education requirements.

LSPs are experienced professionals in the field of hazardous waste site assessment, cleanup and removal.

What LSPs Do

LSPs issue ***waste site cleanup activity opinions*** (see Appendix G) describing whether contamination is present at a site, what work is needed to clean up the contamination found, and whether that work has been completed. According to the regulations, LSPs may render these opinions only when they manage, supervise or actually perform the assessments or cleanup actions, or periodically observe the perfor-mance of the work by others. In their opinions, LSPs must also attest that the completed work complies with all regulations and any order, permit, or approval issued by the DEP. LSPs are permitted to rely upon the advice of other professionals but must determine that these professionals are qualified by education, training, and experience to it.

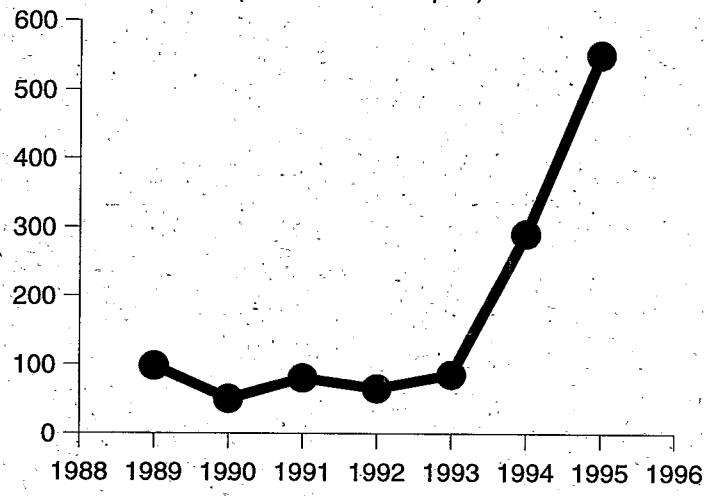
Who Retains LSPs

LSPs are hired and paid by site owners. Because all assessment, containment, or removal work for releases which exceed a state notification threshold must comply with state laws and regulations, only LSPs can sign the waste site cleanup activity opinions filed with the DEP. All private parties who are having assessment and cleanup work done at their site <u>must</u> retain LSPs to demonstrate that the work complies with the regulations.

How The Program Is Doing Now

Sites Permanently Cleaned Up in Massachusetts

(Excludes New Spills)



The LSP program is still in its infancy, but cleanups are already being completed faster. This chart depicts the increase in cleanups (both hazardous material and petroleum) between 1989 and 1995.

Note: 80 percent of the work performed by Massachusetts LSPs since the new program's inception in October 1993 has been UST-related.

Massachusetts' first-in-the-nation program to allow the private sector, through the LSP program, to oversee cleanup of hazardous waste sites won national recognition from the Council of State Governments, which selected it as one of its 1995 Innovations Award winners. ***The Innovations Award Program identifies the best and most creative practices in state government which have the potential to be adopted by other states.*** The U.S. EPA congratulates Massachusetts for its achievement.

Program Design

Program Structure

A third-party cleanup program should include all or most of the following components:

- ✓ Licensing or certification of private industry professionals hired by site owners to carry out regulatory cleanup functions.
- ✓ A system for ranking sites according to risk level so that low risk cleanups can proceed quickly and cost effectively and high risk sites can receive the level of state oversight necessary to protect public health and the environment.
- ✓ Processes (e.g., auditing) performed by the state to determine the level of compliance being achieved and to ensure that quality work is performed.
- ✓ Regulations governing all aspects of the program to be carried out by private industry professionals.
- ✓ Clear procedural guidance for both site owners and licensed industry professionals hired to oversee cleanups.
- ✓ Education and outreach targeted at all affected groups.

The LSP Board

LSP Board members represent all major stakeholder groups.

As part of the 1992 legislative redesign, Massachusetts created an *independent* Board under the jurisdiction of the Massachusetts Executive Office of Environmental Affairs (EOEA), a Secretariat of the Governor's Cabinet. Authority for staffing the Board was delegated by EOEA to the Department of Environmental Protection.

The Chapter 21E statute specifies that the Board will have eleven members and that the Commissioner of DEP or his designee will serve as Chairman. The remaining ten members are volunteers appointed by the Governor. DEP's Commissioner, in turn, delegated the position of Board Chairman to the head of the Bureau of Waste Site Cleanup. The statute also requires that Board membership include representatives from industry, potential responsible parties, environmental groups, LSPs, and the DEP. The eleven-member Board sets policy and general procedural direction for the program.

The May 1993 regulations adopted by the Board outline implementation, administration, and enforcement of the LSP program. The regulations define the qualifications to become an LSP and the standards of professional practice that LSPs must meet. The Board is required by law to license only those individuals who have been proven qualified to render waste site cleanup activity opinions. To do this, the Board established:

- ✓ Minimum education and experience requirements which an individual must meet before being allowed to take the test for licensure as an LSP;
- ✓ Procedures for issuing and renewing licenses;
- ✓ Rules of professional conduct applicable to LSPs;
- ✓ Procedures for issuing advisory rulings interpreting the professional conduct standards; and
- ✓ Procedures for disciplinary action to enforce the regulations and all orders, licenses, and approvals issued by the Board.

As of January 1, 1997, there are 418 LSPs operating in Massachusetts.

By January 1, 1997, the LSP Board had approved 543 applicants for testing and denied 263. The first exam was given in November 1995; the exam is offered every six months.

The LSP Process

Qualifications and licensing. To determine whether environmental professionals are eligible to take the licensing examination, the Board reviews detailed written applications in which candidates describe their education, experience, and moral character. Appendix H contains Instructions for the Application for Temporary Licensing and Qualification for Examination.

Minimum education and experience requirements listed in the Board regulations fall into two categories. The "standard track" requires a baccalaureate, masters, or doctorate degree from an accredited college or university in one of the specified science or engineering curricula approved by the Board (e.g., hazardous waste management, hydrogeology, microbiology). This track requires "eight years of total professional experience," including five years of "relevant professional experience." The "alternate track" requires a high school diploma and 14 years of "total professional experience," including seven years of "relevant professional experience." For both tracks, the regulations require that at least three years of relevant professional experience have occurred within the five years prior to submission of an application.

"Total professional experience" is defined in the Board's regulations as any experience applying scientific or engineering principles in any environmental, scientific, or engineering field. "Relevant professional experience" is defined as experience gained at the decision-making level selecting methodologies and drawing technical conclusions for site investigations, risk characterizations, and/or remediations at sites where oil and/or hazardous material has been released to the ground or groundwater.

The Board regulations define good moral character as "...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."

A licensing exam is administered twice a year. Candidates who are found to be eligible to take the examination are tested for their overall technical and regulatory understanding. Once it has been determined that an applicant is eligible to take the exam, he or she has two years in which to pass it. If an applicant fails to pass the exam, he or she may take another exam within that two-year period without re-applying. Each exam consists of 160 multiple-choice questions, and no two tests are identical. The passing score is determined separately for each exam using a criterion-referenced methodology that takes into account variations in the difficulty of each examination. The passing scores for each of the first three exams given ranged between 77 and 80 percent.

Once an applicant passes the exam, he or she is issued a full LSP license, which is valid for three years. At the end of the three-year licensure period, the license may be renewed for another three-year period by demonstrating that one has met the Board's continuing education requirements and by paying the renewal fee. The exam does not need to be retaken.

The Board made no exceptions to its licensing requirements. No one was or can be "grandfathered in" or granted reciprocity, including those already licensed as Professional Engineers or Professional Geologists in Massachusetts or elsewhere. Nor is exception granted to those who have merely been in the waste site cleanup business for many years.

Fees. Because the Legislature intended the LSP Board to be self-supporting, the enabling statute governing the LSP program requires that the Board charge fees sufficient to recover the costs of its operation. Here is the schedule of fees that was established:

✓	Application fee	$245	(payable at the time application is submitted)
✓	Examination fee	$400	(payable each time exam is taken)
✓	Annual fee	$160	(payable within 30 days after a license is granted and annually thereafter)
✓	License renewal	$100	(payable 30 days before the end of a license period, currently three years)

Continuing education. Because both the regulatory and technical aspects of waste site cleanup work are changing rapidly, the Board established a continuing education requirement intended to encourage LSPs to stay up to date in order to practice competently. To meet this requirement, LSPs must obtain 48 credit hours of continuing education in each three-year licensing period. Credits can be obtained only by taking Board-approved courses. One-third of the credits must come from "regulatory" courses (i.e., courses that enhance the LSP's ability to perform response actions in compliance with the regulatory requirements). Another third of the credits must come from "technical" courses (i.e., courses that enhance the LSP's ability to perform the technical components of response actions). The last third of the credits can come from either of these categories.

Ethics and disciplinary procedures. To provide DEP and the public with confidence that site investigations, risk characterizations, and remediations overseen by LSPs are adequate, and that the scope of response actions are determined by the conditions of the site and not by the site owner's budget, the Board developed and promulgated Rules of Professional Conduct. These rules encompass professional competency and responsibility, conflicts of interest, and a prohibition against entering into contingent fee arrangements whereby payment of the LSP's fee is dependent, in whole or in part, upon the LSP making a specific finding or achieving a particular result.

LSPs who violate the Rules of Professional Conduct risk disciplinary action by the Board. Procedures were developed for receiving, investigating, and processing complaints, and for taking disciplinary actions when warranted. The Board is currently using this process for handling reports of professional conduct violation.

- ✓ Complaint is received by the Board and assigned to a Complaint Review Team consisting of two members of the Board (an LSP and a non-LSP), and a staff attorney.
- ✓ Team investigates the complaint and reports to the Board, which then determines whether sufficient grounds exist to initiate formal disciplinary action against the LSP.

- ✓ If sufficient grounds exist, the team may request an informal conference with the LSP who is the subject of the complaint in an attempt to resolve the matter through an agreement for discipline.

- ✓ If no agreement is reached, the Board proceeds with a full adjudicatory hearing.

As a licensing agent, the LSP Board has the authority, in response to a complaint or findings of its own and after an adjudicatory hearing, to suspend or revoke an LSP's license. The Board has developed procedures for assessing civil administrative penalties and issuing public or private censures to LSPs. If the Board revokes an LSP's license, it can bar reissuance of the license for up to five years.

An LSP can lose his or her license for 5 years.

LSPs And The Waste Site Cleanup Program

Overview

Massachusetts site owners hire LSPs to coordinate their cleanup activity and determine that the work meets state requirements--in most cases without DEP involvement. The revised Massachusetts Contingency Plan (MCP) identifies specific points in the cleanup process that require LSPs to render formal, written opinions. When a site owner discovers a reportable release, the first thing the owner must do, in most cases, is hire an LSP because further site assessment and cleanup cannot begin without oversight performed by an LSP.

The DEP describes the new 21E program as a highway with a variety of entrance and exit points, fast and slow lanes, signs to describe how releases will be identified, and the level of DEP oversight appropriate for each site. The MCP serves as a "roadmap" for conducting assessments and cleanups.

Within limits, the pace of cleanup is determined by site owners in consultation with the LSPs they hire. The MCP provides "off-ramps" at any point where DEP's standards for cleanup have been met. It also establishes basic performance standards and "driving speeds" for moving through the process. The more time site owners spend on the cleanup "highway," the more they will pay DEP in compliance fees. The system was designed with incentives to encourage owners to clean up their sites and get "off the highway" (out of the process) as quickly as possible.

Here is a brief description of the most important features of the MCP regulations pertaining to site remediation.

Notification Thresholds

The original MCP did not provide guidance on the threshold contaminant levels that triggered the mandatory reporting of "historical" contamination. As a result, site owners were reporting everything, even trace amounts of contamination, which led to a backlog

of sites waiting to receive a clean bill of health. The revised MCP established clear thresholds below which contaminant levels in soil and groundwater were not required to be reported to the DEP.

Very small cleanups (i.e., removal of up to 100 cubic yards of soil contaminated with oil or up to 20 cubic yards of soil contaminated by hazardous material) do not have to get into DEP's system at all, providing all contaminants above the threshold reporting levels have been removed. LSP services are not required for initial assessments intended to determine whether there is a reportable release at a site, nor are they required for notifying DEP of a reportable release.

Site Ranking

Massachusetts uses a risk-based process called the Numerical Ranking System.

Sites that have not been cleaned up within one year of notification to the DEP must be evaluated using a risk-based quantitative ranking system, the Numerical Ranking System (NRS). The NRS classifies sites into tiers and ranks them using specific criteria and scoring based on both existing and potential risks to public health, natural resources, and environmental receptors.

Sites that score below a specific number fall into the lower tier. Assessment and cleanup of these sites do not require a DEP permit and can proceed with oversight performed by LSPs. Sites that score above this number or are located in groundwater resource areas fall into the higher tier. All of these require DEP permits before comprehensive response actions can be taken. The NRS is also used to separate high tier sites into three categories. The most complicated and serious response actions in the high tier are coordinated by LSPs with continuous oversight by DEP staff. Response actions at sites ranked in the remaining two categories can proceed without direct DEP oversight, once a permit is issued.

Originally, it was estimated that about 70 percent of the oil and hazardous material releases requiring classification would score in the lower tier. In fact, in the first two years of the program, of 803 sites ranked by LSPs, 88.4 percent were classified in the lower tier. Of the 11.6 percent that scored in the higher tier, only one site fell into the category that required continuous DEP oversight. LSPs had primary responsibility for the remaining 802 sites in the system at that time.

Cleanup Requirements And Endpoints

The revised MCP established a standard for deciding when response actions are complete in terms of the risks remaining at sites. LSPs must render opinions that a condition of "no significant risk of harm to health, safety, public welfare, or the environment" exists at a site. The standard requires consideration of both current and reasonably foreseeable uses of a site and its surrounding area.

Determining "how clean is clean enough" is probably the area in which certainty is desired most, since site owners do not want to begin a cleanup process from which there is no clear end point. LSPs have three options in Massachusetts for defining a level of "no significant risk" or "how clean is clean enough."

- ✓ Method 1: uses numeric standards for more than 100 common chemicals in soil and groundwater.
- ✓ Method 2: allows for adjustments in the standards in Method 1 to reflect site-specific conditions.
- ✓ Method 3: allows cleanup goals to be defined based on a site-specific risk assessment.

LSPs must file a report with the DEP documenting that a permanent or temporary cleanup has been achieved. An "endpoint" considered permanent indicates that "no significant risk" exists at the site. If the permanent solution is based on assumptions of limited site activities, then a deed notice or restriction is required to ensure that these assumptions remain valid over time. Deed restrictions inform future property owners that activities at the site will be limited unless further cleanup action is taken. An "endpoint" considered temporary means that a permanent solution is not feasible, but that all substantial hazards have been eliminated. Eventually, a permanent solution must be implemented if one becomes feasible.

Accelerated Risk Reduction

Early risk reduction measures and accelerated assessment and cleanup actions are encouraged in Massachusetts and, in some cases, mandated. In the case of time-critical conditions, "Immediate Response Actions" must be taken by site owners using LSPs. In non-critical situations, they can work together to take abatement actions that reduce risks and lower future cleanup costs. These risk reduction measures may allow complete cleanup of smaller releases without comprehensive response actions, or may improve site conditions (and lower the site's numerical ranking) at sites where long-term cleanup is required. The DEP reports that the new program has generated a 400-percent increase in voluntary risk reduction measures.

Compliance And Permit Fees

Most cleanups in Massachusetts are paid for by responsible parties (i.e., site owners and operators). DEP assesses one-time compliance fees for various preliminary response actions and risk reduction measures prior to tier classification. After tier classification, owners and operators are required to pay annual compliance fees until their sites are cleaned up and can be closed out of DEP's system. These compliance fees were established for two primary reasons. All LSP opinions and site owner documents that are submitted to DEP are subject to audit; compliance fees help offset the cost of the auditing process. Secondly,
the compliance fees act as an incentive for site owners to clean up their sites as quickly as possible. Doing so reduces the compliance fees required by DEP and also can reduce their cleanup costs.

LSPs And The Audit Program

Overview

The 1992 amendments to Chapter 21E require that DEP, at a minimum, audit 20 percent of the response actions not overseen by DEP. The audit program is run by the Bureau of Waste Site Cleanup (BWSC) and is supported by annual compliance assurance fees paid by owners. See Appendix I for a copy of the Massachusetts "Audit Implementation Plan."

The audit program is carried out by a headquarters office and four regional offices. Headquarters manages the general audit process, (randomly) selects sites to be audited by the regions, and summarizes audit findings. The regional offices target sites to be audited in addition to those randomly selected by headquarters, conduct the audits, and produce the findings. Approximately 200 audits are conducted each year. In general, LSPs see the audit process as a way to educate themselves and DEP on how well the MCP regulations are being followed.

Audits are one of many regulatory tools the DEP uses to ensure compliance with the MCP. Other compliance tools include:

- ✓ Permit review: Reviewing and processing higher tier permit applications.
- ✓ Direct oversight: Reviewing and approving response actions at emergencies and those sites directly overseen by DEP.
- ✓ Response action deadline compliance tracking: Tracking to ensure timely submittal of response action reports.
- ✓ Site inspections: Monitoring response actions.
- ✓ Investigations: Responding to release notifications and referrals from within the DEP, other government agencies, or the public.
- ✓ Enforcement actions: Issuing notices of noncompliance, orders, penalty assessment notices, revocation of permits, and referrals to the Attorney General's Office or other law enforcement authorities.
- ✓ Publicly-funded response actions: Issuing Notices of Response Action and cost recovery actions.

Goals Of The Audit Program

> ***The goals of BWSC's compliance program are: compliance, consistency, credibility, and committment.***

The four major goals of the audit program (called the 4 C's) as well as the goals for the Bureau of Waste Site Cleanup's entire compliance program are to:

✓ *Achieve an increasing level of **compliance** with the MCP to ensure protection of health, safety, public welfare, and the environment overall.* The possibility of an audit is an incentive for both LSPs and site owners to perform their response actions in accordance with the regulations. Such compliance enables them to avoid enforcement actions that could result from an audit and possibly costs of redoing cleanup work to achieve compliance.

✓ *Ensure the **consistency** of audits and other compliance activities throughout the state.* The purposes of this goal are to ensure that audit staff in all regional offices follow the same procedures when performing audits and to ensure that these audit procedures are consistent with all other DEP compliance processes. Some of the mechanisms used are consistent criteria for selecting sites to be audited, consistent forms and correspondence for initiating and completing audits, and guidance used to evaluate response actions and sites.

✓ *Establish **credibility** of the audit/compliance programs with the public, the LSPs, and the regulated community.* In addition, the audit program must meet DEP's expectations for the redesigned 21E program.

✓ *Meet the **commitment** to audit annually 20 percent of sites subject to compliance assurance fees.*

Measuring Success Of The Audit Program

By the end of 1996, the DEP had completed 387 audits. Of this number, 117 were audits of randomly selected sites; they had a compliance rate of 80%. At these sites the work was adequate or the problems were easily corrected without further field work. The remaining 270 sites were specifically targeted because it was anticipated that problems might be found. As expected, the rate of compliance was lower at targeted sites--77%. The state believes that the audit program has improved compliance and pushed the level of professionalism higher within the LSP community.

How Massachusetts Promotes And Supports Its LSP Program

Ensuring Accountability

In designing its third-party cleanup program, Massachusetts designed all of the components to work together to guarantee accountability for the outcome of cleanup activities. Aggressive education and outreach (to site owners, LSPs, contractors, environmentalists, the business community, and the general public) are two ways DEP informs people about how the program is working.

Promoting Compliance

When Massachusetts got out of the business of directly overseeing the majority of its cleanups, DEP was able to shift staff resources from pre-cleanup approvals and oversight to those activities that the state must do--emergency response, site discovery, oversight of high-risk sites, compliance monitoring, and enforcement. To promote compliance in the first two years of the new program, the DEP:

- ✓ Launched the MCP Helpline, which answered more than 11,000 calls from LSPs, site owners, and the general public during its first two years of operation;
- ✓ Conducted 20 seminars to keep the private sector current on 21E program revisions and three regulatory training courses accredited by the LSP Board to meet the continuing education requirements for LSPs;
- ✓ Publicized audit findings and discussed them with the LSP Association to increase awareness of common deficiencies and violations;
- ✓ Contributed a regular column to the LSP Association's monthly newsletter, highlighting important audit findings and compliance issues; and
- ✓ Sent regular "reminder" letters to parties conducting cleanups about specific deadlines they would have to meet.

Supporting The LSP Profession

Once the LSP program was launched, a new profession was created in Massachusetts. In 1992 the Licensed Site Professional Association (LSPA), a non-profit trade association, was established by a group of LSPs to promote the interests of members of the new profession in relation to insurers, vendors, the DEP, and others interested in the program. The Association's stated mission is "to promote sound business and technical practices of member LSPs." The LSPA publishes a monthly newsletter and works jointly with the DEP and the LSP Board to develop and offer Board-approved training courses to LSPs. Its Loss Prevention Committee reviews audit findings provided by the DEP, which has turned out to be a helpful service for LSPA's members.

What Massachusetts Achieves With Its LSP Program

Accomplishments

By 1990, the growing number of sites in the 21E program far outstripped DEP's monetary and human resources to manage site assessments and cleanup at these sites. In that year, fewer than one-quarter of the 4,200 oil and hazardous material sites in the state were actively being worked on, and very few cleanups were completed. The agency also was responding to more than 2,000 emergencies per year. Further, with existing manpower at a ratio of one staff person per 280 sites, this backlog grew to 6,500 sites by mid-1992.

The gridlock was eliminated by the redesigned 21E program. In the first two years of the new program's existence more than 450 applicants received interim LSP licenses and site owners increased their voluntary risk reduction actions by 400 percent. However, Massachusetts' greatest accomplishment during this two-year period was cleanup of 3,200 oil and hazardous material spills and waste sites, some of which had been in the system for years.

Benefits

Massachusetts has realized major benefits from its third-party service provider cleanup program. There has been a significant increase in environmental protection without compromise of the state's environmental standards. Sites that were contaminated have been returned to productive use through a program that continues to provide protection of public health and the environment.

While the number of state employees has actually increased with the addition of the LSP Board staff, the new program also created revenue streams that didn't exist before. Hazardous waste sites now move through the cleanup process faster, and the revised regulations provide a flexible process and a set of clear standards for classifying sites "clean," which has resulted in an exponential increase in cleanups completed. Stakeholders are benefiting from more efficient use of state resources.

Professionals from private industry have benefited from the redesigned cleanup program as well. As site cleanups accelerated, demand for LSP services also grew. With the regulatory checks and balances in the redesigned 21E program, the opinions rendered by LSPs are viewed with confidence and sites are being closed at a much faster pace.

Site owners in Massachusetts benefit from clear regulations; they know what is expected of them. Responsible parties are required to pay the costs of cleaning up their contaminated sites and the new program gives them a process that leaves the pace up to them and gives them more flexibility in the cleanup process. Incentives for reducing risks and achieving permanent solutions are built into the program giving site owners opportunities to lower cleanup costs and get out of the state process quicker.

Costs

Overview

Massachusetts did not redesign its cleanup program for the purpose of reducing state expenditures. Rather, the state was seeking a way to reduce its backlog of hazardous waste site cleanups without requesting significant **additional** money and staffing through the Legislature. This goal has already been achieved. However, those involved with running the redesigned program believe that it is also reducing state expenditures by substantially lowering the state's overall site cleanup costs.

The program is creating a dramatic increase in the number of sites being assessed and cleaned up annually, while only slightly increasing costs and staffing levels.

Furthermore, these increased costs are being offset substantially, if not entirely, by several factors: (1) the fees collected from LSPs, (2) the permit and annual compliance fees collected by DEP from site owners, and (3) the additional tax revenue from millions of dollars of income earned because of increased cleanup activity, as well as, the economy created when contaminated sites are cleaned up and put back into productive use.

Licensing Board Costs

Board members themselves cost the state nothing. The Chairman of the Board is a salaried DEP employee, and, as stated earlier, the other ten members are volunteers. Massachusetts does not pay travel or other expenses incurred when members participate in Board activities.

Licensing Board Start-up Costs

The LSP program started out as a project within DEP. In 1992, two full-time employees began the work of setting up the Board. By the fall of that year the eleven member Board was in place. In the spring of 1993, the Board members and staff finalized the regulations and sent out an announcement inviting applications for admission to the program. To continue the work, including processing the 400 applications received, two more full-time DEP employees and two temporary data-entry clerks were added to the project.

The start-up costs for the LSP program during 1993-1994 included employee compensation for six staff, office space and equipment, preliminary exam development, and program publicity. Additionally, the Board hired legal counsel, which remains a salaried position with the Board today.

Licensing Board Annual Operating Costs

The Board's annual operating costs include compensation for five full-time employees (the Board is supported by an Executive Director and four full-time staff), expenses associated with offering licensing exams, and overhead. Staffing and overhead have remained relatively stable. Exam costs have fluctuated, but were highest in 1994-1995 when the pool of exam questions was being developed. The regulations require that the Board offer the licensing exam at least once each year. It currently has a three-year $200,000 contract in place to develop and administer four or five exams. The contractor is paid on an hourly basis for the time and expenses incurred each year. Overhead includes a payment to DEP of between $40,000 and $50,000 per year for office space, utilities, computer support, and payroll services.

Beginning in fiscal year 1995, the Legislature appropriated funds for the LSP Board in the state budget. Before that, start-up funding was provided by DEP. The following figures are taken from the Board's records and projections from 1994 through the end of its fiscal year in 1997 ending on June 30:

Fiscal Year	Budget	Spending	Revenue
1994		136,200	201,800
1995	314,300	292,400	90,500
1996	312,700	232,900	306,700**
1997	355,000	300,000***	140,000***

(all figures rounded)

* Generated from approximately 400 application fees
** Generated from offering the exam twice in the same year
*** Projected

Site Owner Costs For LSP Service

LSPs charge site owners an hourly rate for their services. The rate ranges from $105 to $180 or $190 per hour depending on several factors:

- ✓ LSP overhead; is he or she an independent, small business owner or the executive vice-president of a large environmental assessment firm?
- ✓ LSP seniority; does he or she have seven years of professional experience or 27 years?
- ✓ Condition of the site; is it a small, uncomplicated cleanup or a large, complex one?

Site owners are encouraged to obtain competitive bids from several LSPs before contracting for cleanup work to be performed at their site.

Part 4

Conclusion

Conclusion

State Challenges

Most states are challenged by a large regulated community, a large number of release sites, and limited resources. Innovative, flexible, and cost-efficient programs are needed to surmount these challenges. Third-party service provider programs are a way to augment and strengthen state underground storage tank programs, but are ***not*** a substitute for them. These programs can, however, reduce public tax burdens by shifting most of the costs of prevention and cleanup to tank owners. They also utilize technical skills available in the private sector.

Most state programs have more high-priority work than they can handle; thus the primary reason for using third-party service providers is to increase states' ability to do this work. State staff will have to oversee a third-party service provider program as well as continue to perform certain regulatory functions (e.g., determining the existence of violations, taking enforcement actions, responding to emergencies, setting cleanup standards and goals, overseeing cleanup of high-risk sites) because of legal considerations or because high risks to human health and the environment are involved.

The Third-Party Program Payoff

Setting up a third-party service provider program takes staff time and money. However, most states probably can do this without a *net* increase in budget or staffing. How long it takes will vary from one state to another, but it may take two or more years to design such a program, write the regulations (if necessary) and guidance, and identify service providers and prepare them to start work. The design phase may require a financial investment as well but, once implemented, third-party service provider programs can become self-supporting, with the payoff of being able to increase field presence (or otherwise strengthen programs) while allowing UST staff to focus on high-priority work.

In both Pennsylvania and Massachusetts, setting these third-party service provider programs up did require additional staff time and money because, among other things, these states were breaking new ground. However, neither program resulted in a reduction of state personnel. Other states should be able to establish programs in less time and with less cost by building on the experience of these two states.

Interested states should consider not only the ideas presented here but also any others that seem suitable. While this guide is based largely on Pennsylvania's and Massachusetts' experience, OUST is not suggesting that other states simply duplicate these programs; rather, that states either take what they find useful from the examples provided by Pennsylvania and Massachusetts or take totally different approaches, depending on state needs.

OUST urges states to consider setting up third-party service provider programs.

If you would like more information about third-party service provider programs, please contact your EPA Regional Underground Storage Tank Program Manager.

Appendix A

Commonwealth Of Pennsylvania
Title 25. Environmental Protection, Chapter 245.
Administration Of The Storage Tank And
Spill Prevention Program,
Subchapter A. General Provisions And
Subchapter B. Certification Program For Installers
And Inspectors Of Storage Tanks And Storage Tank Facilities

Commonwealth of Pennsylvania

Pennsylvania Code

Title 25. Environmental Protection

Department of Environmental Protection

Chapter 245. Administration of the Storage Tank and Spill Prevention Program

Department of Environmental Protection
Bureau of Water Quality Management
Division of Storage Tanks
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Current through 25 Pa. Code 6178 (December 30, 1995)

CHAPTER 245. ADMINISTRATION OF THE STORAGE TANK AND SPILL PREVENTION PROGRAM

Subchap.		Sec.
A.	GENERAL PROVISIONS	245.1
B.	CERTIFICATION PROGRAM FOR INSTALLERS AND INSPECTORS OF STORAGE TANKS AND STORAGE TANK FACILITIES	245.101
D.	CORRECTIVE ACTION PROCESS FOR OWNERS AND OPERATORS OF STORAGE TANKS AND STORAGE TANK FACILITIES AND OTHER RESPONSIBLE PARTIES	245.301
H.	FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS AND STORAGE TANK FACILITIES	245.701

Authority

The provisions of this Chapter 245 issued under the act of The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Storage Tank and Spill Prevention Act (35 P. S. §§ 6021.101—6021.2104); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 245 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4345, unless otherwise noted.

Notes of Decisions

Law Reviews

Pennsylvania's Storage Tank Act: Statute, Regulations and Guidances, Sneath, Wm. Stanley, 6 Vill. Envtl. L.J. 75 (1995).

Subchapter A. GENERAL PROVISIONS

GENERAL

Sec.
245.1. Definitions.
245.2. General.

TANK HANDLING ACTIVITIES

245.21. Tank handling and inspection requirements.

GENERAL

§ 245.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ASNT—The American Society of Nondestructive Testing.

Aboveground field constructed metallic storage tank—An aboveground storage tank that is manufactured from either ferrous or nonferrous metals and has final assembly completed at the job site. The term does not include associated piping.

Aboveground field constructed nonmetallic storage tank—An aboveground storage tank that is manufactured from nonmetallic materials; for example, fiberglass reinforced plastic, composites, plastics, and the like, and has final assembly completed at the job site. The term does not include associated piping.

Aboveground manufactured metallic storage tank—An aboveground storage tank that is manufactured from either ferrous or nonferrous metals and is completely fabricated and assembled in the shop prior to shipping. The term does not include associated piping.

Aboveground manufactured nonmetallic storage tank—An aboveground storage tank that is manufactured from nonmetallic materials; for example, fiberglass reinforced plastic, composites, plastics, and the like, and is completely fabricated and assembled in the shop prior to shipping. The term does not include associated piping.

Aboveground storage tank—One or a combination of stationary tanks with a capacity in excess of 250 gallons, including underground pipes and dispensing systems connected thereto within the storage tank facility, which is or was used to contain an accumulation of regulated substances, and the volume of which, including the volume of piping within the storage tank facility, is greater than 90% above the surface of the ground. The term includes tanks which can be visually inspected, from the exterior, in an underground area. The term does not include the following, or pipes connected thereto:

(i) A farm, municipal or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(ii) A tank used for storing heating oil for consumptive use on the premises where stored.

(iii) A pipeline facility, including gathering lines, regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.A. App. §§ 1671—1687).

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C.A. §§ 2001—2015).

(C) An interstate or intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (A) or (B).

(iv) A surface impoundment, pit, pond or lagoon.

(v) A stormwater or wastewater collection system.

(vi) A flow-through process tank, including, but not limited to, a pressure vessel and oil and water separators.

(vii) A nonstationary tank liquid trap or associated gathering lines directly related to oil and gas production or gathering operations.

(viii) Tanks which are used to store brines, crude oil, drilling or frac fluids and similar substances or materials and are directly related to the exploration, development or production of crude oil or natural gas regulated under the Oil and Gas Act (58 P. S. §§ 601.101—601.605).

(ix) Tanks regulated under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31).

(x) Tanks used for the storage of products which are regulated under the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. §§ 301—392).

(xi) Tanks permitted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas condensate management.

(xii) A tank of 1,100 gallons or less in capacity located on a farm used solely to store or contain substances that are used to facilitate the production of crops, livestock and livestock products on the farm.

(xiii) Tanks which are used to store propane gas.

(xiv) A tank of 300 gallon or less capacity which is located within the interior of a building and is used to store virgin or recycled motor oil.

(xv) Other tanks excluded by regulations promulgated under the act.

Act—The Storage Tank and Spill Prevention Act (35 P. S. §§ 6021.101—6021.2104).

Adjacent—Next to or contiguous with.

Affect or *diminish*—In the context of water supplies, the term has the following meaning: To cause or contribute to a measurable increase in the concentration of one or more contaminants in a water supply above background levels, or to cause or contribute to a decrease in the quantity of the water supply.

Ancillary equipment—Electrical, vapor recovery, access or other systems and devices, including, but not limited to, devices, such as piping, fittings, flanges, valves and pumps used to distribute, meter, monitor or control the flow of regulated substances to or from a storage tank system.

Aquifer—A geologic formation, group of formations or part of a formation capable of yielding sufficient groundwater for monitoring purposes.

Cathodic protection—A technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

Certified inspector—A person certified by the Department to conduct environmental audits and inspections of tanks or tank facilities. A certified inspector may not be an employe of a tank owner.

Certified installer—A person certified by the Department to install, modify or remove storage tanks. A certified installer may be an employe of a tank owner.

Commercial heating oil storage tank—An underground storage tank in excess of 3,000 gallons used for storage of heating oil for the consumptive use on the premises where stored.

Company—A sole proprietorship, partnership, corporation, association, joint venture, consortium, institution, trust, firm, joint stock company or cooperative enterprise.

Containment structure or *facility*—Anything built, installed or established which comes in contact with regulated substances that are spilled, leaked, emitted, discharged, escaped, leached or disposed from a storage tank or storage tank system. The term includes but is not limited to, a vault, dike, wall, building or secondary containment structure around an underground or aboveground storage tank, or any rock or other fill material placed around an underground storage tank.

Corrective action—

(i) The term includes the following:

(A) Containing, assessing or investigating a release.

(B) Removing a release or material affected by a release.

(C) Taking measures to prevent, mitigate, abate or remedy releases, pollution and potential for pollution, nuisances and damages to the public health, safety or welfare, including, but not limited to, the following:

(I) Waters of this Commonwealth, including surface water and groundwater.

(II) Public and private property.

(III) Shorelines, beaches, water columns and bottom sediments.

(IV) Soils and other affected property, including wildlife and other natural resources.

(D) Taking actions to prevent, abate, mitigate or respond to a violation of the act that threatens public health or the environment.

(E) Temporarily or permanently relocating residents, providing alternative water supplies or undertaking an exposure assessment.

(ii) The term does not include the cost of routine inspections, routine investigations and permit activities not associated with a release.

Environmental audit—Activities conducted by a certified inspector to do the following:

(i) Review storage tank facility site characteristics and justifications of those characteristics as supplied by the owner.

(ii) Evaluate the storage tank system or storage tank facility site, equipment and records to determine evidence of an actual or possible release of a regulated substance.

Exempt underground storage tank—An underground storage tank which has been exempted by regulation from participation in USTIF.

Exposure assessment—An assessment to determine the extent of exposure of, or potential for exposure of, individuals, the biological community and all other natural resources to releases from a storage tank based on, but not limited to, the following:

(i) The nature and extent of contamination and the existence of or potential for pathways of human exposure, including groundwater or surface water contamination, air emissions, soil contamination and food chain contamination.

(ii) The size of the community within the likely pathways of exposure.

(iii) The comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants.

Farm—Land used for the production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of these crops, livestock or livestock products if more than 50% of these processed or merchandized products are produced by the farm operator. The phrase "Crops, livestock and livestock products" includes, but is not limited to:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

(ii) Fruits, including apples, peaches, grapes, cherries and berries.

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(iv) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Aquatic plants and animals and their by-products.

Free product—A regulated substance that is present as a nonaqueous phase liquid; that is, liquid not dissolved in water.

Free product recovery—The removal of free product.

Groundwater—Water beneath the surface of the ground that exists in a zone of saturation.

Groundwater degradation—A measurable increase in the concentration of one or more contaminants in groundwater above background levels for those contaminants.

Heating oil for consumptive use—Heating oil used to provide space heating.

Inspection activities—Activities to inspect or conduct an environmental audit concerning all or a part of a storage tank system or storage tank facility.

Install—Activities to construct, reconstruct or erect to put into service a storage tank, a storage tank system or storage tank facility.

Interim certification—Certification granted by the Department on an interim basis under section 108 of the act (35 P. S. § 6021.108) to installers and inspectors of storage tank systems or storage tank facilities.

Intrafacility piping—A common piping system serving more than one storage tank system within a storage tank facility.

Maintenance—The normal operational upkeep to prevent a storage tank system or storage tank facility from releasing regulated substances if the activity involved is not a major modification or minor modification.

Major modification—

(i) An activity to upgrade, repair, refurbish or restore all or any part of an existing storage tank system or storage tank facility which:

(A) Alters the design of that storage tank system or storage tank facility.

(B) May affect the integrity of that storage tank system or storage tank facility.

(ii) The term includes an activity directly affecting the tank portion of the storage tank system or an activity directly affecting an underground component of the storage tank system.

Minor modification—

(i) An activity to upgrade, repair, refurbish or restore all or part of an existing storage tank system or storage tank facility which does not alter the design of that storage tank system or storage tank facility, but, which may effect the integrity of that storage tank system or storage tank facility.

(ii) The term does not include an activity directly affecting the tank portion of the storage tank system or an activity directly affecting an underground component of the storage tank system.

Modify—To conduct an activity that constitutes a major modification or a minor modification.

Monitoring system—A system capable of detecting releases in connection with an aboveground or underground storage tank.

New facility—A storage tank facility which did not exist prior to August 5, 1989.

OSHA—Occupational Safety and Health Administration—The agency established under the Occupational Safety and Health Act of 1970 (29 U.S.C.A. §§ 651—678).

Operator—A person who manages, supervises, alters, controls or has responsibility for the operation of a storage tank.

Owner—Includes the following:

(i) In the case of a storage tank in use on August 7, 1989 or brought into use after August 7, 1989, a person who owns or has an ownership interest in a storage tank used for the storage, containment, use or dispensing of regulated substances.

(ii) In the case of an aboveground storage tank in use before August 7, 1989, but which was no longer in use on August 7, 1989, a person who owned the aboveground tank immediately before the discontinuance of its use as well as a person who meets the definition in subparagraph (i).

(iii) In the case of an underground storage tank, the owner of an underground storage tank holding regulated substances on or after November 8, 1984, and the owner of an underground storage tank at the time all regulated substances were removed when removal occurred prior to November 8, 1984.

Permanently affixed—Not able to be moved from its resting place by design or which is connected to real property by piping or other structure.

Permanent water supply—A well, interconnection with a public water supply, extension of a public water supply, similar water supply or a treatment system, determined by the Department to be capable of restoring the water supply to the quantity and quality of the original unaffected water supply.

Person—An individual, partnership, corporation, association, joint venture, consortium, institution, trust, firm, joint-stock company, cooperative enterprise, municipality, municipal authority, Federal Government or agency, Commonwealth Department, agency, board, commission or authority, or other legal entity which is recognized by law as the subject of rights and duties. In provisions of the act prescribing a fine, imprisonment or penalty, or a combination thereof. The term includes the officers and directors of a corporation or other legal entity having officers and directors.

Pressure vessel—A vessel used in industrial processes designed to withstand pressures above 15 psig.

Process vessel—A vessel in industrial or commercial operation in which, during use, there is a mechanical, physical or chemical change of the contained substances taking place. The industrial or commercial process may include, but is not limited to, mixing, separating, chemically altering, dehydrating, extracting, refining or polishing of the substances in the tank. The term does not include tanks used only to store substances prior to sale or to store feedstock prior to additional processing.

Public water system—A system which provides water to the public for human consumption which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The term includes collection, treatment, storage and distribution facilities under control of the operator of the system and used in connection with the system. The term includes collection or pretreatment storage facilities not under control of the operator which are used in connection with the system. The term also includes a system which provides for bottling or bulk hauling for human consumption. Water for human consumption includes water that is used for drinking, bathing and showering, cooking, dishwashing or maintaining oral hygiene.

Regulated substance—

(i) An element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health, welfare or the environment which is one of the following:

(A) A substance defined as a hazardous substance in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. § 9601) but not including a substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6921—6931).

(B) Petroleum, including crude oil or a fraction thereof and hydrocarbons which are liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute), including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other nonhazardous wastes and crude oils, gasoline and kerosene.

(C) Other substances determined by the Department by regulation whose containment, storage, use or dispensing may present a hazard to the public health and safety or the environment, but not including gaseous substances used exclusively for the administration of medical care.

(ii) The term does not include the storage or use of animal waste in normal agricultural practices.

Release—Spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into surface waters and groundwaters of this Commonwealth or soils or subsurface soils in an amount equal to or greater than the reportable released quantity determined under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. § 9602), and regulations promulgated thereunder, or an amount equal to or greater than a discharge as defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1321) and regulations promulgated thereunder. The term also includes spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater.

Release detection—The determination, through a method or combination of methods, whether a release of a regulated substance has occurred from a storage tank into the environment or into the interstitial space between the storage tank and its secondary containment around it.

Removal—Removal from service, but excluding site assessment.

Removal from service—The term includes the following:

(i) Activities related to rendering a storage tank system permanently unserviceable. Activities include properly draining and cleaning the storage tank system of product liquids, vapors, accumulated sludges or solids, and completing one of the following:

(A) Leaving the storage tank system in the ground and filling the tank with inert, solid material.

(B) Dismantling or removing the storage tank system from the tank site.

(ii) The term includes discontinued use, abandonment, closure in place and permanent closure but does not include temporary closure as those terms are used in the act and the Federal regulations promulgated under the Resource Conservation and Recovery Act of 1976.

(iii) The term includes site assessment activities required under 40 CFR Part 280 (relating to technical standards and corrective action requirements

for owners and operators of underground storage tanks) and applicable State law, which are the responsibility of owners and operators, but are not conducted by certified installers or inspectors.

Reportable release—A quantity or an unknown quantity of regulated substance released to or posing an immediate threat to surface water, groundwater, bedrock, soil or sediment. The term does not include the following, if the owner or operator has control over the release, the release is completely contained and, within 24 hours of the release, the total volume of the release is recovered or removed in the corrective action:

(i) A release to the interstitial space of a double-walled aboveground or underground storage tank.

(ii) A release of less than 25 gallons to a containment area, structure or facility around an aboveground storage tank.

(iii) A release of less than 5 gallons to a synthetic surface, such as asphalt or concrete, which prevents migration of the regulated substance to surface water, groundwater, bedrock, soil or sediment.

(iv) A release of less than 1 gallon to surface soils.

Responsible party—A person who is responsible or liable for corrective action under the act. The term includes: the owner or operator of a storage tank; the landowner or occupier; and a person who on or after August 5, 1990, knowingly sold, distributed, deposited or filled an unregistered storage tank regulated by the act, with a regulated substance, prior to the discovery of the release.

Secondary containment—An additional layer of impervious material creating a space in which a release of a regulated substance from a storage tank may be detected before it enters the environment.

Sediment—Solid fragmental material that originates from weathering of rocks and is transported or deposited by air, water or ice, or that accumulates by other natural agents, such as chemical precipitation from solution or secretion by organisms, and that forms in layers on the earth's surface at ordinary temperatures in a loose, unconsolidated form. The term includes sand, gravel, silt, mud, till, loess and alluvium.

Site—For purposes of § 245.303(c) and (d) (relating to general requirements), the term means the tract of land which includes the storage tank facility. For other purposes the term means the area of surface and subsurface land or water that has been affected by a release of regulated substances.

Small aboveground storage tank—An aboveground storage tank having a capacity equal to or less than 21,000 gallons.

Soil—Unconsolidated materials above bedrock.

Spill prevention response plan—Emergency plans and procedures developed by an aboveground storage tank or tank facility owner, operator, or both, for response to an accident or spill on the facility by facility personnel or contractors.

Stationary tank—An aboveground storage tank that is permanently affixed to the real property on which the tank is located.

Storage tank—An aboveground or underground storage tank which is used for the storage of a regulated substance.

Storage tank facility—One or more stationary tanks, including associated intrafacility pipelines, fixtures, monitoring devices and other equipment. A facility may include aboveground tanks, underground tanks or a combination of both.

Storage tank system—An underground or aboveground storage tank, associated underground or aboveground piping directly serving that storage tank, and one or more of the following which are directly associated with that storage tank:

(i) Ancillary equipment.
(ii) Foundation.
(iii) Containment structure or facility.
(iv) Corrosion protection system.
(v) Release detection system.
(vi) Spill and overfill protection system.

Substantial modification—An activity to construct, refurbish, restore or remove from service an existing storage tank, piping or storage tank facility which alters the physical construction or integrity of the storage tank or storage tank facility.

Survey—For purposes of § 245.303(d), the term means a study at a sufficient level of detail to establish baseline levels for surface water, groundwater, soil and sediment prior to the use of a storage tank facility.

Tank handling activities—Activities to install, modify or remove all or part of a storage tank system or storage tank facility. The term does not include maintenance activities.

Temporary water supply—Bottled water, a water tank supplied by a bulk water hauling system and similar water supplies in quantities sufficient to accommodate normal usage.

Third party liability—Liability of an owner or operator of an underground storage tank to a person for bodily injury or property damage, or both, arising from or caused by a sudden or nonsudden release of a regulated substance from the underground storage tank.

USTIB—Underground Storage Tank Indemnification Board—The Board established under section 703 of the act (35 P. S. § 6021.703), and authorized to carry out the powers and duties described in section 705 of the act (35 P. S. § 6021.705).

USTIF—Underground Storage Tank Indemnification Fund—The Fund established under section 704 of the act (35 P. S. § 6021.704), for the purpose of making payments to the owner or operator of an underground storage tank who

incurs corrective action liability or third party liability caused by a sudden or nonsudden release from an underground storage tank.

USTIF deductible—The portion of liability incurred by an owner or operator of an underground storage tank for corrective action or for third party liability, within the limits of liability for USTIF coverage, which is the responsibility of the owner or operator and which is not indemnified by USTIF coverage. The USTIF deductible amount is established or revised by USTIB in accordance with section 705(c) of the act.

Underground field constructed metallic storage tank—An underground storage tank that is manufactured from either ferrous or nonferrous metals and has final assembly completed at the job site. The term does not include associated piping.

Underground field constructed nonmetallic storage tank—An underground storage tank that is manufactured from nonmetallic materials; for example, fiberglass reinforced plastic, composites, plastics, and the like, and has final assembly completed at the job site. The term does not include associated piping.

Underground manufactured metallic storage tank—An underground storage tank that is manufactured from either ferrous or nonferrous metals and is completely fabricated and assembled in the shop prior to shipping. The term does not include associated piping.

Underground manufactured nonmetallic storage tank—An underground storage tank that is manufactured from nonmetallic materials; for example, fiberglass reinforced plastic, composites, plastics, and the like, and is completely fabricated and assembled in the shop prior to shipping. The term does not include associated piping.

Underground storage tank—One or a combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. The term does not include:

(i) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(ii) Tanks of 3,000 gallons or less used for storing heating oil for consumptive use on the premises where stored.

(iii) A septic or other subsurface sewage treatment tank.

(iv) A pipeline facility (including gathering lines) regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968.

(B) The Hazardous Liquid Pipeline Safety Act of 1979.

(v) An interstate or intrastate pipeline facility regulated under State laws comparable to the provisions of law in subparagraph (iv).

(vi) Surface impoundments, pits, ponds or lagoons.

(vii) Stormwater or wastewater collection systems.

(viii) Flow-through process tanks.

(ix) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.

(x) Storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft or tunnel) if the tank is situated upon or above the surface of the floor.

(xi) Tanks permitted under the Solid Waste Management Act, including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management.

(xii) An underground storage tank system whose capacity is 110 gallons or less.

(xiii) Other tanks excluded by policy or regulations promulgated under the act.

Unregistered storage tank—A storage tank, regulated under the act, which does not hold a current, valid registration.

Water supply—Existing, designated or planned sources of water or facilities or systems for the supply of water for human consumption or for agricultural, commercial, industrial or other legitimate use, protected by the applicable water supply provisions of § 93.3 (relating to protected water uses).

Source

The provisions of this § 245.1 amended December 23, 1994, effective December 24, 1994, 24 Pa.B. 6515. Immediately preceding text appears at serial pages (183067) to (183078).

§ 245.2. General.

A person may not install, construct, erect, modify, operate or remove from service all or part of a storage tank system or storage tank facility in a manner that violates the act, this part or applicable Federal regulations adopted under the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6987). This chapter incorporates by reference the Federal regulations governing underground storage tank systems contained in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)), except for Federal regulations governing the exclusions and deferrals for underground storage tank systems contained in 40 CFR 280.10(b)—(d) (relating to applicability).

TANK HANDLING ACTIVITIES

§ 245.21. Tank handling and inspection requirements.

(a) Tank handling activities shall be conducted by a certified installer and, except in the case of minor modification, inspected by a certified inspector.

(b) The operation of storage tank facilities shall be inspected by a certified inspector. The frequency of inspection shall be based on:

(1) The age of the storage tank systems located at the storage tank facility.

(2) The type of regulated substances contained in the storage tank systems located at the storage tank facility.

(3) The distance of the storage tank facility from public and private surface water and groundwater supplies.

(4) The total capacity of the storage tank systems located at the storage tank facility.

(5) The geologic conditions at the storage tank facility.

(6) Whether the storage tank facility, owner or operator has violated the act or the regulations promulgated thereunder.

(7) Whether the storage tank facility has storage tank systems which are periodically taken out of service.

(8) Whether there is suspected contamination at the storage tank facility.

(9) The level of quality control maintained at the storage tank facility.

(c) The Department will notify the storage tank facility, in writing, when an inspection is required.

Subchapter B. CERTIFICATION PROGRAM FOR INSTALLERS AND INSPECTORS OF STORAGE TANKS AND STORAGE TANK FACILITIES

GENERAL CERTIFICATION REQUIREMENTS

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GENERAL CERTIFICATION REQUIREMENTS

§ 245.101. Purpose.

This chapter establishes a certification program for installers and inspectors of storage tank systems and storage tank facilities and companies that employ installers or inspectors, and establishes standards of performance for certified installers, certified inspectors and certified companies.

§ 245.102. Requirement for certification.

(a) A person may not conduct tank handling activities unless that person holds a current installer certification issued by the Department for the applicable certification category as indicated in § 245.110 (relating to certification of installers). Except as provided in § 245.103 (relating to phase-in from interim certification), installer certification will only be issued by the Department to a person who:

(1) Possesses minimum experience and qualifications as provided under § 245.111 (relating to certified installer experience and qualifications).

(2) Achieves a passing grade on a certification examination administered or approved by the Department for one or more of the certified installer categories described in § 245.110 for which the person is requesting certification.

(3) Submits an accurate and complete application.

(4) Is not found to be in violation of the act or this chapter and has not had a certification revoked by the Department under § 245.109 (relating to revocation of certification).

(b) A person may not conduct inspection activities at a storage tank system or storage tank facility required by the Department under the act and this part unless that person holds a current inspector certification issued by the Department

for the applicable inspector certification category. Except as provided in § 245.103 inspector certification will only be issued by the Department to a person who:

(1) Possesses minimum experience and qualifications as provided under § 245.113 (relating to certified inspector experience and qualifications).

(2) Achieves a passing grade on a certification examination administered or approved by the Department for one or more of the certified inspector categories described in § 245.112 (relating to certification of inspectors) for which the person is requesting certification.

(3) Submits an accurate and complete application.

(4) Is not found to be in violation of the act or this chapter and has not had a certification revoked by the Department under § 245.109.

(c) Certified installers and certified inspectors shall successfully complete additional periodic training and testing administered or approved by the Department to maintain their certification. Successful completion means attendance at all sessions of training and attainment of a minimum grade of 90% on all sections of all tests given as part of the training program.

(d) After March 23, 1992, a certified installer or certified inspector may not perform tank handling or inspection activities as an employe of a company unless the company holds a valid certification issued by the Department under this chapter.

Cross References

This section cited in 25 Pa. Code § 245.104 (relating to application for installer or inspector certification).

§ 245.103. Phase-in from interim certification.

(a) The Department may issue an installer certification or inspector certification on a temporary basis for the applicable certification category to any person who meets the minimum experience requirements under § 245.111 or § 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications).

(b) A person certified as an installer or inspector on an interim basis under section 108 of the act (35 P. S. § 6021.108) who meets the minimum experience and qualification requirements under § 245.111 or § 245.113 may request temporary installer certification or temporary inspector certification on or before January 21, 1992. Failure to be granted temporary installer certification or temporary inspector certification on or before March 23, 1992 will result in revocation of interim certification.

(c) To be granted permanent installer certification or permanent inspector certification, a person who obtains temporary installer certification or temporary inspector certification under this section, shall, on or before September 21, 1994, achieve a passing grade on a certification examination administered or approved

by the Department for one or more of the certified installer or inspector categories described in § 245.110 or § 245.112 (relating to certification of installers; and certification of inspectors). Failure to achieve a passing grade within this time will result in revocation of the temporary installer certification or temporary inspector certification.

Source

The provisions of this § 245.103 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4345; corrected September 27, 1991, effective September 21, 1991, 21 Pa.B. 4405; amended April 23, 1993, effective April 24, 1993, 23 Pa.B. 1949. Immediately preceding text appears at serial page (162554).

Cross References

This section cited in 25 Pa. Code § 245.102 (relating to requirement for certification); 25 Pa. Code § 245.104 (relating to application for installer or inspector certification); and 25 Pa. Code § 245.114 (relating to renewal and amendment of certifications).

§ 245.104. Application for installer or inspector certification.

(a) The applicant shall be a natural person.

(b) An application for installer or inspector certification shall be submitted to the Department on forms provided by the Department and shall contain the following information:

(1) Evidence that the applicant has the certification prerequisites contained in § 245.111 or § 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications).

(2) The applicant's name, address and telephone number.

(3) Other information necessary for a determination of whether the issuance of a certification conforms to the act and this chapter.

(c) An application for certification shall be received by the Department no later than 120 days prior to the announced date of the certification examination.

(d) An application shall be complete upon submission.

(e) An applicant meeting the requirements of §§ 245.102(a)(4) or (b)(4) and 245.103 (relating to requirement for certification; and phase-in from interim certification) will be granted admission to the certification examinations for which the applicant has requested certification and is qualified.

Cross References

This section cited in 25 Pa. Code § 245.107 (relating to reciprocity).

§ 245.105. Certification examinations.

(a) The Department will establish separate administrative and technical content for the examinations and the standards and criteria against which they will

be evaluated to be used in determining the fitness of candidates for certification as certified installers or certified inspectors under the categories established by this chapter.

(b) The Department will schedule a date and location for the examinations for certified installer and certified inspector at least once in each calendar year.

(c) Only applicants who have been authorized by the Department, in accordance with this chapter, to take an examination shall be admitted to an examination or issued a certification as a result of passing an examination. Authorization to take an examination shall be based on compliance with the requirements of this chapter.

(d) To receive a passing grade on the examination, the applicant for certification shall achieve a minimum score of 90% on each section of the examination.

(e) An applicant who fails two examinations for the same certification may not retake the examination until the applicant has successfully completed a training program that is administered or approved by the Department and focuses on those areas of the examination in which the applicant is deficient. Successful completion means attendance at all sessions of training and attainment of a minimum grade of 90% on all sections of all tests given as part of the training program.

§ 245.106. Conflict of interest.

(a) Except as provided in subsection (b), a certified inspector may not be one or more of the following:

(1) An employe of the tank owner.

(2) A certified installer on the same tank handling activity for which he is a certified inspector.

(3) An employe of a company that employs a certified installer on the same tank handling activity for which he is a certified inspector, when the tank handling activity is performed on a field constructed storage tank. This prohibition extends to a company that owns, or is owned by, the employer, in whole or in part.

(b) A certified inspector who is a certified installer may conduct a tank handling activity to correct a deficiency identified by the same certified individual or company during an inspection of the operation of a storage tank facility. Notwithstanding this exception, subsection (a)(2) still prohibits a certified inspector from subsequently inspecting a tank handling activity which the certified inspector conducted to correct a deficiency noted in an inspection of the operation of a storage tank facility.

Source

The provisions of this § 245.106 amended December 23, 1994, effective December 24, 1994, 24 Pa.B. 6515. Immediately preceding text appears at serial page (162556).

§ 245.107. Reciprocity.

(a) A person holding a valid certification issued under the law of another state, territory or the District of Columbia may be issued a certificate in a classification equivalent to the classification of the certification issued by the other state, territory or District of Columbia, if the person proves to the satisfaction of the Department that he is competent to conduct activities in the classification for which certification is being requested. In making its determination, the Department will consider the following:

(1) That the other certification was issued as a result of the passing of an examination equivalent in technical content to that given by the Department for that classification.

(2) That the applicant can be shown to have complied with the laws and requirements of the state, territory or District of Columbia, issuing the other certification in conducting activities for which the other certification was issued.

(3) That the applicant meets the experience and qualification requirements of this chapter for the category of certification being requested.

(4) The applicant achieves a passing grade on all administrative sections of the certification examination required by this chapter for the category of certification being requested.

(b) The applicant shall submit an application for certification to the Department in accordance with § 245.104 (relating to application for installer or inspector certification).

§ 245.108. Suspension of certification.

(a) The Department may suspend the certification of a certified installer or certified inspector for good cause which includes, but is not limited to:

(1) A violation of the act or this part.

(2) Incompetency on the part of the certified installer or certified inspector as evidenced by errors in conducting duties and activities for which the certification in question was issued.

(3) Failure to successfully complete a training program required by the Department.

(4) In the case of a certified inspector's failure to:

(i) Inform the owner or operator and the Department of conditions or procedures that are not in accordance with the manufacturer's technical and procedural specifications for installation, construction, modification or operation of the storage tank system or storage tank facility.

(ii) Conduct, review or observe a test or inspection activity required by the act or this part.

(iii) Submit reports of inspection activities to the Department within 60 days of conducting the inspection activities.

(5) In the case of a certified installer's failure to:

(i) Be present during tank handling activities at the storage tank system or storage tank facility as required by the act and this part.

(ii) Conduct tank handling activities in accordance with the requirements of the act and this part.

(iii) Submit tank handling reports and activities to the Department within 60 days of conducting the tank handling activities.

(6) Working as a certified installer or certified inspector in a certification category for which the person has failed to obtain certification.

(7) Failure to meet one or more of the standards for performance in § 245.132 (relating to standards of performance).

(8) Submission of false information to the Department.

(b) The suspension of a certification in a single category shall prevent the person from engaging in activities in all categories of certification.

(c) The Department may require that the person successfully complete a special training program sponsored or approved by the Department designed to strengthen the specific weakness in the certified installer's or certified inspector's duties, as required under the act or this part identified in the suspension order. Successful completion means attendance at all sessions of training and attainment of a minimum grade of 90% on all sections of all tests given as part of the training program.

(d) The Department may reinstate the certification if:

(1) The cause for the suspension has been removed.

(2) The person is competent to execute duties and responsibilities for which certification was issued.

Cross References

This section cited in 25 Pa. Code § 245.109 (relating to revocation of certification).

§ 245.109. Revocation of certification.

(a) The Department may revoke the certification of a certified installer or certified inspector if the certified installer or certified inspector has done one or more of the following:

(1) Demonstrated a willful disregard of, or willful or repeated violations of the act or regulations promulgated thereunder or this part.

(2) Willfully submitted false information to the Department.

(3) Committed an act requiring suspension under § 245.108 (relating to suspension of certification) after having certification suspended previously.

(b) The revocation of a certification in a single category shall prevent the person from engaging in activities in all categories of certification.

Cross References

This section cited in 25 Pa. Code § 245.102 (relating to requirement for certification).

§ 245.110. Certification of installers.

(a) An installer certification shall authorize the person to whom it is issued to conduct tank handling activities pertaining to storage tank systems or storage tank facilities in one or more of the categories in subsection (b).

(b) Installer certifications may be issued for the following categories:

(1) *Underground manufactured storage tank—installation, modification {UMX}*. Installation and modification of underground manufactured storage tanks.

(2) *Underground manufactured storage tank—modification {UM M}*. Modification of underground manufactured storage tanks.

(3) *Underground manufactured storage tank—removal {UM R}*. Removal of underground manufactured storage tank systems or storage tank facilities.

(4) *Underground field constructed metallic storage tank—installation and modification {UFMX}*. Installation and modification of underground field constructed metallic storage tanks.

(5) *Underground field constructed metallic storage tank—modification {UFMM}*. Modification of underground field constructed metallic storage tanks.

(6) *Underground field constructed nonmetallic storage tank—installation and modification {UFNX}*. Installation and modification of underground field constructed nonmetallic storage tanks.

(7) *Underground field constructed nonmetallic storage tank—modification {UFNM}*. Modification of underground field constructed nonmetallic storage tanks.

(8) *Underground field constructed storage tank—removal {UF R}*. Removal of underground field constructed storage tank systems or storage tank facilities.

(9) *Underground storage tank—mechanical—installation and modification {UMeX}*. Installation and modification of tank related mechanical appurtenances, including, but not limited to, valves, piping, internal piping, pumps, corrosion protection systems, release detection systems, and spill and overfill protection systems that are components of an underground storage tank system or storage tank facility.

(10) *Underground storage tank—mechanical—modification {UMeM}*. Modification of tank related mechanical appurtenances, including, but not limited to, valves, piping, internal piping, pumps, corrosion protection systems, release detection systems, and spill and overfill protection systems that are components of an underground storage tank system or storage tank facility.

(11) *Underground storage tank—civil {UCvl}*. Installation and modification of tank related structural components, including, but not limited to, founda-

tions, field grading systems, vaults, pump supports, pipe supports and drainage systems associated with an underground storage tank system or storage tank facility.

(12) *Underground storage tank—tank tightness tester {U_TT}.* Activities involved in conducting and interpreting results of hydrostatic pressure tests on underground storage tank systems or storage tank facilities.

(13) *Aboveground manufactured metallic storage tank—installation and modification {AMMx}.* Installation and modification of aboveground manufactured metallic storage tanks.

(14) *Aboveground manufactured nonmetallic storage tank—installation and modification {AMNx}.* Installation and modification of aboveground manufactured nonmetallic storage tanks.

(15) *Aboveground manufactured storage tank—removal {AM R}.* Removal from service of aboveground manufactured storage tank systems or storage tank facilities.

(16) *Aboveground field constructed metallic storage tank—installation and modification {AFMX}.* Installation and modification of aboveground field constructed metallic storage tanks.

(17) *Aboveground field constructed nonmetallic storage tank—installation and modification {AFNX}.* Installation and modification of aboveground field constructed nonmetallic storage tanks.

(18) *Aboveground field constructed storage tank—removal {AF R}.* Removal from service of aboveground field constructed storage tank systems or storage tank facilities.

(19) *Aboveground metallic storage tank—modification {A MM}.* Modification of aboveground metallic storage tanks.

(20) *Aboveground nonmetallic storage tank—modification {A NM}.* Modification of aboveground nonmetallic storage tanks.

(21) *Aboveground storage tank—mechanical—installation and modification {AMeX}.* Installation and modification of tank related mechanical appurtenances, including, but not limited to, valves, fill piping, suction piping, internal piping, foam system piping, pumps, corrosion protection systems, release detection systems, and spill and overfill protection systems that are components of an aboveground storage tank system or storage tank facility.

(22) *Aboveground storage tank—mechanical—modification {AMeM}.* Modification of tank related mechanical appurtenances, including, but not limited to, valves, fill piping, suction piping, internal piping, foam system piping, pumps, corrosion protection systems, release detection systems, and spill and overfill protection systems that are components of an aboveground storage tank system or storage tank facility.

(23) *Aboveground storage tank—civil {ACvL}.* Installation and modification of tank related structural components, including, but not limited to, founda-

tions, dike walls, field grading, vaults, pump supports, pipe supports and drainage systems associated with an aboveground storage tank system or storage tank facility.

(24) *Storage tank—liner {T L}*. Activities involved in installing internal linings for underground and aboveground storage tanks systems or storage tank facilities.

Cross References

This section cited in 25 Pa. Code § 245.102 (relating to requirement for certification); and 25 Pa. Code § 245.103 (relating to phase-in from interim certification).

§ 245.111. Certified installer experience and qualifications.

(a) An applicant shall meet the following minimum experience or education requirements, or both, and have completed the required number of activities in the appropriate category for an installer certification:

Category	*Total Experience or Education plus Experience*	*Total Number of Activities Completed*
UMX	3 years, or college degree and 2 years	15 (15 of which are installations)
UM M	3 years, or college degree and 2 years	15 (15 of which are modifications)
UM R	3 years, or college degree and 2 years	15 (15 of which are removals)
UFMX	4 years, or college degree and 3 years	20 (10 of which are installations, 10 of which are modifications)
UFMM	4 years, or college degree and 3 years	20 (20 of which are modifications)
UFNX	3 years, or college degree and 2 years	15 (10 of which are installations, 5 of which are modifications)
UFNM	3 years, or college degree and 3 years	15 (15 of which are modifications)
UF R	3 years, or college degree and 2 years	15 (15 of which are removals)
UMeX	3 years, or college degree and 2 years	15 (10 of which are installations, 5 of which are modifications)

Category	*Total Experience or Education plus Experience*	*Total Number of Activities Completed*
UMeM	3 years, or college degree and 2 years	15 (15 of which are modifications)
UCvL	3 years, or college degree and 2 years	15 (10 of which are installations, 5 of which are modifications)
U__TT	Department approved training	
AMMX	3 years, or college degree and 2 years or UMX Certification	15 (15 of which are installations) None
AMNX	3 years, or college degree and 2 years or UMX Certification	15 (15 of which are installations) None
AMR	3 years, or college degree and 2 years or UMR Certification	15 (15 of which are removals) None
AFMX	4 years, or college degree and 3 years	20 (10 of which are installations, 10 of which are modifications)
AFNX	3 years, or college degree and 2 years	15 (10 of which are installations, 5 of which are modifications)
AF R	3 years, or college degree and 2 years	15 (15 of which are removals)
A MM	4 years, or college degree and 3 years	20 (20 of which are modifications)
A NM	3 years, or college degree and 3 years	15 (15 of which are modifications)
AMEX	4 years, or college degree and 3 years or UMEX Certification	15 (10 of which are installations, 5 of which are modifications) None

Category	*Total Experience or Education plus Experience*	*Total Number of Activities Completed*
AMeM	4 years, or college degree and 3 years	20 (20 of which are modifications)
ACvl	4 years, or college degree and 3 years	20 (10 of which are installations, 10 of which are modifications)
T L	3 years	15 (15 of which are tank linings)

(b) The total number of activities completed required by subsection (a) shall have been completed within the 7-year period immediately prior to submitting the application for certification. The activities shall have been completed in compliance with Federal and State requirements and the applicant shall have had substantial personal involvement at the storage tank site in the activities. Noncertified individuals may work at the site but the certified installer is directly responsible to assure that the activities are conducted properly. This work qualifies toward the total number of activities completed requirements.

(c) A college degree being substituted for experience shall be in civil engineering, mechanical engineering, environmental engineering, petroleum engineering, chemical engineering, structural engineering or geotechnical engineering.

(d) The total experience requirement for underground storage tank—tank tightness tester (UTT) shall be demonstrated through the submission of proof of successful completion of a training program sponsored or approved by the Department. Successful completion means attendance at all sessions of training and attainment of a minimum grade of 90% on all sections of the tests given as a part of the training course.

(e) Except for UTT, the total experience requirement is experience gained working at a storage tank site while working towards the Total Number of Activities Completed requirement.

(f) In the category for aboveground field constructed metallic storage tank {AFMX}, for installation activities involving tanks greater than 90 feet in diameter, each installation activity shall count as two installations for purposes of meeting the total number of activities requirement.

Source

The provisions of this § 245.111 amended December 23, 1994, effective December 24, 1994, 24 Pa.B. 6515; corrected January 6, 1995, effective December 24, 1994, 25 Pa.B. 17. Immediately preceding text appears at serial pages (162561) to (162563).

Cross References

This section cited in 25 Pa. Code § 245.102 (relating to requirement for certification); 25 Pa. Code § 245.103 (relating to phase-in from interim certification); and 25 Pa. Code § 245.104 (relating to application for installer or inspector certification).

§ 245.112. Certification of inspectors.

(a) An inspector certification authorizes the person to whom it is issued to conduct tank inspection activities for storage tank systems and storage tank facilities in one of more of the categories in subsection (b).

(b) Inspector certifications may be issued for the following categories:

(1) *IUM*—Underground manufactured storage tank system and storage tank facility.

(2) *IUF*—Underground field constructed storage tank system and storage tank facility.

(3) *IAM*—Aboveground manufactured storage tank system and storage tank facility.

(4) *IAF*—Aboveground field constructed storage tank system and storage tank facility.

Cross References

This section cited in 25 Pa. Code § 245.102 (relating to requirement for certification); and 25 Pa. Code § 245.103 (relating to phase-in from interim certification).

§ 245.113. Certified inspector experience and qualifications.

(a) An applicant shall meet the following minimum experience or education requirements, or both, and have completed the required number of activities in the appropriate category for an inspector certification:

Category	*Total Experience and Qualification or Education plus Experience*	*Total Number of Activities Completed*
IUM	1. 4 years, or college degree and 2 years 2. Department approved tank tightness familiarization course or UTT certification	20 (10 of which are installations, 10 of which are major modifications)
	or IUF certification and Department approved tank tightness familiarization course or UTT certification	None

Category	*Total Experience and Qualification or Education plus Experience*	*Total Number of Activities Completed*
IUF	1. 4 years, or college degree and 2 years 2. Nondestructive testing level 2 certification using current ASNT Recommended Practice (SNT-TC-1A)	20 (10 of which are installations, 10 of which are major modifications)
	or	
	IAF Certification	None
IAM	1. 4 years, or college degree and 2 years 2. Nondestructive testing level 2 certification using current ASNT Recommended Practice (SNT-TC-1A) or Department approved API 653 training course or API 653 certification	20 (10 of which are installations and 10 of which are major modifications, or all of which are operations or service inspections under API 653 standards)
	or	
	IAF Certification	None
IAF	1. 4 years, or college degree and 2 years 2. Nondestructive testing level 2 certification using current ASNT Recommended Practice (SNT-TC-1A) or Department approved API 653 training course or API 653 certification	20 (10 of which are installations and 10 of which are major modifications, or all of which are operations or service inspections under API 653 standards)

(b) The total number of activities completed required by subsection (a) shall have been completed within the 7-year period immediately prior to submitting the application for certification. The activities shall have been completed in compliance with Federal and State requirements and the applicant shall have had substantial personal involvement at the storage tank site in the activities.

(c) A college degree being substituted for experience shall be in civil engineering, mechanical engineering, environmental engineering, petroleum engineering, chemical engineering, structural engineering, geotechnical engineering, hydrology, geology or environmental studies.

(d) The total number of activities completed required by subsection (a) may be met through the conducting of tank handling or inspection activities. Noncer-

tified individuals may work at the site but the certified inspector is directly responsible to assure that the activities are conducted properly. This work qualifies toward the total number of activities completed requirements.

(e) The total experience requirement is experience gained working at a storage tank site while working towards the Total Number of Activities Completed requirement.

Source

The provisions of this § 245.113 amended December 23, 1994, effective December 24, 1994, 24 Pa.B. 6515. Immediately preceding text appears at serial pages (162563) to (162565).

Cross References

This section cited in 25 Pa. Code § 245.102 (relating to requirement for certification); 25 Pa. Code § 245.103 (relating to phase-in from interim certification); and 25 Pa. Code § 245.104 (relating to application for installer or inspector certification).

§ 245.114. Renewal and amendment of certifications.

(a) Except as provided in § 245.103 (relating to phase-in from interim certification), certification shall be for 3 years from the date of issuance unless suspended or revoked before that date. An applicant for renewal shall:

(1) Submit a completed application for renewal to the Department at least 120 days prior to the renewal date.

(2) Successfully complete a training program sponsored or approved by the Department. Successful completion means attendance at all sessions of training and attainment of a minimum grade of 90% on all sections of all tests given as part of the training program.

(b) A certified installer or certified inspector shall notify the Department and seek amendment of the certification from the Department whenever:

(1) There is a change in the information provided in the application for the certification. This request shall be made within 14 days from the date of a change in information.

(2) The certified installer or certified inspector wishes to conduct tank handling or inspection activities in installer or inspector certification categories other than those approved by the Department as set forth on the certification.

(3) The certified installer or certified inspector wishes to eliminate installer or inspector certification categories from the certification.

(c) Certified installers or certified inspectors required to amend their certifications in accordance with subsection (b)(1) or (3) shall apply for amendment on a form provided by the Department.

(d) Certified installers or certified inspectors required to amend their certifications in accordance with subsection (b)(2) shall comply with the applicable requirements of this chapter related to application, experience, qualifications and examination.

COMPANY CERTIFICATION

§ 245.121. Certification of companies.

After March 23, 1992 a company may not perform or employ a certified installer or certified inspector to perform tank handling or inspection activities unless the company holds a valid certification issued by the Department under this chapter and the company verifies that the certified installer or certified inspector holds a valid certification issued under this chapter for the appropriate category.

Source

The provisions of this § 245.121 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4345; corrected September 27, 1991, effective September 21, 1991, 21 Pa.B. 4405.

§ 245.122. Applications for company certification.

(a) Applications for certification shall be submitted to the Department on forms provided by the Department and shall include information that will enable the Department to determine if issuance of the certification shall conform to the requirements of the act and this chapter. The following information shall be included:

(1) The full name, address and telephone number of the company.

(2) The names held by the company within the previous 7 years.

(3) A summary of the previous tank handling and inspection activities performed by the company and the officers of the company over the 7-year period immediately preceding the application.

(4) Identification of industry or government licenses or certifications held by the company and the officers of the company relating to underground or aboveground storage tanks.

(5) The names and certification numbers of all certified installers and certified inspectors employed by the company.

(6) A statement signed by a person authorized to bind the company certifying that the company:

(i) Has obtained a copy of the act and this chapter.

(ii) Will comply with the act and this chapter and will direct the employes, principals and agents of the company to perform tank handling and inspection activities in a manner that is consistent with the act and this chapter.

(7) Other information necessary for a determination whether the issuance of a certification conforms to the requirements of the act and this chapter.

(b) Applications shall be complete upon submission.

§ 245.123. Suspension of company certification.

(a) The Department may suspend the certification of a certified company for good cause, which includes, but is not limited to:

(1) A violation of the act or this chapter by the company or a certified installer or certified inspector employed by the company.

(2) Incompetency on the part of the company as evidenced by errors in executing duties and responsibilities for which the certification was issued.

(3) Failure to meet one or more of the standards of performance in § 245.132 (relating to standards of performance).

(b) The Department may reinstate the certification if the following apply:

(1) The certified company and certified installers and certified inspectors employed by the certified company are competent to execute the duties and responsibilities for which certification was issued.

(2) The cause for the suspension has been removed.

(c) Suspension of a certification by the Department shall prevent a company from conducting tank handling or inspection activities during the suspension.

§ 245.124. Revocation of company certification.

(a) The Department may revoke the certification of a certified company for one or more of the following conditions:

(1) A willful disregard for, or willful or repeated violations of the act or this chapter.

(2) The certification of an installer or inspector employed by the company is revoked.

(3) There has been a prior suspension of the certification.

(b) Revocation of a certification by the Department shall prevent a company from conducting tank handling or inspection activities.

§ 245.125. Renewal and amendment of company certification.

(a) Company certification shall be for 3 years from the date of issuance unless suspended or revoked before that date. An applicant for renewal shall submit a completed application for renewal to the Department at least 120 days prior to the renewal date.

(b) A certified company shall notify the Department and file an amendment to its company certification on a form approved by the Department whenever there is a change in the information provided in the application for the certification.

STANDARDS FOR PERFORMANCE

§ 245.131. Validity of certification.

A certificate will not be valid if it is obtained through fraud, deceit or the submission of inaccurate data or qualifications.

§ 245.132. Standards of performance.

(a) Certified companies, certified installers and certified inspectors shall:

(1) Maintain manufacturers, American Society of Nondestructive Testing (ASNT), American Petroleum Institute, American Society of Mechanical Engineers, Underwriters Laboratory, EPA, and Department technical and administrative specifications and manuals which pertain to the categories for which certification was issued. This material is available from the following sources:

(i) ASNT, 1711 Arlingate Lane, Post Office Box 28518, Columbus, Ohio 43228-0518.

(ii) American Petroleum Institute, 2535 One Main Place, Dallas, TX 75202-3904.

(iii) American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(iv) Underwriters Laboratory, Suite 400, 818 Eighteenth Street, N. W., Washington, D. C. 20006.

(v) Environmental Protection Agency, Region III, UST/LUST Section (3HW63), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

(vi) Department of Environmental Resources, Division of Storage Tanks, 400 Market Street, Post Office Box 8762, Harrisburg, Pennsylvania 17105-8762.

(2) Complete and file with the Department on a form provided by the Department a certification that the tank handling activity or inspection activity conducted by the certified installer or certified inspector meets the requirements of the act and this part.

(3) Maintain complete records of tank handling and inspection activities.

(4) Report to the Department a release of a regulated substance or confirmed or suspected contamination of soil, surface or groundwater from regulated substances observed while performing services as a certified installer or certified inspector.

(5) Perform certified installer or certified inspector activities so that there is no release of regulated substances or contamination of soil, surface or groundwater caused by regulated substances from a storage tank system or storage tank facility.

(6) Not affix the certified installer's or certified inspector's signature or certification number to documentation concerning the installation or inspection of a component of a storage tank system project or to documentation concerning tank handling or inspection activity, unless:

Appendix B

Pennsylvania Public Information Request Form

3930-FM-WC0019 2/97

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED CONSERVATION
DIVISION OF STORAGE TANKS

	PUBLIC INFORMATION REQUEST	REVISION DATE	COPY NEEDED
1.	Act 32 w/Amendments	6/95	
2.	Certification Company Application	11/95	
3.	Certified Company Amendment Form	11/95	
4.	Certification Install/Inspect Application	1/95	
5.	Certified Install/Inspect Amendment Form	11/95	
6.	Certification Training Course Approval Application	2/96	
7.	DEP Approved Training Courses - Certification	current list	
8.	DEP Certified Inspection Companies	12/95	
9.	DEP Certified Tank Handling Companies	12/95	
10.	DEP Regulated AST & UST Listing - Order Form (STDS List)	6/96	
11.	EPA - Controlling UST Cleanup Costs - Fact Sheets 1-5	5/92	
12.	EPA - Dollars & Sense	7/95	
13.	EPA - Federal Register - Financial Requirements	10/88	
14.	EPA - Federal Register - Technical Requirements	9/88	
15.	EPA Environmental Fact Sheet - Lender Liability Rule for USTs with 40 CFR Part 280 attached	9/95	
16.	EPA - Musts for USTs	7/95	
17.	EPA - OH No!	12/88	
18.	EPA - Regional & State UST/LUST Program Contacts	2/95	
19.	EPA - Straight Talk On Tanks	7/95	
20.	Fact Sheets:		
	#1 Storage Tank & Spill Prevention Act	8/96	
	#2 Certification of Storage Tank Installers & Inspectors	12/95	
	#2A Understanding the Certification Categories	12/95	
	#3 Storage Tank Company Certification	12/95	
	#4 Storage Tank Training Course Approval	12/95	
	#6 Leak Detection: Meeting the Requirements	12/95	
	#7 Upgrading Underground Storage Tanks	12/95	
	#8 Stage II Vapor Recovery Systems	9/95	
	#9 Storage Tank Registration	8/96	
	#10 Developing a Spill Prevention Response Plan	12/95	
	#11 How to Detect Leaks Using Inventory Control	12/95	
	#12 How to Detect Leaks Using Tank Tightness Testing	11/95	
	#13 How to Detect Leaks In Underground Piping Systems	12/95	
	#16 Financial Responsibility for USTs	12/95	
	#17 Tips for Residential Heating Oil Tank Owners -ASTS	12/95	
	#18 Farm Storage Tank Requirements		

	PUBLIC INFORMATION REQUEST (cont'd)	REVISION DATE	COPY NEEDED
21.	Introduction to Statistical Inventory Reconcilation for USTs	9/95	
22.	Guidelines Emergency Spill Response Plan	7/95	
23.	Hazardous Substance List	9/95	
24.	PA Code Title 25, Chapter 245-Certification, Corrective Action and Financial Responsibility	3/95	
25.	Reference List (Industry Codes / Associations)	10/93	
26.	Registration Form for Storage Tanks	9/95	
27.	Storage Tank Regional List	3/95	
28.	Storage Tank Monitor Newsletter	Current Issue	
29.	Storage Tank Regional Map	8/95	
30.	Technical Reference Manual Installers & Inspectors - UST's		
31.	Technical Reference Manual Installers & Inspectors - AST's		
32.	EPA Manual Tank Gauging	11/93	
33.	EPA Doing Inventory Control Right for USTs	11/93	
34.	EPA Don't Wait Until 1998 - Spill, Overfill and Corrosion Protection for USTs	4/94	
35.	List of Leak Detection Evaluation (Manufacturer's List)	Current list price	

☐ ADDITIONAL REQUEST FORM

NAME _____

ADDRESS _____

_____

_____

Mail To:

DEPT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED CONSERVATION
DIVISION OF STORAGE TANKS
PO BOX 8762
HARRISBURG PA 17105-8762

Appendix C

Installer And Inspector Certification Application Form

3630-FM-WQ0206 Rev. 7/96

Commonwealth of Pennsylvania
Department of Environmental Protection

INSTALLER AND INSPECTOR CERTIFICATION APPLICATION FORM

DATE		
Appl. Appr.	Appl. Denied	
_____	_____	
_____	_____	

Application No. _____

Client ID No. _____

Employer ID No. _____

Certification ID No. _____

SECTION 1

APPLICATION TYPE: (check ONLY one)

_____ (i) Initial Certification (first time application under Chapter 245)

_____ (ii) Modification of Existing Certification (add or delete certification categories)

_____ (iii) Renewal of Existing Certification categories

Your current Certification ID # is _____

SECTION 2

Is this application in response to a previous denial of certification under Chapter 245 of DEP's regulations?

Yes ____ No ____

If yes, the Application Number on the notification of denial is _____

SECTION 3

APPLICANT INFORMATION: Social Security # _____-_____-_____

Applicant Name _____
Last First M.I.

Home Mailing Address _____

_____

City _____

State _____ Zip _____ Phone (_____) _____ Ext. _____

Municipality _____ County _____
(City, Twp. Boro.)

SECTION 4

CURRENT EMPLOYER INFORMATION:

Dates of Employment: From _____/_____/_____ To _____/_____/_____

Current Employer Name _____

Mailing Address _____

_____

City _____

State _____ Zip _____ Phone (_____) _____ Ext. _____

Municipality _____ County _____
(City, Twp. Boro.)

Company Certification ID _____

Social Security # _____-_____-_____

SECTION 5

SEND CORRESPONDENCE TO: Applicant Address _____ Employer Address _____

If more than one employer, Employer name _____

Only ONE address can be used for mailing:

SECTION 6

(a) CERTIFICATION BEING REQUESTED FOR INITIAL APPROVAL:

Note: Check (below) all the categories desired and for which you are qualified. See attached ***Installer/Inspector Description Sheet*** for descriptions and qualifications for each category. Applicant must complete a separate ***Attachment A*** for each certification category requested.

INSTALLER CATEGORIES

Underground	Aboveground	Tank Liner
___ UMX	___ AMMX	___ TL
___ UMR	___ AMNX	
___ UTT	___ AMR	
	___ AFMX	
	___ AFR	
	___ AMEX	
	___ ACVL	

INSPECTOR CATEGORIES

Underground

___ IUM

Aboveground

___ IAM

___ IAF

(b) RENEWAL:

Note: Carefully check (below) all categories for which you are applying for renewal. Indicate whether you wish to renew by being actively involved in the category (Attachment A), retesting in the technical module for this category or if you wish to delete this category. To add new categories, refer to section 6. (a). When using Attachment A, the applicant must complete a separate Attachment A for each certification category in which he/she is requesting renewal.

METHOD OF RENEWAL BEING USED

	Attachment A	Retest	Delete
INSTALLER CATEGORIES:			
Underground			
UMX	___	___	___
UMR	___	___	___
UTT	___	___	___
Aboveground			
AMMX	___	___	___
AMNX	___	___	___
AMR	___	___	___
AFMX	___	___	___
AFR	___	___	___
AMEX	___	___	___
ACVL	___	___	___
Underground/Aboveground			
TL	___	___	___
INSPECTOR CATEGORIES:			
Underground			
IUM	___	___	___
Aboveground			
IAM	___	___	___
IAF	___	___	___

Social Security # _____-_____-_____

SECTION 7

RECIPROCITY ALLOWANCE:

None Available

At the present time no state is approved for Pennsylvania Installer/Inspector Certification reciprocity allowance.

SECTION 8

EXAMINATION LOCATION PREFERENCE:

Check one location you would prefer for the certification examination.

____ Pittsburgh ____ Philadelphia
____ Harrisburg ____ Allentown

SECTION 9

This section must be completed and notarized by the applicant.

I hereby certify that the statements made in this application and all attached documents are true and accurate to the best of my knowledge. I understand that any statement made by me that is not accurate may serve as grounds to invalidate any certificate.

_____ Signature of the Applicant (In Ink)

____/____/____ Date

AFFIDAVIT

STATE _____

COUNTY OF _____ SS

Sworn to and Subscribed Before Me This
_____Day of_____, 19____

NOTARY SEAL

_____ Notary Public

This Commission Expires _____

The Department reserves the right to request additional information necessary to determine whether the issuance of a certification conforms to Act 32 and Chapter 245.

Retain a copy of the application and all attachments for your records and send the application materials to:

Pennsylvania Department of Environmental Protection
P.O. Box 8763
Harrisburg, PA 17105

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CERTIFIED INSTALLER AND INSPECTOR AMENDMENT FORM

1. INDIVIDUAL INFORMATION:

Social Security # _____ - _____ - _____

Name _____ Certification Number: _____
Last First M.I.

Home Address _____

City _____
State _____ Zip _____ Phone (_____) _____ ext. _____
Municipality _____ County _____
(City, Twp., Boro.)

Is this a new address Yes _____ No _____
Address previously reported to DEP (If you are reporting a new address):

City _____
State _____ Zip _____ Phone (_____) _____ ext. _____
Municipality _____ County _____
(City, Twp., Boro.)

2. CURRENT EMPLOYER INFORMATION:

Dates of Employment: From _____/_____/_____ To _____/_____/_____

Current Employer Name _____
Address _____

City _____
State _____ Zip _____ Phone (_____) _____ ext. _____
Municipality _____ County _____
(City, Twp., Boro.) Company Certification ID _____

Complete only when requesting *Amendment of Existing Certification* regarding Employer status:
(Choose One Only) Adding Employer _____ Changing Employer _____

If Changing Employer, complete the following:

Name of Previous Employer _____
Date Terminated from that Employer _____/_____/_____

3. MAILING INFORMATION:

Send correspondence to (choose only one): Applicant Address _____ Employer Address _____
If more than one employer, employer name _____

I hereby certify that information provided on this amendment is true and accurate to the best of my knowledge and I understand that providing false information may serve as grounds to invalidate my certification.

Signature _____ Date _____

Note: Use this Amendment Form only for changing address, changing mailing address, changing employer or adding employer.

Retain a copy of this Amendment document for your records and send the original Amendment Form to:

Pennsylvania Department of Environmental Protection
P. O. Box 8763
Harrisburg, PA 17105-8763

This section for Official Department Use Only

Action	Date	Initial	Comment
Reviewed			
Posted			
Other			
File			

Installer/Inspector Guidance Sheet for Completing the Installer/Inspector Certification Application Form

Unless otherwise specified, all attachments regarding additional information must be 8 1/2 X 11 inches in size and contain the applicant name, Social Security #, and application section # in the upper right corner of the page.

Unless otherwise specified, all certificates or equivalent proofs of training or certification requested on the Application Form or Attachment A must specifically name the applicant.

SECTION 1. The applicant is requested to check only one of the of the options for application type:

Initial Certification - Check this option if you have never been granted installer or inspector certification by the Department under Chapter 245.

Note: Interim certification as an installer or inspector is not considered as certification under Chapter 245.

Modification of Existing Certification - Check this option if you are currently certified under Chapter 245 and wish to add or delete one or more categories on your certification.

To add certification categories, provide your certification ID number in section 1., your full name, Social Security Number and current home address number in section 3., your Employer Information in Section 4., and place an "X" only in the space(s) associated with the category(s) in section 6. that you wish to add. You must then supply the information necessary to qualify for **Initial Certification** in those categories.

You may also check this option to delete certification categories that you no longer wish to hold. On the **Application Form**, provide your certification ID number in section 1., your full name and Social Security number in section 3., and place the letter "D" in the space associated with the category in section 6. that you now hold, but wish to delete.

Renewal of Existing Certification Categories - Use this section to indicate Certification Renewal and show the method and categories for which you are requesting Certification Renewal in Section 6b.

Use **Installer/Inspector Amendment Form** (attached) to amend existing certification relating to the applicant or employer information.

An Amendment of Existing Certification is required for changes of information provided on the Application Form in regard to:

"Applicant Information" (Section 3.)

"Employer Information" (Section 4.)

SECTION 2. Check whether this application is in response to a previous denial of certification.

Any applicant who is denied certification in any category, either as a result of requesting **Initial Certification** or the result of requesting a **Modification to Existing Certification**, must submit a new **Application Form** if that applicant wishes to again request certification for the denied category. The application must be in the form of a request for **Initial Certification** if no certification was granted, or as a request for a **Modification to Existing Certification** if the applicant currently holds certification under Chapter 245 (See section 1. above). As a part of any application submission in response to a denial of

certification, the applicant must check Yes in section 2. and provide the application number from the denial notification.

List any other employers together with the information required in this section on an **Installer/Inspector Amendment Form(s)** (attached).

If requesting an **Amendment of Existing Certification** regarding Employer Status, check either Adding Employer or Changing Employer. If changing employer due to termination with a previous employer, indicate the name of the previous employer and date of termination.

SECTION 6.(a) A certified installer is defined as a person certified by the Department to install, modify or remove storage tanks. A certified installer may be an employe of a tank owner.

Activities to install, modify or remove storage tanks are collectively referred to as tank handling activities.

A certified inspector is defined as a person certified by the Department to conduct inspections of tanks or tank facilities. A certified inspector may not be an employee of a tank owner.

Activities to conduct inspections are collectively referred to as inspection activities.

The **Application Form** lists 11 categories of certification for installers and three certification categories for inspectors. These categories reflect separate specialities relating to individuals who conduct tank handling and inspection activities with regard to underground or aboveground storage tanks (See the attached **Installer/Inspector Description Sheet**). The categories are designed to allow the applicant flexibility in tailoring certification to his or her specific needs. Each applicant may select any category desired for which the applicant is qualified by virtue of experience and qualifications requirements as established in Chapter 245, Section 245.111 or 245.113 for the specific category.

Place an "X" next to the categories desired for certification.

For example, an applicant may wish to remove underground storage tanks and to install underground storage tanks, underground piping, corrosion protection systems, release detection systems, and spill and overfill protection systems. In this case the applicant would place an "X" next to the following:

UMR Underground storage tank - removal
UMX Underground storage tank system - installation, modification

Or, for example, an applicant may wish to inspect underground storage tank systems. In this case the applicant would place an "X" next to the following:

IUM Underground storage tank system and storage tank facility

SECTION 6.(b) Place and "x" next to the category and below the method which is being used to renew a certification category in which you are presently permanently certified. If you wish to delete a category place an "x" next to the category and in the delete column.

Renewal by Attachment A requires an Attachment A to be completed for that category indicating activities performed during the time since permanent certification was obtained.

(See the Attachment Guidance Sheet for completing Attachment A, keeping in mind the permanent certification period and the dates involved.)

Renewal by Retest may be used if the activities completed in the category since becoming permanently certified are not sufficient to qualify for renewal by active involvement as indicated on an enclosed Attachment A. Applicants using this option will be contacted by the testing contractor to schedule a retake of the technical exam for the category involved.

SECTION 7. RECIPROCITY ALLOWANCE - NOT APPLICABLE AT THE PRESENT TIME. The granting of a reciprocity allowance by the Department was established to exempt an applicant from taking the technical sections of the certification examination for those certification categories deemed by the Department to be equivalent to the certification issued to the applicant by the other certification program. For an applicant to be granted the reciprocity allowance, the certification program being requested for recognition must be approved by the Department. At the present time no state certification program has been approved by the Department.

SECTION 8. To aid the Department in scheduling examinations, the applicant must indicate the examination location preferred.

Retain a copy of the application and all attachments for your records and send the completed application materials to:

Pennsylvania Department of Environmental Protection
P.O. Box 8763
Harrisburg, PA 17105

Questions may be directed in writing to this address or to telephone number:

(717) 772-5599

Description Sheet for DEP Certified Installer and Inspector Categories and Minimum Experience and Education Qualifications

Six months experience may be accredited to an installer applicant who successfully completes a Department approved training program applicable to the certification category being requested. The six months experience shall be accredited to the total years of experience required by Subsection (a), except for applicants who are substituting a college degree for experience.

INSTALLER CATEGORIES

Category Code	Description	Total Experience or Education Plus Experience	Total Number of Activities For Initial Approval or Renewal
UMX	Underground storage tank system installation and modification	2 yrs. or college degree and 1 yr.	15 installations
UMR	Underground storage tank removal	2 yrs. or college degree and 1 yr.	15 removals
UTT	Underground storage tank tightness tester. Tightness testing activities involved in conducting and interpreting results of volumetric and nonvolumetric tests on underground storage tank systems or storage tank facilities.	Department approved training with testing equipment manufacturer's certification.	10 Tank tightness tests required for renewal only
AMMX	Aboveground manufactured metallic storage tank installation and modification	2 yrs. or college degree and 1 yr. or UMX certification or AFMX certification	15 installations. None None
AMNX	Aboveground Nonmetallic Storage Tank - Installation and Modification	2 yrs. or college degree and 1 yr.	15 which may be installations or major modifications.
AMR	Aboveground manufactured storage tank removal	2 yrs. or college degree and 1 yr. or UMR certification or AFR certification	15 removals None None
AFMX	Aboveground field constructed metallic storage tank installation, modification and removal	3 yrs. or college degree and 2 yrs.	20 which may be installations or major modifications
AFR	Aboveground field constructed storage tank removal	2 yrs. or college degree and 1 yr.	15 removals.
AMEX	Aboveground storage tank-mechanical - installation, modification and removal. Mechanical include: valves, fill piping, suction piping, foam system piping, pumps, corrosion protection, release detection, spill and overflow prevention and other appurtenances that are components of the storage tank system or facility.	3 yrs. or college degree and 2 yrs.	20 10 installations and 10 modifications.

Description Sheet for DEP Certified Installer and Inspector Categories and Minimum Experience and Education Qualifications

INSTALLER CATEGORIES

Category Code	Description	Total Experience or Education Plus Experience	Total Number of Activities
ACVL	Aboveground storage tank - civil. Installation and modification of tank related structural components such as foundations, dike walls, field grading, above and below grade vaults, pump supports, pipe supports, corrosion protection systems, and drainage systems associated with an aboveground tank system or facility.	3 yrs. or college degree and 2 yrs.	20 10 installations, and 10 modifications
TL	Storage tank-liner. Activities involved in the installation of internal liners for underground and aboveground storage tank systems or facilities.	2 years	15 tank linings

INSPECTOR CATEGORIES

Category Code	Description	Total Experience or Education Plus Experience	Total Number of Activities
IUM	Underground storage tank systems and storage tank facilities.	1. 4 yrs., or college degree and 2 yrs. 2. Department approved tank tightness familiarization course or UTT certification. OR IAM certification and Department approved tank tightness familiarization course or UTT certification	20 10 installations and 10 major modifications (20 operations inspections for cert. renewal applicants) None
IAM	Aboveground manufactured storage tank system and storage tank facilities	1. 4 yrs, or college degree and 2 yrs. 2. Nondestructive Testing Level 2 certification using current ASNT recommended practice (SNT-TC-1A) or Department approved aboveground tank inspector training course or API 653 Certification OR IAF certification	20 which may be any combination of installations, major modifications or inspections. None
IAF	Aboveground field constructed storage tank systems and storage tank facilities.	1. 4 yrs, or college degree and 2 yrs. 2. Nondestructive Testing Level 2 certification using current ASNT recommended practice (SNT-TC-1A) or Department approved API 653 Training Course or API 653 Certification	20 which may be any combination of installations, major modifications or inspections under API 653 standards.

Attachment Guidance Sheet for Completing Attachment A Documentation of Total Experience and Qualification or Education Plus Experience and Total Number of Activities Completed

1. A separate copy of a complete Attachment A package (pages 1 through 7) must be attached to the application form for each certification category being requested. An application requesting a category for which the Attachment A package is incomplete or missing will be denied for the subject category.

2. Refer to the **Installer/Inspector Description Sheet** for a listing of the category codes to complete this section.

3a. Indicate the number of years of experience in the specific certification category being requested. This number must be at least that stated in the "total experience and qualifications or education plus experience" requirement in Sections 245.111 and 245.113 of Chapter 245 for the category in question in order for the applicant to be considered qualified for that category. Refer to **Installer/Inspector Description Sheet** for a listing of this information.

The employment history for the years of experience (and substantial involvement) listed in Section 3a must be listed in the space provided. The history dates should be listed as month/year and must cover the years being considered as experience, but need not be consecutive. If additional space is required to provide the experience employment history, additional pages may be added to the Attachment A section of the application.

3b. Six months experience may be accredited to an installer applicant who successfully completes a Department approved training program applicable to the certification category being requested. The six months experience shall be accredited to the total years of experience required by subsection (a), except for applicants who are substituting a college degree for experience.

3c. The applicant may, at his or her option, substitute documentation of acceptable education for part of the "total experience and qualifications" requirement as allowed by Sections 245.111 and 245.113 of Chapter 245 for the certification category being requested. Refer to **Installer/Inspector Description Sheet** for a listing of the "total experience and qualifications or education plus experience" requirements by category.

The types of education that are acceptable as a partial substitute for experience for installer certification include college degrees in:

civil engineering, mechanical engineering, environmental engineering, petroleum, engineering, chemical engineering, structural engineering, or geotechnical engineering.

The types of education that are acceptable as a partial substitute for experience for inspector certification include college degrees in:

civil engineering, mechanical engineering, environmental engineering, petroleum engineering, chemical engineering, structural engineering, geotechnical engineering, hydrology, geology, or environmental studies.

4a. In this section, the applicant must provide all the information requested for each activity being documented as completed, for the certification category in question.

This information includes:

Date activity completed - Provide the month and year the activity being documented was completed.

In order to qualify for certification, the activities completed must have occurred within the seven-year period immediately prior to submitting the application.

Type of activity completed - Enter one appropriate code per line from below.

- **I** Installation (tank handling or inspection associated with installation)
- **M** Modification (tank handling or inspection associated with modification)
- **P** Operations or service inspection performed on a storage tank system or facility
- **R** Removal (tank handling or inspection associated with removal)

Tank Handling Activities are activities in which the applicant has had substantial hands-on personal involvement at the storage tank site. Supervision or oversight of tank handling activities do not qualify for initial certification, but will qualify for certification renewal.

Be aware that an activity is considered to be an installation if it involves activities to construct, reconstruct, or erect the components of a storage tank system or storage tank facility so as to put that system or facility into service.

Modification involves activities to upgrade, repair, refurbish, or restore any part of an existing storage tank system or storage tank facility. Major modification activities involve modifications that alter the design of the storage tank or system and modifications that affect the integrity of the system as defined at Chapter 245.1.

For example, activities to install associated piping and a release detection system for a new storage tank system would be considered installation, whereas, activities to replace associated piping and add a release detection system for an existing storage tank system would be considered modification. Further, the activities conducted by the applicant pertaining to the associated piping and the release detection system would be considered separate activities. Likewise, activities to install separate storage tanks would be considered as separate activities.

Inspection of installations, modifications, removals and operations or service inspections also qualify as activities completed for inspector categories and would be entered as "I", "M", "P", or "R", as appropriate, in the "Type of activity completed" block.

System component involved - Enter one appropriate code per line from below.

- **A** Underground storage tank system
- **F** Aboveground manufactured metallic storage tank
- **G** Aboveground nonmetallic storage tank system
- **H** Aboveground field constructed metallic storage tank greater than 90 foot diameter
- **I** Aboveground field constructed metallic storage tank less than or equal to 90 foot diameter
- **K** Aboveground storage tank system mechanical (piping, valves, corrosion protection, release detection, spill and overfill prevention, etc)
- **L** Aboveground storage tank system civil (foundations, field grading systems, vaults, pump supports, pipe supports, drainage systems, etc)
- **M** Underground or Aboveground storage tank lining

Brief Description of Activity Completed - Provide a brief description of the specific activity completed.

In order to qualify for certification, the number of activities completed, the type of activity completed and the system component involved must be appropriate to the certification category being requested. (Only one activity code and one component code should appear on each line.)

For example, for an applicant to qualify for Aboveground storage tank - mechanical - installation/modification {AMEX}, he or she would have to list at least 20 activities completed within the last seven years, 10 installations and 10 modifications related to aboveground storage tank system piping, valves, corrosion protection systems, release detection systems, spill and overfill prevention systems, or other storage tank mechanical appurtenances.

Additional activities completed may be listed on a separate sheet of paper. This sheet must be 8 1/2 x 11 inches in size, labeled as "4a. Additional Activities Completed" and include the applicant's name and social security number in the upper right corner of the page as they appear on the application form. The information required in section 4b. must also be provided for each additional activity submitted.

4b. In this section the applicant must provide all information as to the storage tank facility involved and the applicant's employer for each of the activities documented in section 4a. The storage tank facility and employer information listed under each activity number in section 4b. must correspond to the number of the activity being documented in section 4a.

For example, an applicant documenting the installation of an underground storage tank in item number 1 of section 4a. must provide in item number 1 of section 4b, the required information regarding the storage tank facility where the storage tank was installed and the applicant's employer at the time of the installation.

In cases where the applicant completed more than one activity at the same facility, the applicant may enter "Same as 'n'" (where 'n' is the "activity number" of first activity at that facility) in the "Owner Name" block for that activity in 4b. In cases where the applicant completed more than one activity under the same employer, the applicant may follow the same procedure by entering "Same as 'n' "(where 'n' is the "activity number" for the first listing of that employer) in the "Company name" block.

If the applicant's employer for an activity completed in Section 4a is his **present** employer, then a **company official must sign the form, confirming and verifying the activity**. A signature from past employers is not required.

For activities completed on regulated storage tank systems in **Pennsylvania** after September 21, 1991 **the certification number of the individual under whose supervision the activity was completed must appear under the employer in Section 4b.** No PA Certification Numbers are required for activities not completed in Pennsylvania. (For example: activities completed in another state, such as New York, would not require verification of PA certifications.)

The telephone number for the contact or facility for which the activity was completed must appear under Section 4b.

All certificates or equivalent proofs of training or certification requested in Sections 5. and 6. must specifically name the applicant.

5. Completion of this section relates to certification for "Underground storage tank - tank tightness tester" {UTT} or Department approved familiarization course for IUM certification. Section 245.111 of Chapter 245 requires that an applicant requesting certification in these categories submit proof of successful completion of a training program sponsored or approved by the Department. Training can be from a manufacturer, private sector organization or business, providing the training program is approved by the Department.

To document qualification for certification in this category the applicant must provide the name and training approval number of the tank tightness testing or familiarization training program attended and the date the program was completed. The applicant must also submit a copy of the current certificate or other equivalent proof of successful completion of the training program.

6. Completion of this section relates to inspector certification for "Aboveground manufactured storage tank system and storage tank facility" {IAM} and "Aboveground field constructed storage tank system and storage tank facility" {IAF} only. Section 245.113 of Chapter 245 requires that an applicant requesting certification in these categories hold NDT Level 2 certification, API-653 certification or have

successfully completed a Department approved API-653 training course (for IAF) or AST inspection training program (for IAM).

To document this requirement, the applicant must submit a copy of the current certificate or certification or other equivalent proof of successful completion of the Department approved API-653 training course.

7. Completion of this section relates to Department approved training being substituted for experience.

   Six months experience may be accredited to an installer applicant who successfully completes a Department approved training program applicable to the certification category being requested. The six months experience shall be accredited to the total years of experience required by subsection (a), <u>except</u> for applicants who are substituting a college degree for experience. Applicants who are substituting a college degree for total years of experience can not apply the Department approved training program completion credit.

8. Refer to Section 3c.

ATTACHMENT A

DOCUMENTATION OF TOTAL EXPERIENCE AND QUALIFICATION OR EDUCATION PLUS EXPERIENCE AND TOTAL NUMBER OF ACTIVITIES COMPLETED

*** IMPORTANT - PLEASE READ THE FOLLOWING ***

Attach to the application a copy of this completed attachment package consisting of pages 1 through 7 for each category of installer or inspector certification requested.

Make as many copies of this attachment package, prior to completing the information, as necessary to document all categories of installer or inspector certification being requested.

See the ***Installer/Inspector Description Sheet*** attached to the application form for descriptions of installer and inspector categories and information on minimum qualifications based on education plus experience and total number of activities completed for each specific installer and inspector category. See the ***Attachment Guidance Sheet*** at the end of this attachment for codes and information on completing this form.

Provide the following information as it appears on the application form:

1. Applicant Name _____
   last first middle int.

   Social Security # _____-_____-_____

2. CERTIFICATION CATEGORY BEING REQUESTED WITH THIS ATTACHMENT _____

OFFICIAL USE ONLY initials _____

Number of Years of Experience
Adequate for category _____
Insufficient # provided _____
Required _____ Provided _____

College Degree
Appropriate to Chapter 245 _____

Transcripts verified _____
Transcripts acceptable _____
Degree acceptable _____

Department approved training appropriate to category requested _____

Training course Department approved _____

Years of Experience insufficient because degree unacceptable _____

UTT Training
Training course not DEP approved for the category _____

Applicant has not shown proper proof of completion _____

Total Number of Activities Completed
Adequate for category _____
Insufficient # provided _____
Required _____ Provided _____

Activity(s) _____
Date Activity Completed invalid

Activity(s) _____
Type Activity Completed inappropriate to category

Activity(s) _____
System Component Involved inappropriate to category

Activity(s) _____
cannot be properly verified

NDT Level 2 Certification
Applicant has not shown proper proof of completion _____

Social Security # _____-_____-_____

3. DOCUMENTATION OF TOTAL EXPERIENCE OR EDUCATION AND EXPERIENCE

3a. Number of years of experience and substantial involvement in the category being requested _____

List employment history for the years of experience stated in 3a. above.

	Company Name	From	To	Contact	Telephone Number
1.					
2.					
3.					

3b. Requesting six month experience accreditation based on approved training course. Yes _____
(Complete Section 7 on page 7 of Attachment A).

3c. Is a college degree being substituted for appropriate experience? Yes _____ No _____
If yes, complete Section 8 on Page 7 of Attachment A.

4. DOCUMENTATION OF TOTAL NUMBER OF ACTIVITIES COMPLETED

4a. No.	Date Activity Completed (Month/Yr)	Type of Activity Completed (See Codes) one per line	System Component Involved (See Codes) one per line	Brief Description of Activity Completed (Do Not Just Re-enter Component Involved)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

4b. Storage Tank Facility and Employer Information

Social Security # _____-____-_____

Complete the information listed below for each activity listed in section 4a. Activity No.'s in 4a. must correspond to Activity No.'s in 4b.

Storage Tank Facility Activity Completed for	Official Use	Applicant's Employer when Activity Completed
No. 1		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 2		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 3		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 4		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 5		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____

4b. Storage Tank Facility and Employer Information (continued)

Social Security # _____ - _____ - _____

Storage Tank Facility Activity Completed for	Official Use	Applicant's Employer when Activity Completed
No. 6		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 7		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 8		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 9		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 10		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____

4b. Storage Tank Facility and Employer Information (continued)

Social Security # _____-____-_____

Storage Tank Facility Activity Completed for	Official Use	Applicant's Employer when Activity Completed
No. 11 Owner Name _____ Facility Name _____ Facility _____ Address _____ City _____ State _____ Zip _____ Owner Contact _____ Contact Phone (_____) _____-_____ Facility Phone (_____) _____-_____	Approved _____ Verified _____	Company Name _____ Company _____ Address _____ City _____ State _____ Zip _____ Company Contact _____ Contact Phone (_____) _____-_____ Present Company Official Verification -Signature _____ Worked under Certified Individual - PA Cert No. _____
No. 12 Owner Name _____ Facility Name _____ Facility _____ Address _____ City _____ State _____ Zip _____ Owner Contact _____ Contact Phone (_____) _____-_____ Facility Phone (_____) _____-_____	Approved _____ Verified _____	Company Name _____ Company _____ Address _____ City _____ State _____ Zip _____ Company Contact _____ Contact Phone (_____) _____-_____ Present Company Official Verification -Signature _____ Worked under Certified Individual - PA Cert No. _____
No. 13 Owner Name _____ Facility Name _____ Facility _____ Address _____ City _____ State _____ Zip _____ Owner Contact _____ Contact Phone (_____) _____-_____ Facility Phone (_____) _____-_____	Approved _____ Verified _____	Company Name _____ Company _____ Address _____ City _____ State _____ Zip _____ Company Contact _____ Contact Phone (_____) _____-_____ Present Company Official Verification -Signature _____ Worked under Certified Individual - PA Cert No. _____
No. 14 Owner Name _____ Facility Name _____ Facility _____ Address _____ City _____ State _____ Zip _____ Owner Contact _____ Contact Phone (_____) _____-_____ Facility Phone (_____) _____-_____	Approved _____ Verified _____	Company Name _____ Company _____ Address _____ City _____ State _____ Zip _____ Company Contact _____ Contact Phone (_____) _____-_____ Present Company Official Verification -Signature _____ Worked under Certified Individual - PA Cert No. _____
No. 15 Owner Name _____ Facility Name _____ Facility _____ Address _____ City _____ State _____ Zip _____ Owner Contact _____ Contact Phone (_____) _____-_____ Facility Phone (_____) _____-_____	Approved _____ Verified _____	Company Name _____ Company _____ Address _____ City _____ State _____ Zip _____ Company Contact _____ Contact Phone (_____) _____-_____ Present Company Official Verification -Signature _____ Worked under Certified Individual - PA Cert No. _____

4b. Storage Tank Facility and Employer Information (continued)

Social Security # _____-____-_____

Storage Tank Facility Activity Completed for	Official Use	Applicant's Employer when Activity Completed
No. 16		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Present Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 17		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 18		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 19		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____
No. 20		Company Name _____
Owner Name _____	Approved	Company _____
Facility Name _____		Address _____
Facility _____	_____	City _____
Address _____		State _____ Zip _____
City _____		Company Contact _____
State _____ Zip _____	Verified	Contact Phone (_____) _____ - _____
Owner Contact _____		Present Company Official Verification -Signature
Contact Phone (_____) _____ - _____	_____	_____
Facility Phone (_____) _____ - _____		Worked under Certified Individual - PA Cert No. _____

Social Security # _____-_____-_____

5. **TANK TIGHTNESS FAMILIARIZATION OR TANK TIGHTNESS TESTING PROOF OF TRAINING** (For UTT certification or Familiarization Course for IUM certification.)

Name of Department approved Tank Tightness Testing training course attended.

Training Approval Number _____

Course Title _____

Date Completed _____/_____/_____

(Submit copy of current certificate or other equivalent proof of successful completion of the training course.)

---

6. **INSPECTOR PROOF OF NDT OR NDE LEVEL 2 CERTIFICATION, APPROVED API 653 TRAINING COURSE OR API 653 CERTIFICATION FOR IAM OR IAF CERTIFICATION. DEPARTMENT APPROVED ABOVEGROUND TANK INSPECTOR TRAINING COURSE APPLIES TO IAM CERTIFICATION ONLY.**

	Date Completed / Obtained
_____	_____/_____/_____
_____	_____/_____/_____
_____	_____/_____/_____
_____	_____/_____/_____
_____	_____/_____/_____

(Submit copy of current certificate or other equivalent proof of successful completion or obtainment of NDT Level 2 Certification, Department approved API-653 Training Course or API-653 Certification.

---

7. **DEPARTMENT APPROVED TRAINING COURSE**
Six months experience accredited to installer applicant successfully completing Department approved training applicable to category requested.

CATEGORY _____

COURSE TITLE _____

TRAINING APPROVAL NUMBER _____

DATE COMPLETED _____

(Submit copy of current certificate as proof of successful completion of the training course.)

---

8. College Name _____

Address _____

Degree Earned _____ Major _____ Date _____/_____/_____

(College transcripts must be attached as evidence of the degree being considered.)

Appendix D

Inspection Company Certification Application Form

Commonwealth of Pennsylvania
Department of Environmental Protection
Storage Tank Program

COMPANY CERTIFICATION APPLICATION FORM
Storage Tank Program

OFFICIAL USE ONLY: DATE		
Appl. Appr.	Appl. Denied	
_____	_____	Application No. _____
_____	_____	Client ID No. _____
		Company Certification ID No. _____

1. **APPLICATION TYPE:** _____ (i) **Initial Certification** (first time application under Chapter 245)

   (check ONLY one) _____ (ii) **Renewal of Existing Certification** (required every three years)

   The current Company Certification ID # (renewals only) is _____

2. Is this application in response to a previous denial of certification under Chapter 245 of DEP's regulations? Yes ____ No ____

   If yes, the Application Number on the notification of denial is _____

3. **APPLICANT INFORMATION:** Federal Tax ID # _____

   Company Name _____
   Address _____
   _____
   City _____
   State _____ Zip _____ Phone (____)_____-_____ Ext._____
   Municipality _____ County _____
   (*City, Twp., Boro.*) Contact Name _____
   Contact Phone (____)_____-_____ Ext._____
   FAX (____)_____-_____

CORPORATE SUBSIDIARY OF: Federal Tax ID # _____

Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)_____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*) Contact Name _____
Contact Phone (____)_____-_____ Ext._____
FAX (____)_____-_____

4. COMPANY OFFICERS:

Provide the names and titles of at least two of the top company officers, such as the President and Vice-president or Chairman or Vice Chairman, as they exist within the company. List the telephone number for each officer.

Officer Name _____
Last First M.I.
Title _____
Phone (_____)_____-_____ Ext. _____

Officer Name _____
Title _____
Phone (_____)_____-_____ Ext. _____

Officer Name _____
Title _____
Phone (_____)_____-_____ Ext. _____

---

5. PREVIOUS COMPANY NAMES: Federal Tax ID # _____

List all names held by the company within the previous seven years. Give the time period during which that name was held.

Previous Name _____
From: ___/___/___ To: ___/___/___

Previous Name _____
From: ___/___/___ To: ___/___/___

Previous Name _____
From: ___/___/___ To: ___/___/___

Previous Name _____
From: ___/___/___ To: ___/___/___

---

6. LICENSES AND CERTIFICATIONS HELD:

List all industry or government licenses or certifications held by the company and the officers of the company relating to underground or aboveground storage tanks. Give names, numbers and expiration dates.

***** Copy this form as needed, prior to completing, to detail all licenses *** and certifications held**

License or Certificate Name _____
Number _____ Expiration Date ___/___/___
Held by _____
Description _____

License or Certificate Name _____
Number _____ Expiration Date ___/___/___
Held by _____
Description _____

License or Certificate Name _____
Number _____ Expiration Date ___/___/___
Held by _____
Description _____

7. CORPORATE SUBSIDIARY INFORMATION:

Federal Tax ID # _____

1. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)_____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*)
Contact Name _____
Contact Phone (____)_____-_____ Ext._____
FAX (____)_____-_____

Federal Tax ID # _____

2. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)_____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*)
Contact Name _____
Contact Phone (____)_____-_____ Ext._____
FAX (____)_____-_____

Federal Tax ID # _____

3. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)_____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*)
Contact Name _____
Contact Phone (____)_____-_____ Ext._____
FAX (____)_____-_____

Federal Tax ID # _____

4. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)_____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*)
Contact Name _____
Contact Phone (____)_____-_____ Ext._____
FAX (____)_____-_____

Federal Tax ID # _____

5. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)_____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*)
Contact Name _____
Contact Phone (____)_____-_____ Ext._____
FAX (____)_____-_____

Federal Tax ID # _____

8. **CERTIFIED EMPLOYEES:**

List the names, PA certification ID numbers and subsidiary no. (see page 3) worked for (if any) for all certified installers and inspectors employed by the company. List by Last Name, First Name, M.I. If the individuals certification is in process, use "Pending" for the PA Certification ID. If there are no PA certified individuals enter "None."

***** Copy this form as needed, prior to completing, to detail all installers *****
and inspectors

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Name _____ Cert. ID _____ Subsidiary No. _____

Federal Tax ID # _____

9. **PROJECT HISTORY:**

Provide a brief summary of the previous tank handling and inspection activities performed by the company and/or the officers of the company. Project history items cannot be older than 7 years from the application notary date. See the attached **Company Guidance Sheet** for codes and information to complete the project history information. Project history information need not exceed the spaces provided on this page.

Project Period (Month/Year) From: ____/____ To: ____/____
Type of Project Code _____ System Component Code _____
Facility Owner _____
Facility Name _____
Facility Mailing Address _____
City _____
State _____ Zip _____
Owner Contact _____
Contact Phone (_____)_____-_____
Facility Phone (_____)_____-_____
Project involvement by (check one): Company ____ Company Officer ____
If Company Officer, Name _____
Project Description and Comments: _____

Project Period (Month/Year) From: ____/____ To: ____/____
Type of Project Code _____ System Component Code _____
Facility Owner _____
Facility Name _____
Facility Mailing Address _____
City _____
State _____ Zip _____
Owner Contact _____
Contact Phone (_____)_____-_____
Facility Phone (_____)_____-_____
Project involvement by (check one): Company ____ Company Officer ____
If Company Officer, Name _____
Project Description and Comments: _____

Project Period (Month/Year) From: ____/____ To: ____/____
Type of Project Code _____ System Component Code _____
Facility Owner _____
Facility Name _____
Facility Mailing Address _____
City _____
State _____ Zip _____
Owner Contact _____
Contact Phone (_____)_____-_____
Facility Phone (_____)_____-_____
Project involvement by (check one): Company ____ Company Officer ____
If Company Officer, Name _____
Project Description and Comments: _____

Federal Tax ID # _____

10. This section must be completed and notarized by a company official authorized to bind the company. Photocopied signatures and notary information will not be accepted.

I hereby certify to the following:

(a) that the company has obtained copies of:

(i) the Storage Tank and Spill Prevention Act (Act 32), and
(ii) Chapter 245, Administration of the Storage Tank and Spill Prevention Program, and
(iii) all technical and administrative specifications and manuals required by Section 245.132(a)(1) of Chapter 245, and

(b) that the company will comply with Act 32 and Chapter 245 and will direct the employees, principals and agents of the company to perform tank handling and inspection activities in a manner that is consistent with Act 32 and Chapter 245.

Failure to meet these requirements or any other conditions specified in Act 32 or Chapter 245 could result in the revocation or suspension of company certification.

I further certify on behalf of the company that the statements made in this application and all attached documents are true and accurate to the best of my knowledge. I understand that any statement made that is not accurate may serve as grounds to invalidate any certificate.

_____ ___/___/___
Signature of the Company Official (In Ink) Date

_____
Type or Print Name of the Company Official

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____ SS
Sworn to and Subscribed Before Me This
_____Day of_____, 19____

NOTARY SEAL

_____ This Commission Expires _____
Notary Public

The Department reserves the right to request additional information necessary to determine whether issuance of a certification conforms to Act 32 and Chapter 245.

Retain a copy of the application and all attachments for your records and send the completed application materials to:

Pennsylvania Department of Environmental Protection
Storage Tank Program
Rachel Carson State Office Building
P.O. Box 8763
Harrisburg, PA 17105-8763

Company Guidance Sheet for Completing the Company Certification Application Form

Unless otherwise specified, all attachments regarding additional information must be 8 1/2 X 11 inches in size and contain the applicant name, Federal Tax ID # (or Social Security #), and application section # in the upper right corner of the page.

1. The applicant is requested to check only one of the of the options for application type:

   Initial Certification - Check this option if you have never been granted company certification by the Department under Chapter 245.

   Renewal of Existing Certification - Check this option if you are applying for renewal of company certification. Renewal is required every three years. The applicant must submit the **Application Form** with information that is updated from that of the last submission.

2. Check whether this application is in response to a previous denial of certification.

   Any applicant who is denied certification must submit a new **Application Form** if that applicant wishes to, again, request certification. As a part of any application submission in response to a denial of certification, the applicant must check Yes in section 2. and provide the application number from the denial notification.

3. If a Federal Tax ID number cannot be provided, The Social Security number of the company officer who signs the Application Form in section 9. may be substituted. If the company is a corporate subsidiary of another company, complete the "Subsidiary of" Section of the application.

6. In addition to the name, number and expiration date, provide the name of the officer who holds the license or certificate and a description of the scope or purpose of that license or certificate.

   Some examples of possible licenses or certificates are: manufacturer's training certificates, NACE certifications, ASME certifications, ASNT certifications and OSHA personnel protection and safety training certificates.

8. **Subsidiary Information** - List all corporate subsidiaries that will be covered under the parent company certification number if approved. Leave this section blank if no corporate subsidiaries will be involved with any form of tank handling or inspection activities.

9. **Type of Project** - Enter the appropriate code from below.

   I Installation (Handling or Inspection)

   M Modification (Handling or Inspection)

   R Removal (Handling or Inspection)

   System component involved - Enter the appropriate code from below.

   A Underground manufactured storage tank

   B Underground field constructed metallic storage tank

   C Underground field constructed nonmetallic storage tank

   D Underground mechanical (piping, valves, corrosion protection, release detection, spill and overfill prevention, etc)

   E Underground civil (foundations, field grading systems, vaults, pump supports, pipe supports, drainage systems, etc)

   F Aboveground manufactured metallic storage tank

G Aboveground manufactured nonmetallic storage tank

H Aboveground field constructed metallic storage tank greater than 90 foot diameter

I Aboveground field constructed metallic storage tank less than or equal to 90 foot diameter

J Aboveground field constructed nonmetallic storage tank

K Aboveground mechanical (piping, valves, corrosion protection, release detection, spill and overfill prevention, etc)

L Aboveground civil (foundations, field grading systems, vaults, pump supports, pipe supports, drainage systems, etc)

M Underground or Aboveground storage tank lining

The owner contact may be the owner or other employe responsible and familiar with the project in question.

Check whether involvement in the project was by the applicant company or by a company officer. Company officer would be checked, primarily, if the involvement for the project in question is being documented by a company officer outside of his or her association with the applicant company. If company officer is checked, provide the name of that officer.

Provide a brief description and comments that will more completely characterize the project.

Amendment of Existing Certification - If the company currently holds certification under Chapter 245, but you wish to amend general information supplied as a part of the application submission, utilize the Certified Company Amendment form (3600-FM-WQ207(b)) attached to this application.

An Amendment of Existing Certification is required for changes of information provided in regard to:

"Applicant Information" (Section 3.) (Including addition of corporate subsidiaries)
"Company Officers" (Section 4.)
"Certified Employees" (Section 7.)

Unless specifically directed by the Department, it is <u>not</u> required to submit an **Amendment of Existing Certification** to update information regarding:

"Licenses and Certifications Held" (Section 6.)
"Project History" (Section 8.)

To include additional information relating to officers, employees or corporate subsidiaries, copy pages of this application as needed.

Retain a copy of the application and all attachments for your records and send the application materials to:

Pennsylvania Department of Environmental Protection
Storage Tank Program
Rachel Carson State Office Building
P.O. Box 8763
Harrisburg, PA 17105-8763

Questions may be directed in writing to this address or to telephone number:

(717) 772-5599

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3630-FM-WQ0207(b) 11/95

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Storage Tank Program
P.O. Box 8763
Harrisburg, PA 17105-8763

CERTIFIED COMPANY AMENDMENT FORM

Federal Tax ID # _____ Certification # _____
Effective Date: _____

Current Company Name _____
Corporate Subsidiary of _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____) ____-_____ Ext. _____
Municipality _____ County _____
(City, Twp., Boro.)
Contact Name _____
Contact Phone (____) ____-_____ Ext. _____
FAX (____) ____-_____
Federal Tax ID # _____ Certification # _____

Previous Company Name _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____) ____-_____ Ext. _____
Municipality _____ County _____

NEW COMPANY OFFICERS:

Officer Name _____
Last First M.I.
Title _____
Phone Phone (____) ____-_____ Ext. _____
Officer Being Replaced _____

Officer Name _____
Last First M.I.
Title _____
Phone Phone (____) ____-_____ Ext. _____
Officer Being Replaced _____

Officer Name _____
Last First M.I.
Title _____
Phone Phone (____) ____-_____ Ext. _____
Officer Being Replaced _____

CHANGES IN CERTIFIED EMPLOYEES:

*** Copy this form as needed, prior to completing, to detail all installers and inspectors

Name	Hire Date	Termination Date	Certification ID #

3630-FM-WQ0207(b) 11/95

NEW SUBSIDIARY INFORMATION: Federal Tax ID # _____

1. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*) Contact Name _____
Contact Phone (____)____-_____ Ext._____
FAX (____)____-_____

NEW SUBSIDIARY INFORMATION: Federal Tax ID # _____

2. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*) Contact Name _____
Contact Phone (____)____-_____ Ext._____
FAX (____)____-_____

NEW SUBSIDIARY INFORMATION: Federal Tax ID # _____

3. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*) Contact Name _____
Contact Phone (____)____-_____ Ext._____
FAX (____)____-_____

DELETE SUBSIDIARY INFORMATION: Federal Tax ID # _____

1. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*) Contact Name _____
Contact Phone (____)____-_____ Ext._____
FAX (____)____-_____

DELETE SUBSIDIARY INFORMATION: Federal Tax ID # _____

2. Company Name _____ Certification No. _____
Address _____
_____
City _____
State _____ Zip _____ Phone (____)____-_____ Ext._____
Municipality _____ County _____
(*City, Twp., Boro.*) Contact Name _____
Contact Phone (____)____-_____ Ext._____
FAX (____)____-_____

_____ ____/____/____
Signature of the Company Official (In Ink) Date

_____
Type or Print Name of the Company Official

Recycled Paper

Appendix E

Owner/Operator Notice Of Storage Tank Facility Inspection Information Packet

Southcentral Regional Office
One Ararat Boulevard
Harrisburg, PA 17110

717-

CERTIFIED LETTER NO.

RE: NOTICE OF STORAGE TANK FACILITY INSPECTION

Dear Underground Storage Tank Owner:

The 1989 Storage Tank and Spill Prevention Act requires that operations inspections be conducted at storage tank facilities. Operation inspections are to review tank facility compliance with technical and operation requirements. Operations inspections of underground storage tanks must be conducted by an inspector holding DER certification in the IUM category. After the operations inspection has been done, the completed operations inspection form must be submitted to DER by the certified inspector.

Your facility has been scheduled for an operations inspection to be completed **within 45 days of receipt of this letter.** As the tank owner, it is your responsibility to make all arrangements regarding the inspection including obtaining the services of a certified inspector to conduct the operations inspection. We suggest that you contact several companies having employees certified in the IUM category to obtain bids for the inspection work. When you have selected an inspector, ask the inspector's advice for organizing the necessary documents and product inventory records so that you have them available for the inspection.

Please notify the Department of the scheduled inspection date and certified inspector's name, by returning the enclosed postcard at least 10 days prior to the inspection.

Enclosed are:

(1) A List of Department Trained Underground Storage Tank Certified IUM Inspectors, and Certified Inspection Companies,

(2) Questions Commonly Asked by Storage Tank Owners about Operations Inspections for your reference,

(3) A Postcard for confirming your inspection schedule to DER, and

(4) Underground Storage Tank Facility Operations Inspection Form which the inspector must complete and submit to DER.

If you have any questions or concerns regarding the inspection, contact this office at the above telephone number.

Sincerely,

Regional Monitoring and Compliance Manager
Storage Tank Section

Enclosures (4)

Underground Storage Tank Facility Inspection Schedule

"URGENT"

Return at least 10 days prior to the scheduled inspection.

FACILITY ID# _____

FACILITY NAME _____

OWNER NAME _____

OWNER'S TELEPHONE # _____

INSPECTORS NAME _____

INSPECTION DATE _____

Questions Commonly asked by Storage Tank Owners about Operations Inspections

-Why must I pay for the Operations Inspection?
The Act was designed to limit the need for state employees by making use of the private sector to help implement the program. One area where the private sector is being used is in the facility operation inspections. Instead of paying higher fees or taxes to support a large staff of state inspectors, owners contract with private sector inspectors to have operation inspections conducted. In this way, the number of state inspectors is minimized. It is believed that this is a less costly, more efficient way to accomplish these inspections, utilizing industry expertise.

-What is an Operations Inspection?
An Operations Inspection is an inspection conducted by a Department of Environmental Protection (DEP) certified private sector inspector to evaluate all regulated underground storage tanks at a storage tank facility. Relevant components of each storage tank system are evaluated including: construction material of tank and piping, cathodic protection or corrosion protection, pump system, spill and overfill prevention devices, vapor recovery, and release detection devices. The status of tank system registration and fire marshal permits are also evaluated. Records regarding tank and piping release detection and corrosion protection are evaluated in detail.

-What is the goal of an Operations Inspection?
The ultimate goal of the Operations Inspection is to bring all storage tank facilities into compliance with the laws and regulations that govern these systems. The inspector will discuss the results of the inspection with the facility owner/operator representative and, if necessary, offer recommendations for facility or record keeping improvements to bring the facility into compliance.

-When should I have an Operations Inspection completed?
Inspections can be "self-initiated" or "DEP-initiated", you may choose to have an inspection of your facility at any time. If DEP initiates an inspection, you will receive a letter from the Department requesting an Operations Inspection of your facility. The inspection should be completed by the date specified in the letter you received. To get credit for the inspection, a self-initiated inspection report should be submitted to DEP to reduce the likelihood of the Department initiating an additional inspection.

-How much will an Operations Inspection cost?
The cost of an Operations Inspection will vary with the size, type, and location of a facility. There are also other variables which could impact the cost. Obtain several bids from qualified inspectors to get the best price for the best service. Be sure to use a DEP certified inspector. Refer to the list of DEP Certified Inspection Companies for company names and phone numbers.

-How long will the inspection take? An hour, a day, a week?
The length of the inspection depends upon the size and type of facility. The inspection may be extended if compliance problems are identified during the inspection. Most facilities can be completed in less than one day.

-What kind of records do I need to show the inspector?
1) The inspector will need to see records regarding all system components that cannot be verified by visual inspection. For instance, if the tank is constructed of fiberglass and totally backfilled, an inspector might not be able to confirm that the tank is in fact constructed of fiberglass. An invoice record of the tank purchased and a certified tank installer's "Tank Handling Activities Report" that documents the installation are the easiest ways to confirm the construction material of the tank.
2) Registration sticker displayed at the tank fill and the registration certificate displayed within view of the general public.

3) If steel tanks or piping are present, records of cathodic protection testing must be available for new systems and will be evaluated. Refer to page 4 of DEP's Underground Storage Tank Facility Operations Inspection Report for the cathodic protection compliance criteria.

4) Tank and piping release detection records. Refer to page 2 and 3 of DEP's Underground Storage Tank Facility Operations Inspection Report for the release detection method criteria for the release method(s) you use. The inspector will need to see the appropriate records for the type of release detection you use for the tank and piping. These records might include tightness tests, monthly monitoring records, manufacturer's certification of test performance, construction details for suction piping, or results of annual line leak detector tests on pressurized piping.

5) State Fire Marshal permit (or equivalent in Allegheny of Philadelphia Counties) when flammable or combustible liquids are stored.

-What should I do during the inspection?

You or a responsible staff person needs to be present at the inspection to assist the inspector in becoming familiar with the facility and in conducting any activities that require operation of equipment or access to system components.

-What happens at the end of the inspection?

The inspector will review the results of the inspection with you or your staff person and answer questions. The inspector will explain the information presented on the form. Violations, if any exist, will be identified. The inspector is available to assist you in determining how to deal with these violations. You or your staff person should review the inspection report to make sure that it accurately describes the condition of your facility, includes appropriate clarification comments, and you understand what is documented. The inspector and you or your staff person must sign the report. The completed report is submitted to both the DEP local region and central offices.

-Who is responsible for sending the report to DEP?

The certified inspector is by law responsible for submitting the completed Operations Inspection report to DEP within 60 days. Owners, however, should encourage the inspector to submit the report to DEP immediately upon inspection completion.

-Who is allowed to make necessary facility improvements?

Only Department certified installers may perform tank handling activities in their area(s) of certification. The inspector who has the required certification may make the necessary facility improvements with the owner/operator's approval. You as the facility owner may want to "shop" for competitive prices by contacting several certified installers or companies qualified to complete the necessary tank handling activity. A list of Certified Tank Handling Companies is available by contacting DE P.

-What if the facility improvements are not completed prior to submission of the Operations Inspection report?

The Inspection Summary, Section VII on page 1 of the Operations Inspection report indicates area of compliance and noncompliance. Areas of noncompliance may be further investigated by DEP to assess whether the appropriate improvements have been completed and there is a possibility that penalty assessments will be issued.

-Are all underground storage tank facilities required to complete an operations inspection?

Yes, over a period of several years, all regulated underground storage tank facilities will be required to undergo an Operations Inspection. However, facilities having compliance problems may be asked by have more frequent operations inspections.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY MANAGEMENT
STORAGE TANK DIVISION

UNDERGROUND STORAGE TANK FACILITY OPERATIONS INSPECTION

I. FACILITY INFORMATION

Facility Identification Number _____

Facility Name _____

Facility Address _____

_____

Owner/Operator Representative: (present during inspection)

Name _____

Phone _____

II. CERTIFIED INSPECTOR

Name _____

Certified Inspector No. _____

Phone No. _____

Employer _____

III. DATE(S) OF INSPECTION (month/day/year)

Initial _____ Followup _____

IV. FINANCIAL RESPONSIBILITY INFORMATION PROVIDED Yes _____ No _____

V. SUSPECTED/CONFIRMED CONTAMINATION OBSERVED Yes _____ (If so, provide comment) No _____

VI. IMPROPERLY CLOSED TANKS ARE PRESENT Yes _____ (If so, provide comment) No _____

VII. INSPECTION SUMMARY. Complete this section when inspection is final.

1. Indicate the compliance status of each item below using the following codes: N=Non-Compliant C=Compliant

	Tank No. ___	Tank No. ___	Tank No. ___	Tank No. ___	Tank No. ___
Tank Construction and Corrosion Protection					
Piping Construction and Corrosion Protection					
Spill Prevention					
Overfill Prevention					
Registration Sticker Display					
Tank Release Detection					
Piping Release Detection					

2. CERTIFIED INSPECTOR

I, the DEP Certified Inspector, have inspected the entire above referenced facility. Based on my observation of the facility and information provided by the owner, I certify under penalty of law as provided in 18 Pa. C.S.A. Section 4904 (relating to unsworn falsification to authorities), that the information provided by me is true, accurate, and complete to the best of my knowledge and belief.

_____ Certified Inspector's Signature _____ Date

3. OWNER/OPERATOR REPRESENTATIVE: I have reviewed the completed inspection report. I certify under penalty of law as provided in 18 PA C.S.A. Section 4904 (relating to unsworn falsification to authorities), the the information provided by me is true, accurate, and complete to the best of my knowledge and belief.
I have / have not *(circle one)* submitted an amended registration form.

_____ Signature _____ Title _____ Date

UNDERGROUND STORAGE TANK FACILITY OPERATIONS INSPECTION

Facility Name _____ **Date** _____ **Facility ID** _____

VIII. TANK SYSTEM INFORMATION For each tank, write in the Tank Number at the top of the column, the Tank Capacity, Substance Stored, Installation Date, and the most recent Modification Date. For the remaining items, fill in the correct Tank System Component Code from the lists at the bottom of the page.

	For DEP Use	Tank No. – – –	Tank No. – – –	Tank No. – – –	Tank No. – – –	Tank No. – – –
1. Tank Capacity (gallons)						
2. Substance Stored						
3. Installation Date						
4. Modification Date (if any)						
5. Tank Construction and Corrosion Protection	(1)					
6. Piping Construction and Corrosion Protection	(2)					
7. Pump (piping) System	(4)					
8. Spill Prevention	(6)					
9. Overfill Prevention	(7)					
10. Current Registration Sticker Display	(8)					
11. Fire Marshal Permit	(9)					
12. Vapor Recovery	(11)					
Complete the attached pages before entering the codes for the following items						
13. Tank Release Detection (2 possible)	(12)					
14. Piping Release Detection (2 possible)	(5)					

TANK SYSTEM COMPONENT CODES

5. TANK CONSTRUCTION and CORROSION PROTECTION
- A Unprotected Steel (single wall)
- B Cathodically Protected Steel (Galvanic)
- C Cathodically Protected Steel (Impressed Current)
- D Double Walled Steel
- E Fiberglass (Single Wall)
- F Fiberglass (Double Wall)
- G Steel w/ Plastic or Fiberglass Jacket
- H Steel w/ FRP Coating (Act 100 or equivalent)
- I Steel w/ lined interior
- J Concrete
- N Unknown
- 99 Other (provide written comment)

6. PIPING CONSTRUCTION and CORROSION PROTECTION
- A Bare Steel
- B Cathodically Protected Steel
- C Copper
- D Fiberglass or rigid non-metallic
- E Flexible Non-metallic
- F Unknown
- 99 Other (provide written comment)
- Z Double wall (use with Code A-99)

7. PUMP (PIPING) SYSTEM
- A Suction: Check Valve at Pump
- B Suction: Check Valve at Tank
- C Pressure
- D Gravity flow to dispenser

8. SPILL PREVENTION
- Y Yes
- N No

9. OVERFILL PREVENTION
- Y Yes
- N No

10. CURRENT REGISTRATION STICKER DISPLAY
- Y Properly displayed
- N None

11. FIRE MARSHAL PERMIT
- A Issued prior to August 5, 1989
- B Issued on or after August 5, 1989
- C No permit obtained
- D Tanks not regulated by Fire Marshal

12. VAPOR RECOVERY
- A Stage I Installed
- B Stage II Installed
- C Stage I and II Installed
- D None

13. TANK RELEASE DETECTION
- A Inventory Control and code B or C
- B Annual Tank Tightness Testing
- C Tank Tightness Testing every 5 years
- D Statistical Inventory Reconciliation
- E Automatic Tank Gauging
- F Manual Tank Gauging (36 Hour)
- G Manual Tank Gauging (44 or 58 Hour)
- H Interstitial Monitoring (2 Walls)
- I Interstitial Monitoring (Liner)
- J Groundwater Monitoring
- K Vapor Monitoring
- N None or method incomplete
- O Exempt (provide written comment)

14. PIPE RELEASE DETECTION
- A Automatic Line Leak Detector (incl. test)
- B Annual Line Tightness Test (pressure)
- C Line Tightness Test - 3 years (suction)
- D Interstitial Monitoring
- E Groundwater Monitoring
- F Vapor Monitoring
- H None or method incomplete
- I Exempt (provide written comment)
- J Statistical Inventory Reconciliation

UNDERGROUND STORAGE TANK FACILITY OPERATIONS INSPECTION

Facility Name _____ **Date** _____ **Facility ID** _____

IX. RELEASE DETECTION REFERENCE

Instructions: Check the box to indicate that criteria has been met. Circle the box to indicate that criteria has not been met. Circle with "N/A" when criteria is not applicable.

Tank ____	Tank ____	Tank ____	Tank ____	Tank ____	
Inventory Control and Tank Tightness Testing (Tank only)					
☐	☐	☐	☐	☐	stick (or ATG) readings and dispenser readings each operating day
☐	☐	☐	☐	☐	1/8th inch accuracy in stick readings
☐	☐	☐	☐	☐	before/after delivery stick readings reconciled with delivery receipts
☐	☐	☐	☐	☐	drop tube present in gauge opening
☐	☐	☐	☐	☐	dispenser meter calibrated
☐	☐	☐	☐	☐	monthly check for water (1/8th inch accuracy)
☐	☐	☐	☐	☐	monthly reconciliation (1% of volume pumped plus 130 gallons)
☐	☐	☐	☐	☐	reconciliation records maintained for one year
☐	☐	☐	☐	☐	documentation of annual tightness test or 5 year tightness test (upgraded tank) present at site
☐	☐	☐	☐	☐	manufacturer's certification of tightness test performance is present at site (after 12/22/90)
Statistical Inventory Reconciliation: (Tank and/or piping)					
☐	☐	☐	☐	☐	manufacturer's certification of test performance is present at site
☐	☐	☐	☐	☐	data is collected according to the vendor's instructions
☐	☐	☐	☐	☐	analysis completed monthly; records maintained for 1 year
Automatic Tank Gauging (Tank only)					
☐	☐	☐	☐	☐	monthly leak test conducted
☐	☐	☐	☐	☐	documentation of last year of tests
☐	☐	☐	☐	☐	manufacturer's certification of equipment performance is present at site (installed after 12/22/90)
☐	☐	☐	☐	☐	records including dates of calibration, maintenance, and repair for the past year
☐	☐	☐	☐	☐	equipment is operational
Manual Tank Gauging (Tank only)					
☐	☐	☐	☐	☐	performed weekly
☐	☐	☐	☐	☐	tank capacity is 2,000 gallons or less
☐	☐	☐	☐	☐	1/8th inch accuracy stick readings
☐	☐	☐	☐	☐	average 2 stick readings before and after test
☐	☐	☐	☐	☐	test length appropriate for each tank (minimum 36 hour test)
☐	☐	☐	☐	☐	variation is within standard (both weekly and monthly)
☐	☐	☐	☐	☐	documentation showing test date and results for last year of tests
☐	☐	☐	☐	☐	last tightness test and manufacturer's test certification when required
Interstitial Monitoring: (Tank and/or piping)					
☐	☐	☐	☐	☐	interstitial area monitored monthly
☐	☐	☐	☐	☐	monitoring wells (secondary barrier) or ports are clearly marked and secured
☐	☐	☐	☐	☐	documentation showing test date and results for last year of monitoring
☐	☐	☐	☐	☐	records of calibration, maintenance, and repair of equipment for last year
☐	☐	☐	☐	☐	manufacturer's certification of equipment performance is present at site (installed after 12/22/90)
☐	☐	☐	☐	☐	secondary barrier is compatible with stored substance and impermeable
Groundwater Monitoring: (Tank and/or piping)					
☐	☐	☐	☐	☐	regulated substance stored is immiscible in water and has a specific gravity <1.
☐	☐	☐	☐	☐	groundwater is within 20 feet of surface grade and soil hydraulic conductivity is $\geq .01$ cm/sec.
☐	☐	☐	☐	☐	casing is properly slotted and allows entry of product during high and low groundwater conditions
☐	☐	☐	☐	☐	wells are sealed from ground surface to the top of the filter pack
☐	☐	☐	☐	☐	site evaluation verifies the above information; wells are located according to site evaluation
☐	☐	☐	☐	☐	monitoring devices can detect at least 1/8 inch of product; manufacturer's certification present on site
☐	☐	☐	☐	☐	monitoring wells are marked and secured
☐	☐	☐	☐	☐	wells monitored and results recorded monthly
☐	☐	☐	☐	☐	monthly documentation is maintained for 1 year
Vapor Monitoring: (Tank and/or piping)					
☐	☐	☐	☐	☐	stored substance is sufficiently volatile and backfill allows diffusion of vapors from releases
☐	☐	☐	☐	☐	the monitoring device is not rendered inoperative by groundwater, rainfall, or soil moisture
☐	☐	☐	☐	☐	background contamination will not interfere with vapor monitoring
☐	☐	☐	☐	☐	vapor monitors are designed and operated to detect increases in concentrations of stored substance
☐	☐	☐	☐	☐	site evaluation verifies above information, wells are located according to the site evaluation
☐	☐	☐	☐	☐	monitoring wells are marked and secured
☐	☐	☐	☐	☐	wells monitored and results recorded monthly; monthly documentation is maintained for 1 year
☐	☐	☐	☐	☐	records of calibration, maintenance, and repair of monitoring equipment for last year
☐	☐	☐	☐	☐	manufacturer's certification of equipment performance is present at site (installed after 12/22/90)

UNDERGROUND STORAGE TANK FACILITY OPERATIONS INSPECTION

Facility Name _____ Date _____ Facility ID _____

IX. RELEASE DETECTION REFERENCE

Instructions: *Check the box to indicate that criteria has been met. Circle the box to indicate that criteria has not been met. Circle with "N/A" when criteria is not applicable.*

Pipe	Pipe	Pipe	Pipe	Pipe	
Piping Tightness Testing (Piping only)					
☐	☐	☐	☐	☐	test conducted at proper frequency - conducted annually for pressurized piping without monthly monitoring - conducted every 3 years for suction piping (doesn't meet exempt criteria) without monthly monitoring
☐	☐	☐	☐	☐	documentation of last test and test was conducted within proper timeframe
☐	☐	☐	☐	☐	manufacturer's certification of test performance
☐	☐	☐	☐	☐	if test device permanently installed, records of calibration, maintenance and repair for last year
Automatic Line Leak Detection (PRESSURIZED piping only)					
NOTE: This method of leak detection required on all pressurized piping in addition to at least one other leak detection method					
☐	☐	☐	☐	☐	annual test of leak detector according to manufacturer's instructions
☐	☐	☐	☐	☐	documentation showing date and results of last annual test
☐	☐	☐	☐	☐	manufacturer's certification of equipment performance (installed after 9/22/91)
☐	☐	☐	☐	☐	able to detect a leak of 3 gph at 10 psi within 1 hour
☐	☐	☐	☐	☐	records of calibration, maintenance and repair for last year
Check Valve at the Dispenser (SUCTION piping only)					
NOTE: No further release detection required on piping meeting all these criteria.					
☐	☐	☐	☐	☐	the tank is lower than the dispenser
☐	☐	☐	☐	☐	the below grade piping slopes uniformly back to the tank
☐	☐	☐	☐	☐	there is only one check valve in the piping
☐	☐	☐	☐	☐	the check valve is located close to or inside the suction pump
☐	☐	☐	☐	☐	compliance with above specifications can be readily determined

X. CATHODIC PROTECTION COMPLIANCE CRITERIA

Tank and Pipe	Tank and Pipe	Tank and Pipe	Tank and Pipe	Tank and Pipe	
Galvanic Cathodic Protection (Tank and/or Piping)					
☐	☐	☐	☐	☐	structure to soil potential greater than .85 volts
☐	☐	☐	☐	☐	monitoring conducted within six months of installation
☐	☐	☐	☐	☐	monitoring conducted every three years
☐	☐	☐	☐	☐	documentation of last two monitoring results
☐	☐	☐	☐	☐	monitoring conducted within 6 months of repair
Impressed Current Cathodic Protection (Tank and/or Piping)					
☐	☐	☐	☐	☐	structure to soil potential greater than .85 volts
☐	☐	☐	☐	☐	monitoring conducted within six months of installation
☐	☐	☐	☐	☐	monitoring conducted every three years
☐	☐	☐	☐	☐	documentation of last two monitoring results
☐	☐	☐	☐	☐	volt and amp readings recorded every 60 days (within design limits)
☐	☐	☐	☐	☐	documentation of last three volt and amp readings
☐	☐	☐	☐	☐	designed by a corrosion expert
If Cathodic Protection is Added to Existing Tanks, One of the Following is Required:					
☐	☐	☐	☐	☐	tank was internally inspected and found to be structurally sound and free of corrosion holes
☐	☐	☐	☐	☐	the tank was less than ten years old and now uses automatic tank gauging, soil vapor monitoring, groundwater monitoring, interstitial monitoring or statistical inventory reconciliation for leak detection
☐	☐	☐	☐	☐	the tank was less than ten years old and was tested for tightness prior to installing the cathodic protection and between three and six months following the first operation of the cathodic protection
☐	☐	☐	☐	☐	the tank was also internally lined as specified in the rules
☐	☐	☐	☐	☐	the tank was assessed and found to be acceptable for upgrading under ASTM standard ES 40-94

UNDERGROUND STORAGE TANK FACILITY OPERATIONS INSPECTION

Facility Name _____ **Date** _____ **Facility ID** _____

XI. COMMENTS

Reference section and tank number for each comment

Appendix F

309 CMR: Board Of Registration Of Hazardous Waste Site Cleanup Professionals (Regulations)

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
State Publications and Regulations

REGULATION FILING AND PUBLICATION

1. **Regulation Chapter, Number and Heading:** **309 CMR 1.00 - 8.00**

2. **Name of Agency:** **Board of Registration of Hazardous Waste Cleanup Professionals**

3. **This document is reprinted from the Code of Massachusetts Regulations and contains the following:**

309 CMR	1.00	Reserved
	2.00	Introductory Provisions
	3.00	Licensing of Licensed Site Professionals
	4.00	Rules of Professional Conduct
	5.00	Advisory Rulings
	6.00	Design and Use of Licensed Site Professional Seals
	7.00	Procedure Governing Disciplinary Proceedings
	8.00	Administrative Penalty Regulations

Under the provisions of Massachusetts General Laws, Chapter 30A, Section 6 and Chapter 233, Section 75, this document may be used as evidence of the original documents on file with the Secretary of the Commonwealth.

Compiled as in full force and effect: **8/11/95**

A true copy attest:

William Francis Galvin

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

$2.45

309 CMR: BOARD OF REGISTRATION OF HAZARDOUS WASTE SITE CLEANUP PROFESSIONALS

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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, 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.

2.02: continued

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 which 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 further described in 310 CMR 40.0950.

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

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

License means 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.

2.02: continued

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 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 waste site cleanup activity opinions, by a licensed site professional who has either

(a) in the case of an opinion related to an assessment:
   1. managed, supervised or actually performed such assessment, or
   2. periodically observed 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 reviewed and evaluated the performance by others of such action.

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.

2.02: continued

Rules of Professional Conduct means the regulations set forth at 309 CMR 4.00.

Same Requirement(s) means requirement(s) that require, or prohibit, the same action or activity.

Standard Adjudicatory Rules of Practice and Procedure means the rules set forth at 801 CMR 1.00.

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 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.

2.04: continued

(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. The affirmative vote of at least a majority of the Board members shall be required to take disciplinary action against an applicant, licensed site professional, or other person engaged in unauthorized practice.
(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.

2.06: Submissions to the Board

Each submission to the Board shall be delivered either by hand or mail delivery, 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 within 30 days of initial issuance of a license and annually thereafter. The annual fee is non-refundable.

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:

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

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.

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 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.

309 CMR 3.00: LICENSING OF LICENSED SITE PROFESSIONALS

Section

3.01: Licensing of Licensed Site Professionals
3.02: Qualifications for Licensure as an LSP
3.03: Application for Licensure
3.04: Examination
3.05: Temporary Licensing
3.06: Special Rules Applicable To Persons Assisting with Examination Development
3.07: License Denial
3.08: License Renewal
3.09: Right to Adjudicatory Hearing
3.10: Waiver of Right to Adjudicatory Hearing
3.11: Continuing Education Requirements
Appendix A

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 Licensure as an LSP

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

(1) Minimum Education Requirements. Applicants for licensure shall meet the requirements of one of the following tracks by the deadline established by the Board for filing an application to be eligible for the next examination:

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

(a) For the 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) For the 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.

3.02: continued

(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

(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, with the Board at least 90 days prior to the date of the next scheduled examination. Applications filed after the deadline established for filing will be reviewed by the Board for the examination that follows the next scheduled examination. Incomplete applications, and applications which are 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 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 applications and supporting evidence to determine the completeness of applications and the eligibility of an applicant for examination. 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. Each applicant deemed eligible for examination by the Board will be notified 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 be sent a written explanation of the reasons the Board has found the applicant ineligible no less than 15 days prior to the scheduled examination date. Applicants determined by the Board to be ineligible for examination may reapply for examination in accordance with the procedures set forth in 309 CMR 3.02.

(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 applicant shall be deemed ineligible to sit for the next scheduled examination, unless the Board finds such failure to appear was due to circumstances reasonably beyond the applicant's control.

3.04: Examination

(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(3).

(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. 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:

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.

3.04: continued

(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) 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) For applicants who have been issued a temporary license and who fail to achieve a passing score on the first examination scheduled for said applicants, the rules and procedures set forth in 309 CMR 3.05, where applicable, shall take precedence over the procedures set forth in 309 CMR 3.04(8).

(b) 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 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).

(c) 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 written application must apply 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.

The Board shall require that each of these applicants meets the eligibility requirements existing at that time for initial applicants and shall require that each of these applicants demonstrates in the limited licensure application that at least three years of relevant professional experience occurred within five years prior to submission of the limited licensure application.

3.05: Temporary Licensing

(1) Subject to the requirements of 309 CMR 3.03(1), prior to the date on which the Board administers its first examination the Board may issue a temporary license to any applicant whom the Board determines has met the requirements for education and experience set forth in 309 CMR 3.02, is found by the Board to be of good moral character, and thus is eligible for examination.

(2) Applicants issued a temporary license are eligible for the first scheduled examination. If an applicant who has been issued a temporary license fails to appear for the first examination scheduled for the applicant, then the applicant's temporary license shall expire on the date of the next scheduled Board meeting unless the Board, in its discretion, reissues the applicant's temporary license pursuant to 309 CMR 3.05(3). If an applicant who has been issued a temporary license fails to receive a passing score on the first examination scheduled for the applicant, the applicant's temporary license shall remain in effect, and the Board shall schedule the applicant for the next available examination, for which the applicant shall pay the appropriate examination retake fee. If the applicant fails the second examination, said applicant's temporary license shall expire on the date the Board gives notice of the applicant's score on the second scheduled examination. A temporary licensee who receives a passing score on either the first or the second examination scheduled for said temporary licensee shall be issued a full license.

(3) Notwithstanding 309 CMR 3.05(2), an applicant who has been issued a temporary license and whose failure to appear for the first scheduled examination was caused by circumstances beyond his or her reasonable control may petition the Board to have his or her temporary license reissued pending the administration of the second examination scheduled for the applicant. The Board, in its discretion, may reissue the applicant's temporary license pending the second scheduled examination. If the applicant fails to appear for the second scheduled examination, then the applicant's temporary license shall expire effective on the date of that examination. If the applicant fails to receive a passing score on the second scheduled examination, then his or her temporary license shall expire on the date the Board gives notice of the failure.

3.05: continued

(4) Notwithstanding 309 CMR 3.08, the Board will not renew a temporary license issued pursuant to 309 CMR 3.05(1).

3.06: Special Rules Applicable To Persons Assisting With Examination Development.

(1) Notwithstanding 309 CMR 3.05(2), an applicant who has been issued a temporary license and who is serving or has served, with the Board's permission, as a provider of technical advice or assistance to the independent testing service that is developing or has developed the Board's first five licensing examinations (a "technical advisor") may be deferred, upon a vote of the Board, from taking any of those examinations that are administered within eighteen months of the date said technical advisor last provided technical advice or assistance to the independent testing service (the "deferment period"). The date which marks the commencement of the deferment period shall be confirmed in a letter from the Board to said technical advisor. Each said technical advisor shall be scheduled to take the first examination which is offered by the Board after the deferment period has elapsed for said technical advisor, and he or she shall retain his or her temporary license until receiving notice of his or her score on said examination.

(2) Notwithstanding 309 CMR 3.05(2), Board members and former Board members who are temporary licensees ("LSP Board members") and who are serving or have served as members of the Board's committee that reviews and approves the questions and/or examinations developed by the independent testing service that is developing or has developed the Board's first five licensing examinations shall be deferred from taking
any of those examinations that are administered within eighteen months of the date said LSP Board member last participated in the development, review and approval of questions and answers for the licensing examinations (the "deferment period"). Each LSP Board member shall be scheduled to take the first examination after the deferment period has elapsed, and he or she shall retain his or her temporary license until receiving notice of his or her score on said examination.

(3) During the period that technical advisors and LSP Board members are participating in the described examination development process, they shall maintain strict confidentiality with respect to any material information about any examination questions, answers, scoring sheets or any portions of any of the examinations developed by said testing service. After last serving in the described capacities, they shall not keep, view, discuss or disclose the substance of, or any material information about, any examination questions, answers, scoring sheets or any portions of any of the examinations developed by said testing service.

(4) If a temporary licensee who has received a deferment pursuant to 309 CMR 3.06(1) or (2) fails to appear for the first examination scheduled for said individual, his or her temporary license shall expire on the date of the next scheduled Board meeting unless the Board, in its discretion, reissues the individual a temporary license pursuant to 309 CMR 3.06(4). If a temporary licensee who has received a deferment pursuant to 309 CMR 3.06(1) or (2) fails to receive a passing score on the first examination scheduled for said individual, his or her temporary license shall remain in effect, and the Board shall schedule the individual for the next examination, for which the individual shall pay the examination fee described in 309 CMR 3.04(4). If the individual fails the second examination, said individual's temporary license shall expire on the date the Board gives notice of the individual's score on the second scheduled examination. A temporary licensee who has received a deferment pursuant to 309 CMR 3.06(1) or (2) and who receives a passing score on either the first or the second examination scheduled for said individual shall be issued a full license.

(5) Notwithstanding 309 CMR 3.06(3), a temporary licensee who has received a deferment pursuant to 309 CMR 3.06(1) or (2) and whose failure to appear for the first examination scheduled for said individual was caused by circumstances beyond his or her reasonable control may petition the Board to have his or her temporary license reissued pending the administration of the next examination. The Board, in its discretion, may reissue the said individual's temporary license pending the next examination. If said individual fails to appear for the next examination, then the said individual's temporary license shall expire effective on the date of that examination. If said individual fails to receive a passing score on the next examination, then his or her temporary license shall expire on the date the Board gives notice of the failure.

3.07: 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. An individual denied a license may reapply for licensing in accordance with the procedures set forth in 309 CMR 3.02.

3.08: 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 on the date stated on his or her license unless renewed by the Board.

(2) To renew a license, a licensed site professional shall:
(a) submit for approval to the Board a completed renewal application form and the proper renewal fee established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, and published in 801 CMR 4.00, 30 days prior to the date of expiration of his or her license;
(b) include with such application form the full payment of the non-refundable renewal fee by check or money order made payable to the Commonwealth of Massachusetts; and
(c) demonstrate to the Board's satisfaction that he or she has fulfilled the continuing education requirements set forth in 309 CMR 3.11 or obtained a waiver of those requirements in accordance with 309 CMR 2.12.

(3) If a licensed site professional fails to renew his or her license in accordance with 309 CMR 3.08(2), then his or her license shall lapse on the date of expiration of his or her license and remain so until his or her license is renewed. An individual who fails to renew his or her license within one year of the date of expiration of his or her license shall reapply for licensing in accordance with the procedures set forth in 309 CMR 3.02. A person whose license has lapsed and not been renewed shall not be, act as, advertise as, or hold himself or herself out to be, or represent himself or herself as being, a licensed site professional.

(4) Notwithstanding 309 CMR 3.08(3), a licensed site professional who in good faith believes he or she has submitted a completed renewal application to the Board, paid the proper renewal fee and fulfilled the continuing education requirements prior to the date of expiration of his or her license may continue to render waste site cleanup activity opinions until the Board gives notice to such LSP informing him or her that his or her request for renewal does not conform with the requirements set forth in 309 CMR 3.08(2) 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.

3.09: Right to Adjudicatory Hearing

(1) An applicant determined by the Board to be ineligible for examination may request an adjudicatory hearing by filing a written Notice of Claim for Adjudicatory Proceeding. The Notice shall state clearly and concisely the facts which 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.

3.10: Waiver of Right to Adjudicatory Hearing

An applicant will be deemed to have waived his or her right to an adjudicatory hearing unless the Board receives his or her written request for an adjudicatory hearing by the deadline set forth in 309 CMR 3.09.

3.11: Continuing Education Requirements

(1) Definitions. As used in 309 CMR 3.11, the following terms shall have the following meanings unless the context clearly indicates otherwise:

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 3.11(9), are granted by the Board for each approved course completed by a licensee; and

(b) For all other Board-approved 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.

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.

Core Curriculum and Core each mean courses, approved as such by the Board for a specified number of continuing education credits, for which the course provider has demonstrated, to the Board's satisfaction, that the course subject matter is directly focused upon specific regulatory topics that constitute necessary and important components of the performance of response actions (*i.e.*, assessment, containment and/or removal) at disposal sites in Massachusetts.

Licensee(s) and LSP(s) each mean individuals holding a temporary or full LSP license which 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.

(a) Every three years following issuance of his or her full 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 only be earned by successfully completing Board-approved courses devoted to the topics set forth in 309 CMR 3.11(3). No person may apply continuing education credits earned during one license period toward another license period. Subject to the attendance and other requirements set forth in 309 CMR 3.11, continuing education credits are considered to be earned at the completion of each Board-approved course.

3.11: continued

(b) All the requirements set forth in 309 CMR 3.11(2)(a) apply to temporary licensees except that each LSP who held a temporary license issued by the Board pursuant to 309 CMR 3.05 shall demonstrate to the Board's satisfaction as a condition of receiving the first renewal of his or her full license that he or she has earned a total of 64 continuing education credits. A maximum of 32 continuing education credits may be earned prior to the date said LSP received a full license. In the event that the first full licenses are not issued on or before December 1, 1995, the Board may, in its discretion, require each LSP who holds a temporary license to earn additional continuing education credits.

(c) All continuing education credits submitted in fulfillment of the requirements of 309 CMR 3.11(2)(a) and (b) shall be earned in Board-approved courses that are reasonably likely to maintain or enhance the licensee's ability to render competent professional services.

(d) There shall be no right of appeal from any decision made by the Board with respect to approval of courses for continuing education credit.

(3) Credit Minimums.

(a) The continuing education credits required in 309 CMR 3.11(2)(a) shall include not fewer than 16 credits from courses concerning technical subjects relevant to oil or hazardous materials assessment, containment or removal activites at disposal sites in Massachusetts and not fewer than 16 credits from courses concerning regulatory subjects relevant to oil or hazardous materials assessment, containment or removal activities at disposal sites in Massachusetts. The balance of the required credits may be earned in either of these two categories.

(b) The continuing education credits required in 309 CMR 3.11(2)(b) shall include not fewer than 24 credits from courses concerning technical subjects relevant to oil or hazardous materials assessment, containment or removal in Massachusetts and not fewer than 24 credits from courses concerning regulatory subjects relevant to oil or hazardous materials assessment, containment or removal activities in Massachusetts. The balance of the required credits may be earned in either of these two categories.

(c) At least 12 of the 16 continuing education credits from courses concerning regulatory subjects, as required by 309 CMR 3.11(3)(a), and at least 12 of the 24 continuing education credits from courses concerning regulatory subjects required for those who have held temporary licenses as set forth in 309 CMR 3.11(3)(b), must be earned by attending courses approved by the Board as "Core Curriculum."

(d) The 309 CMR 3.11(3)(a) and (b) continuing education requirements for both those who have held temporary licenses and those who have not are depicted in the following table.

Course Categories	Minimum Number of Credits Required	
	Upon first renewal if LSP held a Temporary License	Upon all other license renewals
Technical	24	16
Regulatory	24*	16*
Total Credits Required	64**	48**

NOTES: * At least 12 of the required "Regulatory" hours must be earned in "Core" courses.
** The balance of the credits may be earned in either category.

(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 3.11(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 four contiguous hours of instruction time will be provided;

3.11: continued

(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) Core Curriculum Course Requirements. To be considered by the Board for approval as a Core Curriculum course, the licensee or course provider must:
(a) meet the requirements set forth in 309 CMR 3.11(5); and
(b) demonstrate that the course meets the definition for Core Curriculum set forth in 309 CMR 3.11(1).

(7) 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) may be approved, in the Board's discretion, up until the time the Board issues its first set of full licenses. After the Board has issued its first set of full licenses, the Board may consider approving a course retroactively only if a request for course approval was received by the Board at least two months before the course commenced. In no event will a course be approved for continuing education if it commenced prior to September 29, 1993.
(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;
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 specified hours of continuing education credit;
7. for courses offered as part of a university or college curriculum, a statement that the sponsoring organization will, at the completion of the course, conduct an evaluation of the course instructor(s) using, at a minimum, evaluations prepared confidentially by the students attending the course and maintained in such a manner that the identity of each student evaluator is not disclosed to the course instructor; and
8. any other information which the Board requests of the licensee or course provider to demonstrate compliance with 309 CMR 3.11.
(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, whether as Core Curriculum or otherwise, the licensee or course provider may suggest an appropriate division of the course into regulatory and technical components. Based on the information submitted, the Board may determine, in its discretion, whether to approve regulatory and technical 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 3.11(2)(c) 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 3.11(2)(c) for a given individual, the Board reserves the right to do so. If the Board finds that this criterion has not been met, without waiving any other remedy available to it, the Board may 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.

3.11: continued

(8) Attendance Requirements. For continuing education credit to be granted, the following attendance requirements must be met:

(a) To receive continuing education credit for a Board approved Core Curriculum course that is not being offered as part of a university or college curriculum, the licensee must attend 100% of the portion of the course for which credit is being sought.

(b) To receive continuing education credit for any other Board approved course, the licensee must attend at least 75% of the course; however, in no event may the attendance be less than four hours. In the event that an LSP attends at least 75% but less than 100% of the course, the LSP will receive credit on a pro rata basis.

(c) 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.

(d) Once an LSP has received continuing education credit for a course, no further credit can be earned by attending the course again at any time thereafter.

(9) Maximum Credit for University or College Courses. Courses offered as part of a university or college curriculum may be approved by the Board for up to 12 credits of regulatory or technical continuing education credits if the course is taken for a grade and the licensee passes, or up to 8 credits of regulatory or technical continuing education credits 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.

3.00: continued

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:

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

If the applicant's degree is not in a field listed above, the Board shall consider whether the degree is equivalent to one or more of the degrees listed. The applicant has the burden of proof; the Board shall base its decision in part on official transcripts.

REGULATORY AUTHORITY

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

NON-TEXT PAGE

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: Contingent Fees

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 required of licensed site professionals in good standing practicing in the Commonwealth at the time the services are performed.

(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 a waste site cleanup activity opinion related to an assessment, managed, supervised or actually performed such assessment or periodically observed the performance by others of such assessment; or,

(b) in the case of a waste site cleanup activity opinion related to a containment or removal action, managed, supervised, actually performed, or periodically reviewed and evaluated the performance by others of such action, in order to opine whether the completed work complies with M.G.L. c. 21E, 310 CMR 40.0000, and any order, permit or approval of the Department.

(3) In rendering waste site cleanup activity opinions, an LSP may rely in part upon the advice of one or more professionals whom the LSP determines are qualified by education, training and experience.

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) If a licensed site professional, acting in accordance with 309 CMR 4.02(1), identifies an imminent hazard 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.

4.03: continued

(3) If, in the course of providing professional services, an LSP obtains knowledge through observation of a condition:

(a) on a property known by the LSP to be owned or operated by the client and which in whole or in part comprises all or a portion of the site for which the LSP has been retained; and

(b) which the LSP, in the exercise of his or her professional discretion, considers to pose a significant risk to health, safety, public welfare or the environment (within the meaning of M.G.L. c. 21E).

Then, the LSP shall notify the client of the existence of the condition.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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 professional responsibilities of a licensed site professional.

(10) Applicants and licensed site professionals shall cooperate fully in the conduct of investigations by the Board by promptly furnishing, in response to orders or subpoenas issued by the Board, such information as the Board, or persons duly authorized by the Board, deems necessary to perform its duties under M.G.L. c. 21A, §§ 16 and 19 through 19J.

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: Contingent Fees

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

REGULATORY AUTHORITY

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

NON-TEXT PAGE

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, or an attorney acting on his or her behalf, may at any time request an advisory ruling interpreting one or more of the Rules of Professional 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 or by his or her attorney. This signature constitutes a certification by the signatory 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. If the request is submitted by a licensed site professional's attorney, then the request shall state that he or she has been authorized by his or her client to submit the request.

(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 and, if the request is submitted by his or her attorney, the name, address and telephone number of his or her attorney, and 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.

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.

5.04: continued

(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.

REGULATORY AUTHORITY

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

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 or embossing device for a seal, the design, arrangement, size and working of which shall conform with the Board's specifications.

(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 is intended for his or her personal use in connection with waste site cleanup activity opinions for which he or she will be responsible and is not transferable.

(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 seal, shall stamp or emboss 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.

REGULATORY AUTHORITY

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

NON-TEXT PAGE

309 CMR 7.00: PROCEDURE GOVERNING DISCIPLINARY PROCEEDINGS

Section

7.01: General Provisions
7.02: Initiation
7.03: Preliminary Investigation
7.04: Informal Conferences
7.05: Disposition by the Board
7.06: Docket
7.07: Suspension Prior to Hearing
7.08: Board Action Without Hearing
7.09: Reinstatement

7.01: General Provisions

In response to a complaint and after an adjudicatory hearing, the Board may:

(1) suspend or revoke any license issued by it:
(a) for cause, including, but not limited to:
1. fraud or misrepresentation in procuring a license or its renewal;
2. felonious acts; and
3. acts involving dishonesty, fraud, deceit or lack of good moral character which have a substantial connection to the professional responsibilities of a licensed site professional.
(b) for failure to pay a penalty in full and in a timely fashion as required by 309 CMR 8.18(2); or
(c) for noncompliance with any provision of M.G.L. c. 21A, §§ 19 through 19J, or any provision of 309 CMR;

(2) assess a civil administrative penalty on any person who is in noncompliance with any provision of any regulation, order, or license issued or adopted by the Board, or with any provision of M.G.L. c. 21A, §§ 19 through 19J, subject to the requirements of 309 CMR 8.00;

(3) issue a public or private censure to a licensed site professional for cause; and

(4) take action as allowed by law.

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

7.02: Initiation

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

7.03: Preliminary Investigation

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

7.04: 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 the commencement of an adjudicatory proceeding.

7.05: Disposition by the Board

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

7.06: Docket

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

7.07: Suspension Prior to Hearing

In the event that the Board finds that an imminent threat to public health or safety or to the environment could result during the pendency of an adjudicatory hearing, the Board may issue an order suspending or revoking a 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.

7.08: 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.

7.09: Reinstatement

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

REGULATORY AUTHORITY

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

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.

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.

8.03: continued

(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;

(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.

8.04: continued

(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;

(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:

(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;

8.10: continued

(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 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.

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) 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 8.1 6 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 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.

8.18: continued

(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.

Appendix G

Comprehensive Response Action Transmittal Form (BWSC-107A/B) And Phase I Completion Statement (BWSC-108)

Massachusetts Department of Environmental Protection **BWSC-107A**

Bureau of Waste Site Cleanup

TIER CLASSIFICATION, TIER II EXTENSION & TIER II TRANSFER TRANSMITTAL FORM

Pursuant to 310 CMR 40.0510 and 40.0560 (Subpart E)

Release Tracking Number ☐ - ☐

A. DISPOSAL SITE LOCATION:

Disposal Site Name: _____

Street: _____ Location Aid: _____

City/Town: _____ ZIP Code: _____

Related Release Tracking Numbers That This Submittal Will Address: _____

B. THIS FORM IS BEING USED TO: (check all that apply)

☐ Submit a new or revised **Tier Classification Submittal for a Tier I Site**, including a Numerical Ranking Scoresheet (complete Sections A, B, C, I, J, K and L).

☐ Submit a new or revised **Tier Classification Submittal for a Tier II Site**, including a Numerical Ranking Scoresheet (complete Sections A, B, C, F, G, I, J, K and L).

☐ Submit a **Notice that an additional Release Tracking Number(s) is (are) being linked to this Tier Classified Site** and rescoring is not required at this time (complete Sections A, B, J, K and L). If this submittal is for a Tier I Site, you must also submit a Minor Permit Modification Transmittal Form (BWSC-109).

List Additional Release Tracking Number(s): _____

☐ Submit a **Phase I Completion Statement supporting a Tier Classification Submittal** (complete Sections A, B, I, J, K and L).

☐ Submit a **Tier II Extension Submittal** for Response Actions at a Tier II Site (complete Sections A, B, D, F, G, I, J, K and L).

☐ Submit a **Tier II Extension Submittal for Response Actions taken after expiration of a Waiver,** pursuant to 310 CMR 40.0630(4) (complete Sections A, B, D, F, J, K and L, and also complete Sections G and I *or* Section H).*

☐ Submit a **Tier II Transfer Submittal** for a change in person(s) undertaking Response Actions at a Tier II Site (complete Sections A, B, E, F, G, I, J, K, L, M, N and O).

☐ Submit a **Tier II Transfer Submittal for a change in person(s) undertaking Response Actions at a Waiver Site,** pursuant to 310 CMR 40.0630(6) (complete Sections A, B, E, F, J, K, L, M, N and O, and also complete Sections G and I *or* Section H).*

You must attach all supporting documentation required for each use of form indicated, including copies of any Legal Notices and Notices to Public Officials required by 310 CMR 40.1400.
***NOTE: The Waiver expires on the effective date of this submittal and all further Response Actions must be taken as a Tier II Site.**

C. TIER CLASSIFICATION SUBMITTAL:

Numerical Ranking Score for Disposal Site: (from Numerical Ranking Scoresheet) _____

Proposed Tier Classification of Disposal Site: (check one) ☐ Tier IA ☐ Tier IB ☐ Tier IC ☐ Tier II

Check which, if any, of the Tier I inclusionary criteria are met by the Disposal Site, pursuant to 310 CMR 40.0520:

☐ Groundwater is located within an Interim Wellhead Protection Area or a Zone II, and there is evidence of groundwater contamination by an Oil or Hazardous Material at the time of Tier Classification at concentrations equal to or exceeding the applicable RCGW-1 Reportable Concentration set forth in 310 CMR 40.0360.

☐ An Imminent Hazard is present at the time of Tier Classification.

☐ Check here if this Tier Classification revises a previous submittal for this Disposal Site. You must include a revised Numerical Ranking Scoresheet with this submittal. If a Tier I Permit has been issued, you may also need to submit a Major Permit Modification Application (BWSC 10).

If incorporating additional Release(s) into the Disposal Site, list Release Tracking Number(s): _____

D. TIER II EXTENSION SUBMITTAL REQUIREMENTS:

State the expiration date of the Tier II Classification or Waiver for the Disposal Site, whichever is applicable: _____

Attach a statement summarizing why a Permanent or Temporary Solution has not been achieved at the Disposal Site.
A Tier II Extension is effective for a period of one year beyond the current expiration date of the Tier II Classification or Waiver.

E. TIER II TRANSFER SUBMITTAL REQUIREMENTS:

State the proposed effective date of the change in person(s) undertaking Response Actions at the Disposal Site: _____

Attach a statement summarizing the reasons for the proposed change in person(s) undertaking the Response Actions.
All Response Actions must be completed by the deadline applicable to the person who first filed either a Tier Classification Submittal for the Disposal Site or received a Waiver of Approvals.

TIER CLASSIFICATION, TIER II EXTENSION & TIER II TRANSFER TRANSMITTAL FORM

Pursuant to 310 CMR 40.0510 and 40.0560 (Subpart E)

Release Tracking Number

☐ - ☐

F. DISPOSAL SITE COMPLIANCE HISTORY SUMMARY:

> If providing either a **Tier Classification Submittal for a Tier II Site** or a **Tier II Extension Submittal for a Waiver Site**, the person named in **Section J** must provide a Compliance History.
> If providing a **Tier II Extension Submittal for a Tier II Site**, the person named in **Section J** must **update** their Compliance History since the effective date of the Tier II Classification.
> If providing a **Tier II Transfer Submittal for a Tier II or Waiver Site**, the person named in **Section M** must provide a Compliance History.

Compliance History for (provide only one name per History): _____

☐ Check here if there has been no change to the Compliance History of the person named above (Extension Submittal for a Tier II Site ONLY).

List all permits or licenses that have been issued by the Department that are relevant to this Disposal Site:

PROGRAM:	PERMIT NUMBER:	PERMIT CATEGORY:	FACILITY ID:
Air Quality			
Hazardous Waste (M.G.L. c. 21C)			
Solid Waste			
Industrial Wastewater Management			
Water Supply			
Water Pollution Control/Surface Water			
Water Pollution Control/Groundwater			
Water Pollution Control/Sewer Connection			
Wetland & Waterways			

List all other Federal, state or local permits, licenses, certifications, registrations, variances, or approvals that are relevant to this Disposal Site:

ISSUING AUTHORITY OR PROGRAM, OR DOCUMENTATION TYPE:	IDENTIFICATION NUMBER:	DATE ISSUED:

If needed, attach to this Transmittal Form a statement further describing the Compliance History of this Disposal Site. This statement must describe the compliance history of the person named above with the following:

(1) DEP regulations; and
(2) other laws for the protection of health, safety, public welfare and the environment administered or enforced by any other government agency.

Such a statement should identify information such as:

(1) actions relevant to the Disposal Site taken by the Department to enforce its requirements including, but not limited to, a Notice of Noncompliance (NON), Notice of Intent to Assess Civil Administrative Penalty (PAN), Notice of Intent to Take Response Action (NORA), and an administrative enforcement order;
(2) administrative consent orders;
(3) judicial consent judgements;
(4) similar administrative actions taken by other Federal, state or local agencies;
(5) civil or criminal actions relevant to the Disposal Site brought on behalf of the DEP or other Federal, state, or local agencies; and
(6) any additional relevant information.

For each action identified, provide the following information:

(1) name of the issuing authority, type of action, identification number and date issued;
(2) description of noncompliance cited;
(3) current status of the matter; and
(4) final disposition, if any.

TIER CLASSIFICATION, TIER II EXTENSION & TIER II TRANSFER TRANSMITTAL FORM

Pursuant to 310 CMR 40.0510 and 40.0560 (Subpart E)

Release Tracking Number

[ ] - [ ]

G. CERTIFICATION OF ABILITY AND WILLINGNESS:

> If providing either a **Tier II Classification Submittal** or a **Tier II Extension Submittal**, the person who signs this certification **MUST** be the person named in **Section J**, or that person's agent.
> If providing a **Tier II Transfer Submittal**, the person who signs this certification **MUST** be the person named in **Section M**, or that person's agent.

I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the/those Licensed Site Professional(s) employed or engaged to render Professional Services for the disposal site which is the subject of this Transmittal Form and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made learn(s) that it/they is/are unable to proceed with the necessary response actions.

By: _____ Title: _____
(signature)

For: _____ Date: _____
(print name of person or entity recorded in Section J or M, as appropriate)

If you are submitting either a Tier II Extension Submittal for a Waiver Site or a Tier II Transfer Submittal for a Waiver Site, you may choose to sign the alternative Ability and Willingness Certification found in Section H in place of providing the certification in Section G and the LSP Opinion in Section I.

H. ALTERNATIVE CERTIFICATION OF ABILITY AND WILLINGNESS:

> If providing a **Tier II Extension Submittal for a Waiver Site**, the person who signs this certification **MUST** be the person named in **Section J**, or that person's agent
> If providing a **Tier II Transfer Submittal for a Waiver Site**, the person who signs this certification **MUST** be the person named in **Section M**, or that person's agent.

I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the Consultant-of-Record for the disposal site which is the subject of this Transmittal Form and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made learn(s) that it/they is/are unable to proceed with the necessary response actions.

By: _____ Title: _____
(signature)

For: _____ Date: _____
(print name of person or entity recorded in Section J or M, as appropriate)

I. LSP OPINION:

I attest under the pains and penalties of perjury that I have personally examined and am familiar with this transmittal form, including any and all documents accompanying this submittal. In my professional opinion and judgment based upon application of (i) the standard of care in 309 CMR 4.02(1), (ii) the applicable provisions of 309 CMR 4.02(2) and (3), and (iii) the provisions of 309 CMR 4.03(5), to the best of my knowledge, information and belief,

> *if Section B of this form indicates that a **Tier I or Tier II Classification Submittal** which relies upon a previously submitted Phase I Completion Statement is being submitted*, this Tier Classification Submittal has been developed in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000;

> *if Section B of this form indicates that a **Phase I Completion Statement** or a **Tier I or Tier II Classification Submittal** which does not rely upon a previously submitted Phase I Completion Statement is being submitted*, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed and implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal;

SECTION I IS CONTINUED ON THE NEXT PAGE

Massachusetts Department of Environmental Protection **BWSC-107A**
Bureau of Waste Site Cleanup

TIER CLASSIFICATION, TIER II EXTENSION & TIER II TRANSFER TRANSMITTAL FORM

Pursuant to 310 CMR 40.0510 and 40.0560 (Subpart E)

Release Tracking Number ☐ - ☐

I. LSP OPINION: (continued)

> *If Section B of this form indicates that a Tier II Extension Submittal or a Tier II Transfer Submittal is being submitted*, the response action(s) that is (are) the subject of this submittal (i) is (are) being implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal.

I am aware that significant penalties may result, including, but not limited to, possible fines and imprisonment, if I submit information which I know to be false, inaccurate or materially incomplete.

☐ Check here if the Response Action(s) on which this opinion is based, if any, are (were) subject to any order(s), permit(s) and/or approval(s) issued by DEP or EPA. If the box is checked, you MUST attach a statement identifying the applicable provisions thereof.

LSP Name: _____ LSP #: _____ Stamp:

Telephone: _____ Ext.: _____

FAX: (optional) _____

Signature: _____

Date: _____

J. PERSON MAKING SUBMITTAL: (For Transfer Submittals describe person currently undertaking response actions, not transferee)

Name of Organization: _____

Name of Contact: _____ Title: _____

Street: _____

City/Town: _____ State: _____ ZIP Code: _____

Telephone: _____ Ext.: _____ FAX: (optional) _____

K. RELATIONSHIP TO DISPOSAL SITE OF PERSON MAKING SUBMITTAL: (check one)

☐ RP or PRP Specify: ◯ Owner ◯ Operator ◯ Generator ◯ Transporter Other RP or PRP: _____

☐ Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)

☐ Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))

☐ Any Other Person Making Submittal Specify Relationship: _____

L. CERTIFICATION OF PERSON MAKING SUBMITTAL:

I, _____, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this transmittal form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate, or incomplete information.

By: _____ Title: _____
(signature)

For: _____ Date: _____
(print name of person or entity recorded in Section J)

Enter address of the person providing certification(s), including Ability and Willingness Certification where applicable, if different from address recorded in Section J:

Street: _____

City/Town: _____ State: _____ ZIP Code: _____

Telephone: _____ Ext.: _____ FAX: (optional) _____

YOU MUST COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY RETURN THE DOCUMENT AS INCOMPLETE. IF YOU SUBMIT AN INCOMPLETE FORM, YOU MAY BE PENALIZED FOR MISSING A REQUIRED DEADLINE, AND YOU MAY INCUR ADDITIONAL COMPLIANCE FEES.

Massachusetts Department of Environmental Protection **BWSC-107B**

Bureau of Waste Site Cleanup

TIER CLASSIFICATION, TIER II EXTENSION & TIER II TRANSFER TRANSMITTAL FORM

Pursuant to 310 CMR 40.0510 and 40.0560 (Subpart E)

Release Tracking Number

[ ] - [ ]

Only complete and submit this page if you are providing a Tier II Transfer Submittal for a Tier II Site or a Waiver Site.

M. PERSON WHO IS TRANSFEREE:

Name of Organization: _____

Name of Contact: _____ Title: _____

Street: _____

City/Town: _____ State: _____ ZIP Code: _____

Telephone: _____ Ext.: _____ FAX: (optional) _____

N. RELATIONSHIP TO DISPOSAL SITE OF PERSON WHO IS TRANSFEREE: (check one)

[ ] RP or PRP Specify: ◯ Owner ◯ Operator ◯ Generator ◯ Transporter Other RP or PRP: _____

[ ] Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)

[ ] Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))

[ ] Any Other Person Who is Transferee Specify Relationship: _____

O. CERTIFICATION OF PERSON WHO IS TRANSFEREE:

I, _____, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this transmittal form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate, or incomplete information.

By: _____ Title: _____
(signature)

For: _____ Date: _____
(print name of person or entity recorded in Section M)

Enter address of the person providing certification, if different from address recorded in Section M:

Street: _____

City/Town: _____ State: _____ ZIP Code: _____

Telephone: _____ Ext.: _____ FAX: (optional) _____

YOU MUST COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY RETURN THE DOCUMENT AS INCOMPLETE. IF YOU SUBMIT AN INCOMPLETE FORM, YOU MAY BE PENALIZED FOR MISSING A REQUIRED DEADLINE, AND YOU MAY INCUR ADDITIONAL COMPLIANCE FEES.

Massachusetts Department of Environmental Protection **BWSC-108**

Bureau of Waste Site Cleanup

COMPREHENSIVE RESPONSE ACTION TRANSMITTAL FORM & PHASE I COMPLETION STATEMENT

Pursuant to 310 CMR 40.0484 (Subpart D) and 40.0800 (Subpart H)

Release Tracking Number ☐ - ☐

A. SITE LOCATION:

Site Name: (optional) _____

Street: _____ Location Aid: _____

City/Town: _____ ZIP Code: _____

Related Release Tracking Numbers that this Form Addresses: _____

Tier Classification: (check one of the following) ☐ Tier IA ☐ Tier IB ☐ Tier IC ☐ Tier II ☐ Not Tier Classified

If a Tier I Permit has been issued, state the Permit Number: _____

B. THIS FORM IS BEING USED TO: (check all that apply)

☐ Submit a **Phase I Completion Statement**, pursuant to 310 CMR 40.0484 (complete Sections A, B, C, G, H, I and J).

☐ Submit a **Phase II Scope of Work**, pursuant to 310 CMR 40.0834 (complete Sections A, B, C, G, H, I and J).

☐ Submit a final **Phase II Comprehensive Site Report and Completion Statement**, pursuant to 310 CMR 40.0836 (complete Sections A, B, C, D, G, H, I and J).

☐ Submit a **Phase III Remedial Action Plan and Completion Statement**, pursuant to 310 CMR 40.0862 (complete Sections A, B, C, G, H, I and J).

☐ Submit a **Phase IV Remedy Implementation Plan**, pursuant to 310 CMR 40.0874 (complete Sections A, B, C, G, H, I and J).

☐ Submit an **As-Built Construction Report**, pursuant to 310 CMR 40.0875 (complete Sections A, B, C, G, H, I and J).

☐ Submit a **Phase IV Final Inspection Report and Completion Statement**, pursuant to 310 CMR 40.0878 and 40.0879 (complete Sections A, B, C, E, G, H, I and J).

☐ Submit a periodic **Phase V Inspection & Monitoring Report**, pursuant to 310 CMR 40.0892 (complete Sections A, B, C, G, H, I and J).

☐ Submit a final **Phase V Inspection & Monitoring Report and Completion Statement**, pursuant to 310 CMR 40.0893 (complete Sections A, B, C, F, G, H, I and J).

You must attach all supporting documentation required for each use of form indicated, including copies of any Legal Notices and Notices to Public Officials required by 310 CMR 40.1400.

C. RESPONSE ACTIONS:

☐ Check here if any response action(s) that serves as the basis for the Phase submittal(s) involves the use of Innovative Technologies. (DEP is interested in using this information to create an Innovative Technologies Clearinghouse.)

Describe Technologies: _____

D. PHASE II COMPLETION STATEMENT:

Specify the outcome of the Phase II Comprehensive Site Assessment:

☐ Additional Comprehensive Response Actions are necessary at this Site, based on the results of the Phase II Comprehensive Site Assessment.

☐ The requirements of a Class A Response Action Outcome have been met and a completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

☐ The requirements of a Class B Response Action Outcome have been met and a completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

☐ Rescoring of this Site using the Numerical Ranking System is necessary, based on the results of the final Phase II Report.

E. PHASE IV COMPLETION STATEMENT:

Specify the outcome of Phase IV activities:

☐ Phase V operation, maintenance or monitoring of the Comprehensive Response Action is necessary to achieve a Response Action Outcome. (This site will be subject to a Phase V Operation, Maintenance and Monitoring Annual Compliance Fee.)

☐ The requirements of a Class A Response Action Outcome have been met. No additional operation, maintenance or monitoring is necessary to ensure the integrity of the Response Action Outcome. A completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

☐ The requirements of a Class C Response Action Outcome have been met. No additional operation, maintenance or monitoring is necessary to ensure the integrity of the Response Action Outcome. A completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

SECTION E IS CONTINUED ON THE NEXT PAGE

COMPREHENSIVE RESPONSE ACTION TRANSMITTAL FORM & PHASE I COMPLETION STATEMENT

Pursuant to 310 CMR 40.0484 (Subpart D) and 40.0800 (Subpart H)

Release Tracking Number

☐ - ☐

E. PHASE IV COMPLETION STATEMENT: (continued)

☐ The requirements of a Class C Response Action Outcome have been met. Further operation, maintenance or monitoring of the remedial action is necessary to ensure that conditions are maintained and that further progress is made toward a Permanent Solution. A completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

Indicate whether the operation and maintenance will be Active or Passive. (Active Operation and Maintenance is defined at 310 CMR 40.0006.):

○ Active Operation and Maintenance ○ Passive Operation and Maintenance

(Active Operation and Maintenance makes the Site subject to a Post-RAO Class C Active Operation and Maintenance Annual Compliance Fee.)

F. PHASE V COMPLETION STATEMENT:

Specify the outcome of Phase V activities:

☐ The requirements of a Class A Response Action Outcome have been met and a completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

☐ The requirements of a Class C Response Action Outcome have been met. No additional operation, maintenance or monitoring is necessary to ensure the integrity of the Response Action Outcome. A completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

☐ The requirements of a Class C Response Action Outcome have been met. Further operation, maintenance or monitoring of the remedial action is necessary to ensure that conditions are maintained and that further progress is made toward a Permanent Solution. A completed Response Action Outcome Statement (BWSC-104) will be submitted to DEP.

Indicate whether the operation and maintenance will be Active or Passive. (Active Operation and Maintenance is defined at 310 CMR 40.0006.):

○ Active Operation and Maintenance ○ Passive Operation and Maintenance

(Active Operation and Maintenance makes the Site subject to a Post-RAO Class C Active Operation and Maintenance Annual Compliance Fee.)

G. LSP OPINION:

I attest under the pains and penalties of perjury that I have personally examined and am familiar with the information contained in this transmittal form, including any and all documents accompanying this submittal. In my professional opinion and judgment based upon application of (i) the standard of care in 309 CMR 4.02(1), (ii) the applicable provisions of 309 CMR 4.02(2) and (3), and (iii) the provisions of 309 CMR 4.03(5), to the best of my knowledge, information and belief,

> *If Section B indicates that a **Phase I, Phase II, Phase III, Phase IV or Phase V Completion Statement** is being submitted*, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed and implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> *If Section B indicates that a **Phase II Scope of Work or a Phase IV Remedy Implementation Plan** is being submitted*, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> *If Section B indicates that an **As-Built Construction Report or a Phase V Inspection and Monitoring Report** is being submitted*, the response action(s) that is (are) the subject of this submittal (i) is (are) being implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal.

I am aware that significant penalties may result, including, but not limited to, possible fines and imprisonment, if I submit information which I know to be false, inaccurate or materially incomplete.

☐ Check here if the Response Action(s) on which this opinion is based, if any, are (were) subject to any order(s), permit(s) and/or approval(s) issued by DEP or EPA. If the box is checked, you MUST attach a statement identifying the applicable provisions thereof.

LSP Name: _____ LSP #: _____ Stamp:

Telephone: _____ Ext.: _____

FAX: (optional) _____

Signature: _____

Date: _____

Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC-108

COMPREHENSIVE RESPONSE ACTION TRANSMITTAL FORM & PHASE I COMPLETION STATEMENT

Pursuant to 310 CMR 40.0484 (Subpart D) and 40.0800 (Subpart H)

Release Tracking Number

☐ - ☐

H. PERSON UNDERTAKING RESPONSE ACTION(S):

Name of Organization: _____

Name of Contact: _____ Title: _____

Street: _____

City/Town: _____ State: _____ ZIP Code: _____

Telephone: _____ Ext.: _____ FAX: (optional) _____

☐ Check here if there has been a change in the person undertaking the Response Action.

I. RELATIONSHIP TO SITE OF PERSON UNDERTAKING RESPONSE ACTION(S): (check one)

☐ RP or PRP Specify: ◯ Owner ◯ Operator ◯ Generator ◯ Transporter Other RP or PRP: _____

☐ Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)

☐ Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))

☐ Any Other Person Undertaking Response Action Specify Relationship: _____

J. CERTIFICATION OF PERSON UNDERTAKING RESPONSE ACTION(S):

I, _____, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this transmittal form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate, or incomplete information.

By: _____ Title: _____
(signature)

For: _____ Date: _____
(print name of person or entity recorded in Section H)

Enter address of the person providing certification, if different from address recorded in Section H:

Street: _____

City/Town: _____ State: _____ ZIP Code: _____

Telephone: _____ Ext.: _____ FAX: (optional) _____

YOU MUST COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY RETURN THE DOCUMENT AS INCOMPLETE. IF YOU SUBMIT AN INCOMPLETE FORM, YOU MAY BE PENALIZED FOR MISSING A REQUIRED DEADLINE.

Appendix H

Instructions For The Application For Temporary Licensing And Qualification For Examination

LSP APPLICATION PACKAGE
SEPTEMBER 1994

Board of Registration of Hazardous Waste Site Cleanup Professionals

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Instructions for the Application for Temporary Licensing & Qualification for Examination

1. INTRODUCTION

The Board of Registration of Hazardous Waste Site Cleanup Professionals is pleased to present the September 1994 Licensed Site Professional Application Package.

The Board's process for evaluating applications is designed to ensure that each applicant receives a fair and impartial decision based on the information presented to it. You can assist the Board to accomplish this goal by remembering that:

all applicants should read these instructions, the LSP regulations, and the other information in the application package carefully before beginning to complete the LSP application forms; the Board has a responsibility to apply its applications criteria as defined by the LSP regulations; applicants' misunderstanding of those regulations or of the Board's applications procedures or these instructions may cause applications to be delayed or denied;

applicants have the burden to both claim and demonstrate that they meet the requirements for licensing: applicants should review their applications to ensure that the Board's questions are answered fully and completely; the Board relies primarily upon the written information provided in the application forms to decide whether or not to issue a temporary LSP license;

applicants should ensure that the information they provide in the application forms stands alone, and does not depend upon any other information or knowledge of the applicant or his or her reputation, firm or experience; the Board's discretion to consider information provided by applicants external to the application form is limited by statute and by the Board's evaluation procedure; therefore, unless specifically requested to do so by the Board, applicants will not have the opportunity to add any other written or oral information to their applications;

applicants should not rely upon their general understanding of the Board's mission or upon information from other sources as a basis for completing the application forms; they should refer to these instructions, the LSP regulations, the definitions of terms in the LSP regulations, and other information in the application package to understand the criteria that the Board uses to evaluate applicants' qualifications;

If applicants need additional information during the preparation of this Application, they may call the Board's offices at (617) 556-1145. Please note that staff will answer general questions about the application and the evaluation process, but must refrain from discussing the specifics of any applicant's qualifications. Applicants with special needs may contact the Board for assistance or additional information.

The Board's regulations describe in detail the qualifications and standards of practice for LSPs. A copy of these regulations (309 CMR 1.00 through 8.00) is in this packet. The law establishing the Board of Registration of Hazardous Waste Site Cleanup Professionals and authorizing the Board to establish a licensing program is M.G.L. c. 21A, section 19-19J

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2. INFORMATION ABOUT QUALIFICATIONS FOR LICENSING

Attributes of an LSP: An LSP is "an individual who, by reason of appropriate education, training and experience, is qualified, as attested by being licensed by the board, to render waste site cleanup activity opinions that can be relied upon as sufficient to protect public health, safety, welfare and the environment."

The regulations establish eight attributes that an individual must have to be licensed as an LSP and therefor issue opinions that can be relied upon to protect public health, safety, welfare and the environment. Two of these attributes (overall technical understanding and overall regulatory understanding) will be evaluated through an examination to be developed and given over the next year.

These other six attributes will be evaluated through the application process. Applicants must meet the minimum requirements for all of these attributes to be issued a temporary license. The six attributes are:

- waste site cleanup decision making experience
- practical experience
- proficiency
- total professional experience
- good moral character.
- appropriate education

The first three attributes, considered together, make up Relevant Professional Experience (RPE). Relevant Professional Experience is the core of what it is to be an LSP; most of the Board's evaluation of applications will center upon RPE. Applicants have the burden of both claiming and demonstrating that they meet the regulatory requirements for RPE. Presented below is information describing how the Board will evaluate the information provided by applicants to support their request for issuance of a license.

Relevant Professional Experience: The Board's determination of whether an applicant possesses sufficient *Relevant Professional Experience* to be given a license is a central component of the licensing process, and is viewed by the Board as core experience that must be demonstrated to receive an LSP license.

The Board's regulations define Relevant Professional Experience as "a combination of waste site cleanup decision making experience and practical experience, both performed with proficiency. Relevant Professional Experience does not include experience involving only non-scientific or non-technical activities associated with a disposal site, such as contract management, budget control, legal analysis and other similar management activities."

Please note that the Board intends to use information gathered through any part of the application review process to reach a determination concerning an applicant's qualifications to become an

LSP. If an individual meets the qualifications established in the LSP regulations, the Board will issue that person a license.

> *What will the Board accept as a demonstration that I have the needed RPE?* The Board's questions on Forms 2 (positions) and Forms 3 (projects) ask complex questions designed to elicit analytical information about the nature of applicants' work experience and decision making responsibilities. Applicants have the burden of presenting written evidence and supporting information that backs up their claims that they meet the requirements for licensing.

The Board will conduct a position by position review: In determining whether an applicant possesses Relevant Professional (RPE), the Board will review each position separately. The Board will determine whether all aspects of the RPE definition are met for each position. If a position fails to meet any aspect of the definition, it will not be credited as RPE.

Applicants are responsible for describing different sets of responsibilities as different positions. If a position contains different sets of responsibilities, and the Board is not convinced that the entire position meets the requirements for RPE, the position will not be credited as RPE, unless the Board finds evidence in that position description to break the position into discrete time periods.

> *My position seems to meet most but not all of the requirements for waste site cleanup decision making experience. Can I get partial credit for that position?* No. In order for the Board to find that a set of position responsibilities meets the requirements for waste site cleanup decision making experience, all of the requirements must be met.

Applicants should answer the Form 2 questions in a manner that fully describes each position in light of the regulatory requirements, and should submit at least two illustrative Form 3 project descriptions for each position. If the project submitted illustrates some aspects of the RPE definition but not others, the applicant should consider submitting additional corresponding Form 3s that illustrate any missing aspects.

Applicants' relationship with consultants: The Board is aware that in describing particular positions, the applicant's precise decision making role in performing waste site cleanup activities may not be always be readily apparent. This is often of particular concern when, in performing such activities, the applicant employed or otherwise utilized contractors, consultants or other assessment, containment, or remediation specialists to perform some or all of the technical, regulatory, oversight or management aspects of assessment, containment or remediation work.

Applicants are therefore directed to set forth in detail precisely when they employed or utilized such experts, under what circumstances, what their day-to-day and overall roles were in relation to those experts, what aspects of the projects were performed by the experts, and approximately

how much of their waste site cleanup work was performed in that manner (and how much was performed by the applicants directly).

> *Since I work in a small company, I do not directly supervise other people doing sites work. What must I do to have the Board accept that I supervise or coordinate other people's work?* The regulations refer to "supervise OR coordinate" in order to recognize that applicants may direct the work of someone over whom they do not have direct supervisorial authority. For example, some applicants may direct the activities of teams of workers who work for other firms. Applicants should describe the manner and degree to which others' work was done at the applicants' direction.

In providing this information, it may be useful to describe the decision making structure or hierarchy of the corporation, firm or other entity in which applicants have held the position, focusing in particular upon applicants' level of authority relative to their supervisors and other officials or personnel.

Applicants as principal decision makers: Included in the requirements for RPE is a requirement that the applicant "demonstrate that [he or she has] been an active participant and *a principal decision maker*" in performing waste site cleanup activities.

Therefore, applicants do not have the burden of demonstrating that they are *the sole* principal decision maker for each position. However, applicants must clearly demonstrate that their technical decisions were significant enough components of decisions made at sites to warrant a finding that they were principal decision makers..

> *Now that the MCP has been revised, it seems as though only LSPs can be principal decision makers. How can I gain decision making experience if I'm not already an LSP?* Under the new MCP there are many opportunities for decisions to be made regarding sites work; only a small number of those decision are "waste site cleanup advisory opinions" reserved by regulations and law solely to LSPs. All other decisions and recommendations may be made by other experienced individuals, dependent upon the particular requirements of the project and of the firms carrying out the work. An applicant's recommendation and decision may be made under the supervision of a more senior individual who also holds an LSP license; in such a case the applicant's burden is still that of demonstrating that he or she is *A* principal decision maker, not *THE* principal decision maker.

The Board recognizes that in performing those activities, the applicant may have engaged in collaborative work with others possessing different fields of expertise. In deciding whether the applicant was "a principal decision maker," the Board will determine whether the applicant exercised significant overall technical and managerial decision making responsibility in that position as a whole.

In so doing. the Board will consider the nature of the position. and the size and complexity of the corresponding projects. the applicants' decision making role in those projects. and will determine the extent to which the applicant was involved in technical and managerial aspects of the significant cleanup decisions made at sites.

> *Must all of my work have been done in Massachusetts?* No. The regulations do not specify that positions described in Form 2 or the projects described in Form 3 must have occurred in Massachusetts. The Board is developing an examination that will assess each applicants' "overall technical understanding" and "overall regulatory understanding", the latter being specific to Massachusetts.

Not all positions or projects that involve waste site cleanup activities will meet the principal decision maker requirement. That could be due to various reasons, including making decisions that do not demonstrate that one was a *principal* decision maker, positions that primarily involve the provision of field or analytical support for other decision makers. or project management without demonstrated technical decision making. Also, positions or projects limited to sub-parts of an assessment. containment or removal activity and that do not demonstrate a connection to principal decision making as a whole will not be regarded as evidence of RPE by the Board..

> *I do risk assessment: can I become an LSP with a specialty in such a narrow field?* There is nothing in the regulations to prevent a person who has a narrow specialty within the hazardous waste site cleanup field from becoming an LSP. as long as they meet all the regulatory requirements. including that of a principal decision maker for assessment. containment or removal activities.

Assessment, containment or removal activities as an integral component of position responsibilities: Included in the requirements for RPE is a requirement that an applicant's assessment. containment or removal responsibilities are an *integral component* of his or her position.

The Board recognizes that *all applicants spend less than 100% of their time* making decisions a sites, whether those other activities are supervising employees. conducting or receiving training. developing client relationships, or conducting other environmental work. However, applicants must demonstrate that their assessment, containment or removal responsibilities were an integral component of their position responsibilities.

> *I work in manufacturing 60% of the time and do sites work 40% of the time. Will this position count as Relevant Professional Experience?* Assuming all other requirements are met, an applicant may receive a license if his or her "assessment, containment or removal responsibilities were an integral component of his or her position." The regulations do not specify that a certain percentage of time must be spent doing sites work. It is within that 40% time that applicants must demonstrate that

they have sufficient experience and exercise sufficient responsibility to meet the requirements for relevant professional experience.

Thus, a position that includes waste site cleanup activities as but one of many functions may still qualify provided that their performance is a regular part of the position, is not rare, occasional, or merely tangential to other functions, and meets all other requirements.

The Board does not use any particular quantitative measure in determining whether a position meets this requirement. The Board will instead make a qualitative determination about whether applicants' waste site cleanup activities comprise a significant or substantial portion of the position responsibilities. In addition to examining information provided by the applicant concerning the frequency or time spent on performing waste site cleanup tasks, the Board will consider the depth and breadth of the waste site cleanup tasks performed, their technical or regulatory complexity, and the applicant's overall role in performing them.

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3. INFORMATION ABOUT THE APPLICATION PROCESS

Temporary Licenses: Until the Board develops the examination and sets the date for the first examination, the Board will issue temporary licenses that will allow license holders to perform any of the functions of an LSP and that will qualify them for the examination. In other words, the Board will award temporary licenses to those who demonstrate that they meet the six attributes of an LSP as evaluated through the application process. Evaluation of the other two attributes will occur when the examination is given.

Temporary license holders who pass that examination will receive regular licenses valid for a 3 year period. The examination will test an applicant's overall technical and regulatory understanding; the other attributes of an LSP are evaluated through the application review process.

Confidentiality of Information on the Application Form: According to applicable laws, the Board may be compelled to release information from an applicant's application form to other people or to the general public in certain circumstances.

> *Can a member of the public see my application? Can I get the Board to agree to hold certain information confidential or will the public and my competitors be able to look at my application?* Since the Board is a public agency, and since the different statutes that apply to public records contain both general rules and performance standards that are met on a case-by-case basis, it would be prudent for applicants to assume that any of the information may at some point become part of the public record. The Board will make a case-by-case determination of what information may be released based on the specific circumstances of a request.

Application time frames: Applications are being accepted by Board continually, and the Board intends to continue to make licensing decisions at each of its monthly meetings. Applicants can expect 10 to 12 weeks between the date their application is submitted and the date the Board takes action on the application.

Board action on applications: The Board first will review each application for administrative completeness. If the application is determined to be "incomplete", a letter will be sent to applicants requesting additional information or application materials. The applicant assumes full responsibility for the timely provision of all materials.

Completed applications are sent to an Application Review Panel for substantive evaluation. The Application Review Panel will be either a recommendation for approval or denial or a request for additional information from the applicant or other parties. That Panel consists of a set of three of the eleven Board members and one staff person. The three members of the Panel evaluate the

application and make a recommendation to the full Board; staff assists the Board members and does not vote.

The Application Review Panel may recommend a decision to the full Board may ask for additional information from the applicant, or may ask for additional information from supervisors, references, or the like. If additional information is requested from applicants, they may provide the information to the Board, voluntarily withdraw their application, or ask the Board to make a decision based upon the information available to the Board at that time.

Recommendations from Application Review Panels are sent to the full Board for its consideration and action. These recommendations are held confidential until the day of the Board's meeting.

> *How can I influence the Board's decisions before the meetings? Does the Board allow applicants to present additional information at the meetings?* The Board has a responsibility to the public to applicant's to ensure that the application review process is as objective as possible. The Board's application evaluation process requires all information from the applicants to come to the Board within the application form, or in response to specific questions from application review panels. There is currently no opportunity in the application review process for applicants to decide to add information to their application by making oral presentations to the Board.

Applicants approved by the Board will receive letters of approval which authorize them to secure the LSP seal and begin practicing . Applicants denied by the Board will receive letters explaining the Board's decision. describing appeal rights, and offering an interview with the staff person who handled their application to discuss the reasons for the Board's actions.

Outside Information: It is possible that the Board may receive written information regarding an applicant's qualifications from any individual. In addition, the law establishing the LSP program requires the Board to notify the Department of Environmental Protection of all applicants, licensees, license suspensions and other disciplinary actions. The Board's written evaluation process describes how the Board will consider such "outside information" during the application evaluation process.

> *How will the board deal with letters written about an applicant from disgruntled or complaining former clients?* The Board anticipates receiving written comments regarding applicants from DEP and from members of the public, and is establishing a specific process to handle this "outside" information. Two of the goals of this process are to ensure that frivolous or false information will not taint the review of applications, and to help the Board to meet its responsibility to consider relevant information before deciding whether to issue a license.

Referents and other persons: The Board may contact the referents and other persons listed in the application to obtain additional information about an applicant's qualifications with or without notifying the applicant.

Substitutions For Requirements: All applicants must meet all requirements to obtain a license. There are a limited number of instances in which the regulations provide substitutions for these requirements. (For example, up to two years of credit for TPE may be obtained through specific educational substitutions.) In those limited instances, the applicant has the burden of proof and must specifically request and provide sufficient information in support of the substitution.

> *Many graduate students work while going to school. I worked as a Research Assistant 15 hours per week during the school year while getting my Masters degree doing fate and transport research at sites. My work was not part of my degree requirements, and I did earn the Masters. Can I count both the work I did as Relevant Professional Experience and get credit for my degree?* The answer to this question depends upon individual circumstances. Assuming that the work done meets all other requirements for licensing (e.g., principal decision making), and assuming that the work done was <u>not</u> required as part of the <u>graduate</u> degree requirements, applicants could claim and receive credit for both the degree and the work. Since work in a position less than 20 hours per week must be pro rated, a person working 15 hours per week for 8 months during a calendar year would claim 1/2 year of work.

Interviews: The Board can require an in-person interview with an applicant to obtain information pertaining to the application. That interview may be with the entire Board, an Application Review Panel, or a subcommittee of the Board.

Proof of Education: All applicants must submit "original transcripts or other documentation from the appropriate educational institution(s) to verify that he or she meets the required educational qualifications". Note that copies made by the applicant of documents he or she received from educational institutions do not meet this requirement.

The Standard Track and the Alternate Track have different minimum educational standards:

- *Standard Track*: college or higher degree in a field listed in Section 3, Appendix A, of the regulations;
- *Alternate Track*: graduation from high school.

Reapplication: If the Board does not approve an application, an individual must submit a complete set of application materials and another application fee to reapply. Unless the Board

specifies otherwise, applicants may re-apply at any time. If the re-application occurs within 6 months of the Board's decision, applicants may choose to use the older references.

Fees: The Board is required by law to charge fees sufficient to recover all costs of its operation. This means that all the activities of the Board must be supported through fees on those who choose to use the Board's services. here are four fees that LSPs are required to pay:

- *application fee* of $245 payable at the time the application is submitted
- an *annual fee* of $160 payable within 30 days after a license is granted and annually thereafter
- a *renewal fee* of $100 payable 30 days before the end of a license period (currently 3 years)
- an *examination fee*, to be set when the examination is developed.

The application fee **must be submitted at the same time the completed application is submitted.** If the Board cannot determine that an applicant has paid the application fee, the Board will stop working on that application.

Examination: The Board is developing an examination to evaluate two of the eight attributes necessary to become an LSP: overall technical understanding and overall regulatory understanding (see the regulations for definitions of these requirements). The Board intends to begin giving the examination in mid- to late 1995. The Board will notify all LSPs (that is, everyone who holds a temporary license) of the time and location of the examination.

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4. APPLICATION INSTRUCTIONS

On the following pages are detailed instructions for each of these forms. The Board will use the information presented on these forms as critical indicators of an applicant's ability to render competent waste site cleanup decisions.

Applicants should read thoroughly the Application Instructions, the LSP regulations and all other information in this application package before attempting to complete these forms. Failure to understand the nature of the information the Board is seeking in each section may cause your answers to fail to demonstrate that you meet the requirements for licensing.

The Board requires typed applications: Handwritten applications will be deemed incomplete and will not be forwarded to the Application Review Panels for evaluation or to the Board for a decision.

The Board requires that the answers on the application form be provided in the space provided. Do not submit additional information unless specifically requested to do so by the application. Information provided by applicants that is not requested in the application will not be used by the Board to make its licensing decisions.

Applicants have a responsibility to **both claim and clearly demonstrate** that they meet the requirements for licensing. Prudent applicants will provide information in the application form that is relevant to the criteria that the LSP Board will evaluate and will refrain from providing information not germane to the LSP requirements.

Since the LSP license is issued to an individual, applicants should use the first person singular to describe their own work, experience and responsibilities.

5. FORM - BY - FORM INSTRUCTIONS

Purpose of the Application Forms: The purpose of these forms is to provide the Board with information it needs to determine whether you meet the qualifications for licensing. After asking for general information (Form 1) the forms focus upon your

- Relevant Professional Experience (Forms 2,3 ,4, and 5) and
- Total Professional Experience (Forms 6 and 7).

The Board will decide whether to grant Relevant Professional Experience for each Form 2 position based upon all the information made available to the Board..

FORM 1
APPLICANT INFORMATION

Form 1: Applicant Information This form gathers basic information about each applicant. including the mailing address applicants you want the Board to use in all correspondence. information concerning your educational background, your selection of either the Standard Track or Alternate Track, information regarding your moral character and proficiency in past work, and a statement for you to write in your own hand that attests to the correctness of the information in this Form and provides a means of identification.

If this is a re-application, write your previous application number in the space provided at the top of Form 1, page 1.

The Board will use the information provided in this form as your official record in its files. Type in your name, address and telephone number exactly as you want them to appear in your LSP file. You are responsible for the accuracy of the information you provide.

If the records you submit to the Board in support of your application refer to you under a different name, type that name in the space provided.

Check the appropriate line to indicate under which Track (Standard or Alternate) you want the Board to consider your application. If you are unsure which track you fit into, reread the appropriate sections of the LSP regulations.

Use the Applicant's Education table to summarize your education. Fill in the initials of the type of degree you received (e.g.. AA, GED. MS). In the last column on the right, *check one and only one box* to indicate the degree you are using to meet the minimum requirements of the Track under which you want to be considered for licensing.

> *If I am relying upon a Masters Degree to qualify for the Standard Track. do I also need to submit documentation to the Board for high school and for my Bachelor's degrees?* No. As noted in the instructions, you will be checking one box on page one of Form 1 to indicate the degree you use to qualify for the Standard or Alternate Track. For the purposes of qualifying for a track, the Board requires documentation for that one degree only. Note that applicants requesting to use degrees for purposes other than qualifying for a track may need to submit additional documentation.

Attach original documentation that you received that degree following Form 1.

> *Could the Board be more specific in defining what it will accept as "original documentation" from schools? When do I need to submit transcripts?* The Board needs to see a document sent from a school which contains the information verifying that the applicant has the educational background that he or she is claiming. Some applicants will

be claiming degrees: for those applicants the document from the school (whether a letter or transcripts) will not need to show specific courses. Other applicants' claims may be based upon the specific courses taken: for those applicants the documents from the school must contain the course information to back up the applicant's claim

If a college or higher degree, it must be listed in Appendix A of the regulations as a qualifying degree. If your degree is not listed and you want the Board to consider approving the degree, explain why the degree should be considered equivalent to those in Appendix A on a separate page and attach that page following Form 1.

If I want to claim my college degree for the Standard Track, but it is not listed in the regulations as a qualifying degree, how can I get the Board to accept the degree? As noted in the LSP regulations in Appendix A, section 3, you may ask the Board to accept your degree as equivalent to those listed in Appendix A. The regulations do not specify a particular method. Each applicant must decide the best way to make the claim, whether based on courses, program requirements, general purposes of the major, or other bases.

You must answer each question in the section regarding moral character and proficiency . If you answer "yes" to any question explain the circumstances on a separate page and attach it following Form 1.

The Board will use the handwriting sample you provide here for two purposes: to ensure that the information you provide is accurate and as a means of establishing your identity.

When all parts of the application are ready to submit, sign and date Form 1 and send the complete application to the Board.

FORM 2:
RELEVANT PROFESSIONAL EXPERIENCE
WASTE SITE CLEANUP DECISION MAKING EXPERIENCE
POSITION DESCRIPTIONS

Form 2: Waste Site Cleanup Decision Making Experience: Through descriptions of positions, Form 2 asks you to explain in detail the type and scope of your waste site cleanup decision making experience. It includes questions regarding the responsibilities of the position, your role in selecting methodologies, your supervising experience, the degree to which you exercised independent judgment, and other information that will enable applicants to both claim and demonstrate that they meet the requirements for licensing..

The Board will decide whether to grant Relevant Professional Experience for each Form 2 position based upon all the information made available to the Board. The Board will be applying

the LSP regulations' definition of "relevant professional experience"; applicants should not rely upon a dictionary definition of the word "relevant."

> *What is the distinction between Form 2 and Form 3?* Form 2 asks applicants to demonstrate their waste site cleanup decision making experience by describing position responsibilities. Form 3 asks applicants to demonstrate their practical experience by describing their project responsibilities. Note that BOTH forms are used by applicants to demonstrate their Relevant Professional Experience.

Complete one copy of Form 2 for each of your waste site cleanup decision making positions. Use discrete time periods for each of your positions; no one Form 2 position should overlap with any other position RPE or TPE). Make copies of this form as needed.

Describe your most recent position first, then work back in time, numbering them consecutively in the upper right hand box on page 1.

In order to obtain as full and as accurate a description of your decision making responsibilities as possible, the Board expects you to regard the term "position" as a set of particular waste site cleanup responsibilities, rather than an organizational rank or title. Using this definition, your waste site cleanup decision making position responsibilities may have changed for a variety of reasons while formal titles or rank stay the same, resulting in more than one "position".

> *What is a "position"? Could you give some examples? How many Form 2s should I fill out?* While there is no regulatory definition for a "position", Form 2 focuses upon a set of particular waste site cleanup responsibilities, not simply applicants' organizational rank or title. Some applicants' responsibilities may have changed over time, even thought their titles have remained the same. Those applicants may choose to describe multiple positions, describing the most recent position first, then working back in time. Other applicants may have been exercising the same set of responsibilities over an extended period of time. These applicants may choose to describe their responsibilities as one position.

You are urged to provide enough information to the Board so that it can make an informed evaluation of your decision making responsibilities over time. If your decision making responsibilities have changed over time, the Board expects that you will submit multiple Forms 2 so that you may accurately describe those changes in responsibilities.

Provide the general information requested about the position, including name and telephone number of your supervisor.

The question regarding average number of hours worked *does not* refer to the number of hours doing waste site cleanup work; it refers to the number of hours in the position. If you worked in the position for an average of less than 20 hours per week, list the average number of hours that you worked.

If the Board has some question about whether I have the 20 hours per week doing sites work. will the Board examine time sheets to make sure I worked on sites that often? First, it is important to note that the Board's question regarding average hours per week does not refer to number of hours doing sites work; it refers to the number of hours in the position as a whole, including but not limited to sites work, non-site environmental work, and related administrative work. Second, if the Board has questions about any of the information on the application. it will begin its search for information using the resources made available to it within the application process (e.g., the applicant, supervisors. references. etc.). If the questions are answered to the Board's satisfaction, it will not proceed further. If the questions are not, the Board can choose to seek additional information.

Do not pro rate you experience on Forms 2 unless specifically directed to do so by these instructions. According to the Board's regulations, applicants who demonstrate that they meet the requirements for waste site cleanup decision making will receive credit for the entire time period: even if that position also contains additional responsibilities that are not related to hazardous waste site assessment, containment or removal.

I work at my position 60 hours a week. and I can document that time. Can I receive additional years of credit for working more than 40 hours per week and. for example. earn my five years of Relevant Professional Experience in 3 years? No. If an applicant works 60 hours in a week. even at two different jobs. they get credit for that one week of work

Include a short description of your field(s) of expertise for this position. The Board will evaluate your suitability to become as LSP in part upon your own definition of your field or fields of expertise. While the Board does not require any applicant to possess a predetermined breadth or depth of knowledge in the assessment, containment or removal fields, it will closely examine your application and supporting materials to ensure that you have sufficient expertise within your field or fields of expertise to render waste site cleanup activity opinions.

Form 2 then asks four questions regarding the nature of your waste site cleanup decision making responsibilities in this position. Answer these questions thoughtfully and carefully. The Board will look for supporting information in other parts of the application to ensure that you have exercised sufficient decision making responsibilities in a proficient manner. Be as specific as possible in your answers. Use the first person singular whenever appropriate.

Question d asks you about the level of responsibility and independent judgment you exercised in this position. The Board recognizes that waste site cleanup decision making experience may consist of work than includes the contributions of others in reaching decisions on waste site cleanup activities. Applicants must demonstrate that they have been an active participant and a principal decision maker, as required in the regulations.

How do I gain experience to qualify as an LSP if the LSPs are the ones making the decisions at sites? LSPs are required by law to issue waste

site cleanup activity opinions, which are required at certain milestones during activities at a site. These opinions are based on a series of actions and decisions by individuals and teams of experts. While it is hypothetically possible for a firm or client to reserve all active participation and principal decision making at sites solely to LSPs, in practice LSPs issuing the opinions depend significantly upon others' decision making experience.

At the bottom right of page 3, list the number of years and months in this position. If you worked in the position for an average of less than 20 hours per week, you must *pro rate* your experience: divide the average number of hours you worked per week by 20 and multiply that fraction times the number of months you were in this position.

How do I handle a leave of absence? Applicants are responsible for demonstrating that they have the minimum number of years of experience for receiving a license. Applicants are individually responsible as professionals to represent to the Board as accurately as possible the amount of experience they have. Applicants have choices about how to inform the Board that they have a gap in service: the "duration" lines in Form 2 , separate Form 2s for experience on either side of the gap, and/or Form 5 to explain these circumstances.

Note that the Board's regulations do not allow any educational substitutions for Relevant Professional Experience. In order to claim employment as a teacher or as a student as Relevant Professional Experience, the applicant must demonstrate that the responsibilities of that position meet the requirements for Relevant Professional Experience in the same manner as any other position. In addition, there are further restrictions upon students' ability to claim Relevant Professional Experience (see the regulations).

FORM 3
RELEVANT PROFESSIONAL EXPERIENCE
PRACTICAL EXPERIENCE
PROJECT DESCRIPTIONS

Form 3: Practical Experience: Through descriptions of between 5 and 10 assessment, containment and removal projects, your Forms 3 illustrate your Practical Experience and the breadth and depth of your waste site cleanup experience. Includes questions regarding the application of your technical expertise, the nature and extent of contamination, and your decision making role in the project.

Complete at least five but no more than ten copies of Form 3 describing your application of technical knowledge and skills in assessment, containment or removal projects. In the upper right hand box of page 1, number each project description.

Submit at least 2 project descriptions for each Form 2 position.

You should select projects that best describe your experience. and that allow the Board to evaluate your understanding of your field or fields of expertise. You do not have to list projects in all areas of waste site cleanup; you should carefully select the projects you describe so that they accurately convey your understanding of the assessment, containment or removal work that you do. The Board will look for supporting information in this and other parts of the application to ensure that you have exercised sufficient decision making responsibilities in a proficient manner.

> *How does the Board define a "project"? Can I separate a site into operable units or separate a site into phases and claim each as a separate project?* Applicants are limited to 5 to 10 projects to demonstrate their practical experience. Applicants are free to describe the sites work that they believe best demonstrates their practical experience. The regulations do not prohibit applicants describing discrete units or phases at a site as separate projects.

You may choose to describe projects that you believe are equivalent to assessment, containment or removal projects, as specified in the LSP regulations. If you do so, explain why you think those projects are equivalent to assessment, containment or removal projects using Form 3 and Form 5.

> *If my main position responsibilities appear to be something other than sites assessment, containment and removal (e.g., landfill assessment, asbestos removal, residuals management) will that experience still count for relevant professional experience? If I come from this background how do I demonstrate that this experience qualifies as relevant professional experience?* Relevant professional experience consists of both waste site cleanup decision making experience and practical experience. The definition of waste site cleanup decision making experience (which applicants will demonstrate in Form 2 requires that an applicant's assessment. containment or removal responsibilities were an integral component of his or her position. Applicants whose responsibilities appear not to be assessment, containment or removal must demonstrate that they meet the regulatory requirements. Form 5, the Optional Statement, can be used by all applicants to provide information that may not fit into the other forms.

Provide all information requested about the project, including identification of the client. Do not leave any lines or boxes unfilled. Be aware that while listing a client as "confidential" does not render your application incomplete, the Board's ability to verify the information you provide or to obtain further information regarding your project may be impaired if you choose to refrain from listing a client.

FORM 4
RELEVANT PROFESSIONAL EXPERIENCE
SUMMARY OF POSITIONS

Form 4: Summary of RPE positions: Summarizes the positions from Form 2. Here you will claim your years and months of Relevant Professional Experience .

Complete Form 4 to summarize the number of years of waste site cleanup decision making experience. You are not required to fill in each row.

Using the position numbers from your Form(s) 2, provide a short description of each position; then list the elapsed time for each position in years and months.

Then list the numbers of the Forms 3 (project descriptions) that correspond to each position, and indicate the month and year that each project started and finished (you can bring that information forward from the project duration portion of each Form 3.)

Total the elapsed time for all claimed Form 2 positions in the box at the bottom of the Form. That resulting number is the total time you are claiming as Relevant Professional Experience.

FORM 5
OPTIONAL STATEMENT OF QUALIFICATIONS

Form 5: Optional Statement: You may write a statement up to 250 words in length in Form 5 providing additional information in support of your demonstration of Relevant Professional Experience. For guidance see the definition of Relevant Professional Experience in the regulations.

FORM 6
TOTAL PROFESSIONAL EXPERIENCE
POSITION DESCRIPTIONS

Form 6: TPE positions: Describes additional scientific, engineering, or environmental positions to demonstrate that you meet the Board's requirements for Total Professional Experience.

> *If I have more that 8 years of Relevant Professional Experience and am on the Standard Track, do I have to fill out any Form 6s?* That decision is at the discretion of the applicant. If you choose not to fill out any Forms 6, include one in your packet and mark it NA. However, be sure that you have the number of years of Total Professional Experience needed for your track in box 4 on Form 7 .

Complete one Form 6 for each of your environmental, scientific. or engineering positions. *Do not include any positions you already claimed as Relevant Professional Experience in your Forms 2.*

> *Should I list my Relevant Professional Experience positions on Form 6 to claim them as Total Professional Experience?* No. Form 7, box 1, provides a way for you to carry forward your Relevant Professional Experience into the calculation for Total Professional Experience. (That is done because, as defined in the regulations, Relevant Professional Experience is a subset of Total Professional Experience.)

Note that the regulations place specific conditions upon any claims for substitutions for Total Professional Experience, and that claims for Total Professional Experience during a period of full-time education are significantly restricted by the LSP regulations.

> *Is teaching experience considered by the Board to be total professional experience?* If the work done meets the regulatory requirements, it will be counted. Applicants who want to claim teaching as total professional experience must demonstrate that they meet the requirements for total professional experience.

Make additional copies of your Form 6 as needed. Describe your most recent position first, then work back in time. numbering them consecutively in the box in the upper right corner of Form 6.

Provide all the information requested. If you worked in a position for an average of less than 20 hours per week, list the average number of hours that you worked. At the bottom right of each Form 6 list the number of years and months in this position. If you worked in the position for an average of less than 20 hours per week, you must *pro rate* your experience: divide the average number of hours you worked per week by 20 and multiply that fraction times the number of months you were in this position.

FORM 7
TOTAL PROFESSIONAL EXPERIENCE
POSITION DESCRIPTIONS

Form 7: Summary of TPE positions: By adding together the amount of time you spent in positions performing Relevant Professional Experience (Box 1), the time you spent in positions performing Total Professional Experience (Box 2), and any credits for education (Box 3) , this form summarizes the number of years of Total Professional Experience claimed (Box 4).

Note that the form automatically counts your claimed Relevant Professional Experience from Form 4 as Total Professional Experience.

The Board's regulations grant educational credit for Total Professional Experience only under specific limited circumstances. Generally, credit may be claimed only for completed degrees,;

but may not be claimed for degrees used to meet the minimum requirements for the Standard or Alternate Track.

If you claim the credits, attach original documentation that you received the appropriate degree immediately following Form 7.

If you are in the Standard Track, a degree for which you claim credit must be from the list of qualified degrees in Appendix A. For the Alternate Track, credit may be claimed for any AA, baccalaureate or higher degree. A maximum of two years credit may be claimed.

SUMMARY OF REFERENCES
PROFESSIONAL REFERENCE FORMS

Summary of References: Lists the names, addresses and telephone numbers of the four people that are submitting references on your behalf.

Professional Reference Forms: The application package contains 4 professional reference forms. 4 envelopes are also provided, one for each reference form. You will send one reference form and one envelope your referents. They will complete the forms, seal them in the envelopes provided, and return them to you. You then will submit the four sealed references as part of your completed application.

For each of the three page reference forms fill in the information about each referent in Box 1. Then fill in the waiver of liability information in box 2.

You must choose whether or not to waive any claims against the referent and whether or not to waive any rights to review the reference's submittal. Sign and date box 2 on the line provided.

> *On the waiver statement on the reference forms, what will happen if I don't choose either "do" or "do not"?* As long as the rest of the reference form is complete, the Board will consider the reference information in its application review.

To each referent send the following items:

- the appropriate three page reference form
- the two page description of the LSP program provided in this package
- the return envelope with the signature line on the back flap of the envelope.

Be sure to arrange for each referent to return *to you* their completed reference form sealed inside the return envelope with the referent's signature across the back of the envelope. You will then submit these four sealed envelopes as part of your application.

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end of Application Instructions

Appendix I

Audit Implementation Plan, January 27, 1994

AUDIT IMPLEMENTATION PLAN

Fiscal Years 93-94 and 94-95

January 27, 1994

For Public Release

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Authors

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I. Introduction

A. Purpose of this Plan

This Audit Implementation Plan describes:

- the **Goals** of the Waste Site Cleanup audit program;
- the **Roles and Responsibilities** of the Department staff, sections and bureaus responsible for implementing the program;
- the **Process** auditors will follow when conducting audits and related activities; and
- the **Measures of Success** the program will use to monitor its effectiveness;

This plan should be viewed as a working draft that begins to structure the audit program. This plan will be modified accordingly when problems implementing it arise. This plan is not intended to create any substantive or procedural rights.

B. Origin of the Audit Program

The 1992 Amendments to Massachusetts General Law Chapter 21E shifted the responsibility to proceed with response actions from the Department to private parties who engage License Waste Site Cleanup Professionals (LSPs). That legislation also mandated that the Department audit a sufficient number of private response actions not overseen by the Department to ensure compliance with M.G.L. c.21E and the MCP. Each year the Department must, at a minimum, audit 20% of the sites subject to annual compliance assurance fees.

Pursuant to that mandate, the Department promulgated regulations which generally set out procedures the Department will follow when conducting audits and compliance assistance that results from audits. Section V describes those procedures and how the Department intends to implement them in more detail.

C. Audits as Part of the Compliance Continuum

Audits constitute only one of the many regulatory tools the Department can use to review and ensure compliance with the MCP. Other compliance tools include:

1. **Permit Review** consisting of review and processing of permit applications;

2. **Direct Oversight** through review and approval of response actions;

3. Response Action **Deadline Compliance Tracking** including tracking the timely submittal of response action reports;

4. **Site Inspections** allowed by permit, waiver, statute or consent;

5. **Investigations** in response to release notifications and referrals from within the Department, other government agencies or the public;

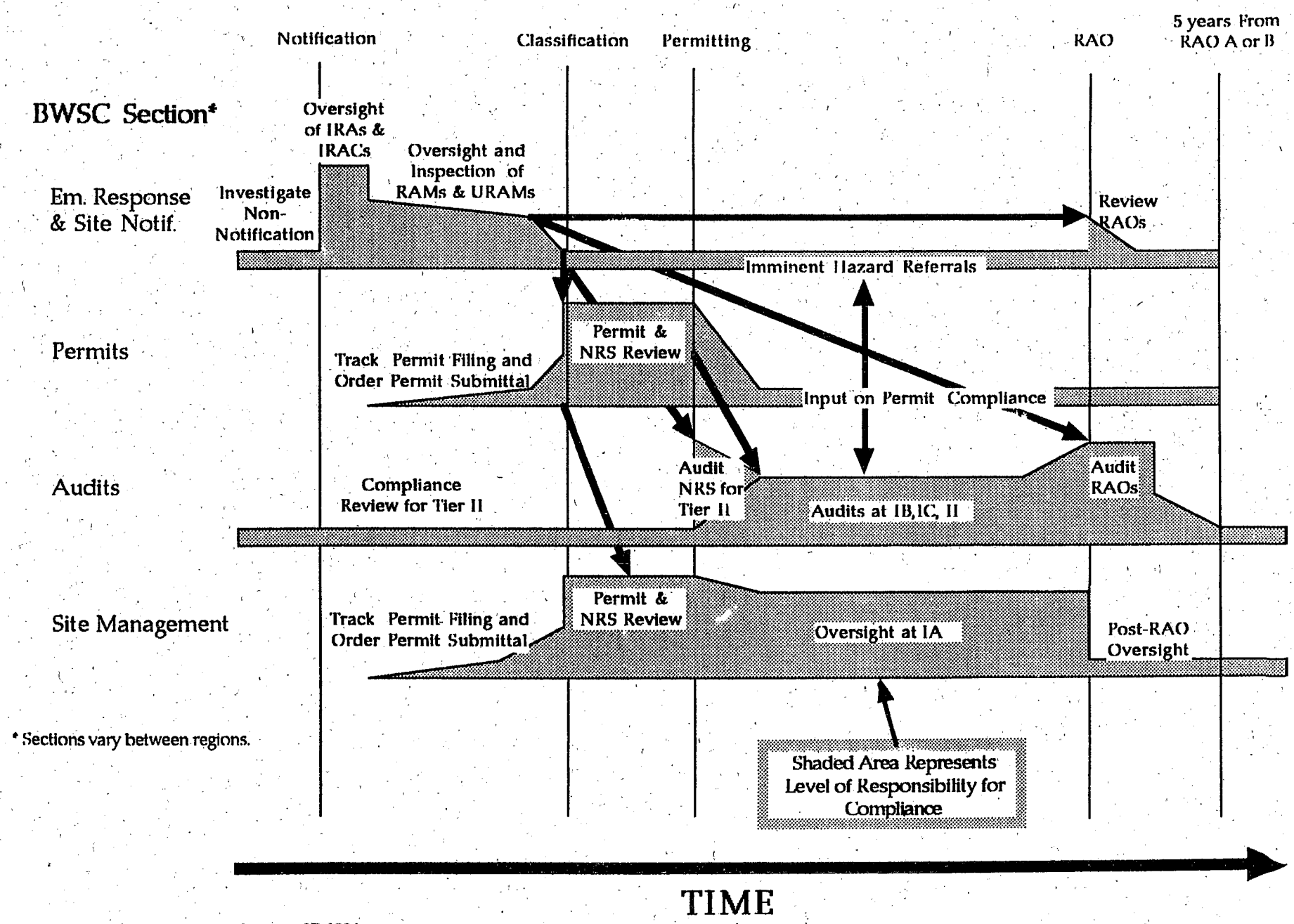
6. **Enforcement Actions** including the issuance of notices of noncompliance, orders, penalty assessment notices, revocation of permits and referrals to the Attorney General's office or other law enforcement authorities; and,

7. **Publicly-funded Response Actions** including the issuance of Notices of Response Action and cost recovery actions.

Significant overlaps exist between audits and the listed compliance activities. The listed activities should not be viewed as rigid categories into which a particular Department action must be fit. Rather, the listed activities should be viewed as an overlapping continuum of actions a number of which can be applied in the same circumstance. Figure 1 presents a representation of the BWSC Compliance Continuum from the time a reportable release or threat of release occurs until a response action outcome has been reached. The shaded areas represent the relative amount of responsibility each of the BWSC regional sections have for ensuring compliance at a particular point in the MCP process.

BWSC COMPLIANCE CONTINUUM

Figure 1



January 27, 1994

Figure 1 demonstrates the overlap of compliance activities and responsibilities for compliance within BWSC. For instance, failures to notify may be identified by either the Emergency Response and Site Management (ER&SN) section during an investigation of a referral from local officials or the Audit section while auditing a Tier II submittal. The ER&SN section may review, approve and inspect a RAM, the permit staff may prioritize that site for permitting because of the nature of the RAM and the audit staff could ultimately assess the effectiveness of the RAM after an RAO has been submitted. In that instance, a visit to confirm compliance would be called a site inspection for ER&SN staff, permit review for permit staff and an audit for audit staff. An auditor may rely upon recent site inspections by ER&SN or permit staff to complete necessary audit activities.

The relationship between audits and other compliance activities should be viewed as a two-way street. Other compliance activities can result in the flagging of a site for audit while auditors can refer a site to other Department staff for appropriate response action. For instance, ER&SN staff may flag a site for audit after responding to an imminent hazard referral. Auditors may refer certain imminent hazards to the ER&SN staff.

D. Activities Considered to Be Audits

As a result of the overlap between the various compliance activities, the type of compliance activity being conducted by the Department will not determine whether such activity is an audit. Nor will the Audit program try to count every compliance activity as an audit. Rather, a compliance activity will be considered an audit when the Department:

- follows the procedures for audit described in Subpart K of the MCP, such as sending a Notice of Audit and making Audit Findings;
- follows the procedures for implementing Subpart K described in this plan and audit guidance developed pursuant to this plan; and,
- is not conducting or overseeing the response action at the time of the audit.

Compliance activities which solely review procedural compliance with the MCP will not be considered an audit. For instance, administrative completeness review consisting

solely of a review to determine whether necessary documentation has been submitted and completed will not be considered an audit. Also, tracking of compliance deadlines using the Department's databases will not be considered auditing.

II. Goals, Standard of Care and Ethic

A. The Four Major Goals of the Audit Program (known as the 4C"s), as well as goals for BWSC's entire compliance program, are to:

1. Achieve an increasing level of **Compliance** with the MCP to ensure protection of health, safety, public welfare and the environment overall.

2. Ensure the **Consistency** of audits and compliance activities within and across regions.

3. Establish the **Credibility** of the audit and compliance programs to the public, Licensed Site Professionals, the regulated community and the Department.

4. Meet the **Commitment** to audit 20% of sites subject to compliance fees.

The following section discusses these goals in more detail.

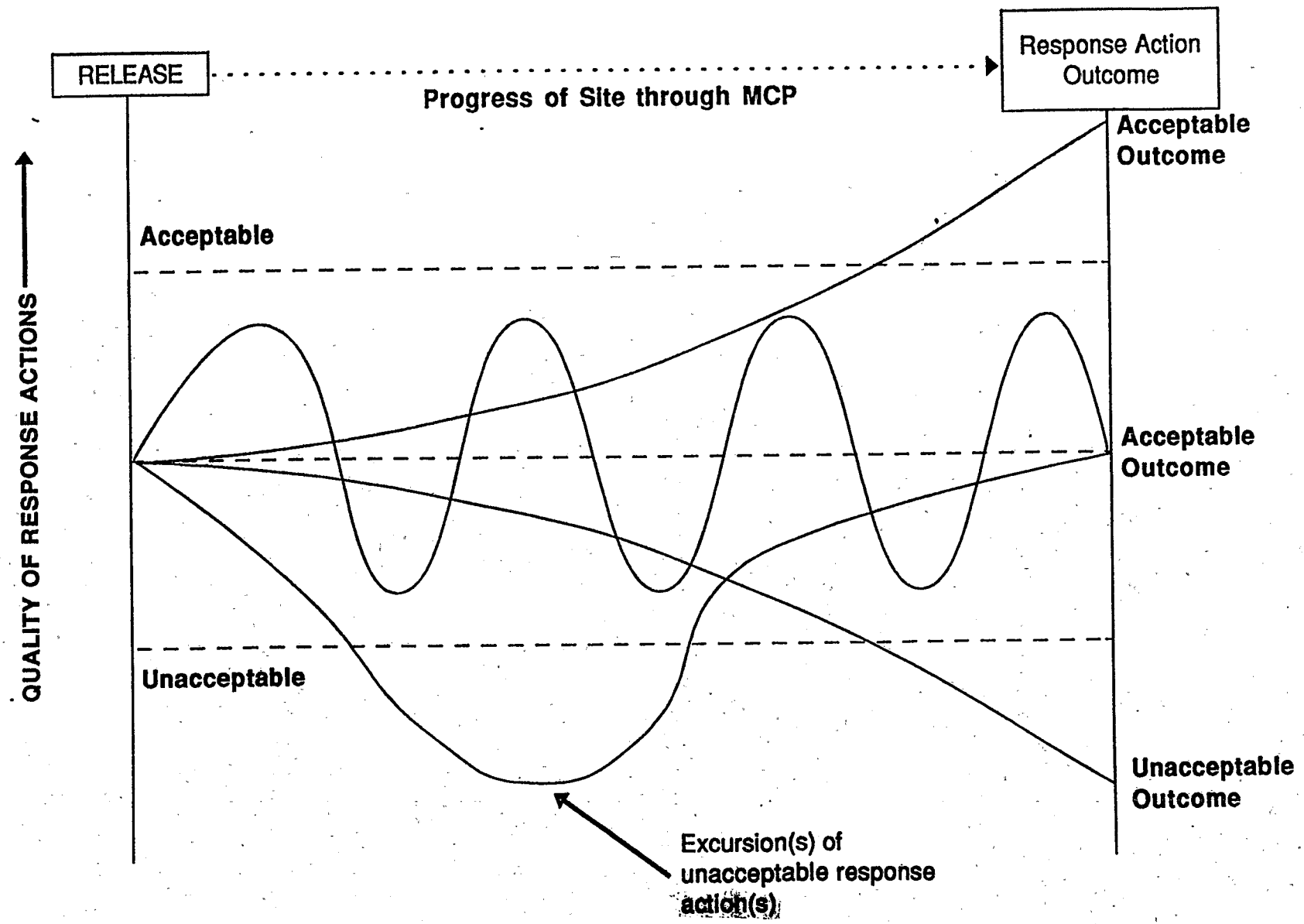
Compliance

The audit program as part of BWSC's entire compliance program seeks to achieve an increasing level of compliance with the MCP over the course of time for all response actions or sites. The audit program will primarily focus on compliance with the MCP after a site has been scored or otherwise classified. The possibility that a response action or site may be audited will cause RPs, PRPs or Other Person to perform response actions in compliance with the regulations to avoid any enforcement actions that could result from an audit and costs to redo response action to achieve compliance.

Figure 2 contains an idealized representation of compliance scenarios. As a site progresses through the MCP process, the audit and compliance programs will seek to establish the acceptable and unacceptable range of

Figure 2

Compliance Scenarios



quality of response actions. Without some possibility of audit, response actions may fall out of the acceptable range, following the lower curve depicted on Figure 2. BWSC will seek to perform enough audits to ensure that at a substantial majority of response actions RP, PRPs, and Other Persons self-regulate themselves with the assistance of LSPs and over time achieve compliance, following the upper curve in Figure 2.

The audit and compliance programs will particularly focus on those response actions and sites which fall below the acceptable range of quality. In particular, Auditors will seek to identify violations and deficiencies which, if not remedied, pose the greatest risks to health, safety, public welfare and the environment. Audit selection procedures attempt to target groups of sites and response actions where violations and deficiencies pose the greatest risk to health, safety, public welfare and the environment and where the most substantial violations and deficiencies have been identified in the past.

The audit program will assist responsible parties return to and remain at an acceptable level of compliance through the use of compliance assistance under Subpart K. Auditors will seek to identify areas where responsible parties and LSPs need further guidance to consistently achieve an acceptable level of compliance,

Many auditors have in the past served as project managers responsible for ensuring compliance at individual sites at each approval step. In contrast, an auditor serves as a member of a team striving to achieve an increasing level of compliance at all sites subject to audit. Of course, auditors must focus on individual sites when conducting audits. In auditing individual sites, audit staff will seek to identify the most substantial violations and deficiencies in the group of sites audited to provide examples to other RPs, PRPs and Other Persons who have not been audited. When making audit findings, auditors should not only seek to guide the RP, PRP or Other Person subject to the audit but should also guide others who may review that audit finding.

The results of random audits will be used to track whether the audit and compliance programs achieve an increasing level of compliance over time.

Consistency

BWSC staff will seek to achieve as high a level of consistency as practicable between the audit and compliance actions conducted by different BWSC staff and between different regions. For audits, this consistency includes consistency in:

- the criteria used to select sites for audit,
- the forms and correspondence used to initiate and complete an audit,
- the minimum standard of evaluation for audits,
- the minimum level of audit evaluation activities conducted,
- the guidance used to evaluate response actions and sites,
- audit findings,
- requirements to correct violations and deficiencies,
- compliance assistance procedures.

Credibility

To attain credibility, the Audit program must meet the varying expectations of the public, the regulated community, Licensed Site Professionals and the Department for the redesigned 21E program.

The December 1990 Waste Site Cleanup Program Improvements Report set forth the basic principles of the redesigned 21E program and called for a vigorous audit and enforcement program. The public and regulated community expect audits to ensure private sector compliance with applicable requirements, to operate as efficiently as possible and to serve as part of a program that encourages private sector responses to the maximum extent possible. The regulated community also expects audits to have a definite beginning and end, to follow the regulatory procedures and to be limited in time after an RAO.

LSPs expect to exercise professional judgment when rendering opinions regarding the adequacy of assessments, appropriateness of cleanup decisions and completeness of response actions implemented. If LSPs

find that they can never render opinions without direct involvement of audit or other Department staff, the audit program will fail because the Department lacks sufficient staff to audit each site.

The Department expects the audit program to confirm private sector compliance with the MCP, to identify portions of the new regulations that cause confusion, result in inconsistencies or warrant the development of further policies, and to protect against abuse of the discretion the new regulations provide.

To achieve all those expectations, the Audit program will conduct frequent site inspections and avoid simply reviewing reports using checklists. Audit Findings will be made publicly available so that the public, LSPs and the regulated community all can review whether the audit program achieves their expectations.

4. Commitment to Achieving the 20% Target

This Audit Plan seeks to achieve the statutory goal of auditing 20% of all sites and response actions subject to annual compliance fees. BWSC will make a good faith effort to see that audits following the procedures of Subpart K of the MCP are conducted at 20% of all sites and response actions subject to annual compliance fees. In addition, the audit program will conduct audits of response actions and sites not subject to annual compliance fees as part of an overall effort to promote compliance with 21E and the MCP. Compliance activities other than audits pursuant to Subpart K will also be tracked and reported.

B. Minimum Standard of Evaluation for Audits

The Minimum Standard of Evaluation for Audits sets forth four basic evaluations that experienced Department staff and consultants believe to be necessary to determine the adequacy of response actions. To achieve that Minimum Standard of Evaluation, an audit must evaluate:

1. the sufficiency, appropriateness and validity of data upon which response actions are based,
2. the reasonableness of interpretations of site information and the adequacy of the selected response actions,
3. the achievement of compliance with the applicable requirements of the MCP with particular emphasis on

the achievement of the performance standards of the MCP,

4. the consistency of the interpretations and response actions with the Best Response Action Management Approach (BRAMA).

The Audit Findings Form that will be completed during each audit contains sections to complete the evaluations of data, interpretations, performance standards and BRAMA. Audit Guidance tailored for the individual response actions being audited emphasizes performance standards and references relevant regulatory sections, policies and guidance. Standards the Department uses to evaluate the sufficiency of response actions will evolve over time through discussions between the Department and LSPs as each gains experience with the 1993 MCP.

C. Confidentiality

Release of certain information related to the audit program could jeopardize the effectiveness of the program in assessing compliance with 21E and the MCP. Audit Guidance may have auditors focus on limited aspects of response actions. If Audit Guidance becomes publicly available, RPs, PRPs and Other Persons could tailor response actions to achieve only those aspects audited by DEP. Department enforcement actions, real estate transactions and the actions of RP, PRPs or Other Persons may be affected if such persons have prior knowledge that a site will be audited or of the specific criteria the Department uses to select sites for audit. As a result, Auditors and other Department staff must keep confidential portions of this plan, the Audit Guidance, lists of sites to be audited and auditing criteria confidential. General audit strategies, however, will be communicated to the public from time to time. The Department will also tell the public which portions of the MCP it considers particularly critical and of course will dedicate more audit resources to those areas.

III. Role and Responsibilities In Implementing the Audit Plan

A. Regional Audit Staff

The Audit program will be implemented by regional offices with support from the Boston office. All staff directly conducting audits will be located in the regions. All auditors will be supervised by the Audit Section Chiefs and the Regional Engineers for Waste Site Cleanup. A total of 18 full-time equivalents have been dedicated to the

program in the regions. The audit staff has been allocated based on the expected number of audits per region. The allocation of auditors assumes that the percentage of confirmed disposal sites represents a good estimate of the percentage of sites that will be subject to audit. Figure 3 breaks down the number of confirmed sites by region in August 1993. The totals in Figure 3 include all priority, non-priority (including waiver sites) and unclassified sites except federal superfund sites and federal facilities.

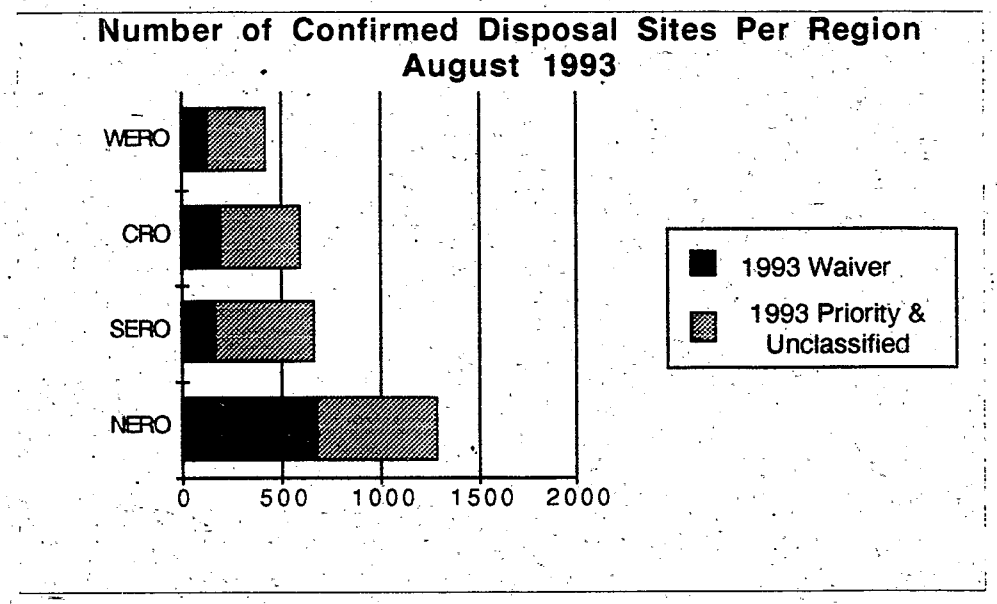


Figure 3

Figure 4 shows how the audit staff will be allocated between the regions. Should a greater percentage of sites be subject to audit in a region, a greater number of audit staff may be required in that region. For instance, as Figure 3 indicates non-waiver confirmed sites (gray bar), which will be audited more frequently than waiver sites, makeup a greater percentage of confirmed sites in Central, Southeast and Western region compared to the Northeast region. Future estimates of audit staff needs will be based on how many sites and response actions and sites are subject to audit. FTEs will in many instances be divided between BWSC staff; some auditors will continue to be project managers. Having auditors perform site management at some sites can broaden auditors experience and technical skills.

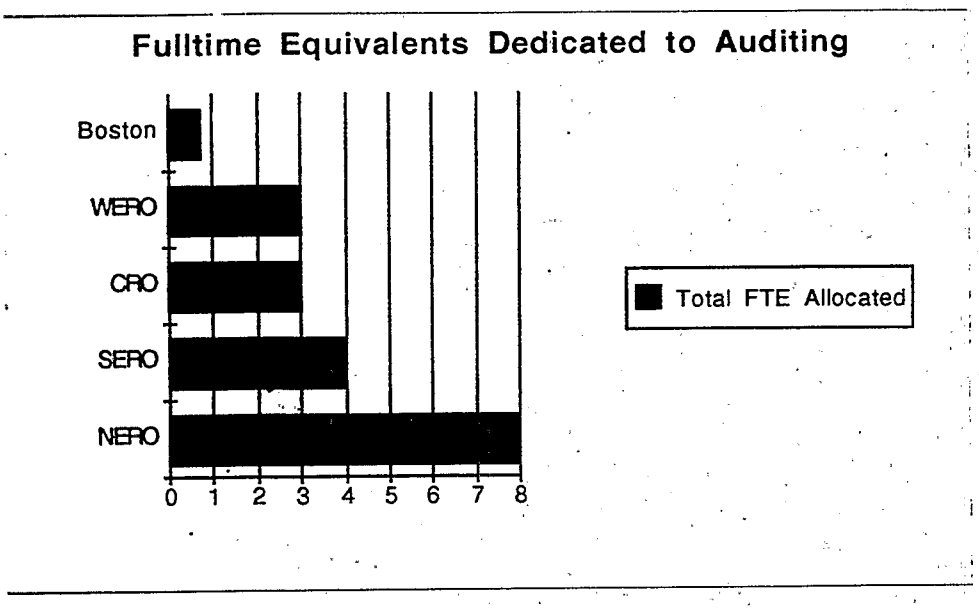


Figure 4

The regional audit staff will select sites for targeted audit based on the criteria developed by the audit team. Boston will assist the regions in this effort by developing reports containing relevant information from BWSC databases. Regional staff will also conduct audits of sites selected entirely at random by the Boston office.

The Audit Section Chief has the responsibility of assigning sites to auditors, overseeing all audits, approving audit findings and reviewing the amount of time spent on each audit. When an auditor completes the required audit activities, the auditor will complete the standard audit findings form and make recommendations for the outcome of the audit to the Audit Section Chief. The section chief reviews the findings for consistency with audits conducted by other auditors and other regions and approves those findings. Initially, regional engineers will also review audit findings. Audit finding forms will be forwarded to the Boston Audit coordinator once finalized. Such forms become public information when the Notice of Audit Findings is issued or when Compliance Assistance has been completed, whichever is later.

Auditors will be responsible for pursuing enforcement for violations discovered during the course of an audit. Other regional staff will have responsibility for pursuing violations they become aware.

B. Other Regional BWSC Staff

ER&SN (including Risk Reduction in NERO) and Permitting Staff will have appropriate roles in auditing based upon their responsibilities for compliance activities. Some audits will be conducted by staff outside the Audit and Site Management sections that will conduct most audits.

C. Boston Audit Coordinator

The Boston Audit Coordinator has primary responsibility to co-ordinate the development, implementation, operation and review of the audit program. That responsibility includes:

1. ensuring the Audit Implementation Plan has been reviewed and supported by the regions, BWSC Boston, the Assistant Commissioner and other bureaus,
2. organizing Audit Team meetings,
3. working with the Audit Team to develop the targeted audit selection criteria and ensuring review of those criteria by BWSC Boston, Assistant Commissioner, Deputy Commissioner for Operations and other bureaus,
4. assisting regions to identify sites which meet targeted criteria and conducting the random site selection process with assistance from MIS,
5. overseeing the development of Audit Guidance, standard audit correspondence and forms by members of the Audit Team,
6. serving as a sounding board for audit section chiefs when new or unique questions arise during audits,
7. reviewing audit findings, identifying major inconsistencies between audits, and raising and resolving those inconsistencies with the Audit Team and/or the regions,
8. preparing an annual report of the progress of the Audit program in meeting its goals;
9. co-ordinating and/or conducting internal training,
10. conducting external training, communicating general audit program priorities and responding to general questions and concerns regarding the audit program,
11. consulting with the Audit Section chief when an audit indicates that an enforcement referrals to AG's office may be warranted.

D. The Audit Team

The Audit Team consists of the Audit Section Chiefs, the Boston Audit Coordinator and representatives of BWSC Policy and Program Development Staff, the Bureau of Resource

Protection, the Bureau of Waste Prevention and the Office of Research and Standards.

The Team ensures consistency in the initiation, performance and findings of audits as spelled out in the Goals. To achieve that role, the Team develops and revises standard forms, correspondence and Audit Guidance for the initiation and performance of audits. The Audit Guidance also sets forth standard evaluation points that auditors review when making findings. Team meetings serve as forums to peer review audits and audit findings, to discuss issues that arise during audits and to develop common solutions. The Team will also plan and develop internal training and workshops for audit staff. The Team will also discuss and ensure the consistency in the enforcement actions undertaken as a result of audits.

After the initial implementation phase of this Plan, the Audit Team will draft written technical advisories that resolve significant inconsistencies and issues that consistently arise during the conduct of audits. Major issues that warrant the development of policies or regulations will be referred to the BWSC Planning and Program Development Section. A discussion paper will further elaborate on the role of the Audit Team in developing technical advisories.

E. Roles of Other Bureaus

Other Bureaus have taken keen interest in particular aspects of the audit program and have indicated a desire to remain involved in those aspects as the program is implemented and becomes fully operational. BRP and BWP will develop training for both audit staff and LSPs regarding regulations of particular concern during waste site cleanups. When requested by other bureaus, BWSC will seek to co-ordinate its audit activities with any enforcement or inspection activities the other bureaus may decide to conduct that relate to the response actions being audited.

The Office of Research and Standards, the Office of General Counsel and Lawrence Experiment Stations will provide services in their areas of expertise.

IV. The Audit Selection Process

Sites will be targeted for audit using either a random or a targeted selection process.

Random auditing creates an incentive for a greater number of people to comply with the MCP when compared to strict prioritization by creating uncertainty that any site or response action may be audited. Random audits will also serve as a control group that allows DEP to report how successful the new MCP is working rather than concentrating DEP resources only where problems would be expected. For the purposes of this plan, random auditing refers to the random selection of response actions, sites or RPs for audit from Selection Groups. Groups will be selected to maximize the ability to use MIS to select sites and minimize the need for manual review of files. The Boston Audit Coordinator will conduct the random selection for sites. Regions may also select additional sites for audit using random selection methods.

For the purposes of this plan, **targeted auditing** refers to the selection of response actions, sites or RPs for audit based on a screening of site information using preexisting targeting criteria. The purpose of targeted auditing is to use more DEP audit resources on those response actions, sites and PRPs of greatest concern and allow use of regional knowledge and information. The regional and Boston offices will develop criteria to use to target sites for audits through the Audit Team. Those criteria will be reviewed by the Assistant Commissioner and the Deputy Commissioner for Operations. Under this plan the regional offices will ultimately select the sites to be targeted for audit. Boston will review site selection information to identify general trends in regional selection and to determine how effectively the overall audit strategy has been implemented.

The new MCP has been developed with the expectation that private parties will be able to rely upon the opinions of LSPs when making real estate transactions and that the Department will focus its resources on those sites that pose the greatest risk. As a result, the Department does not plan to target sites when requested by parties to real estate transactions.

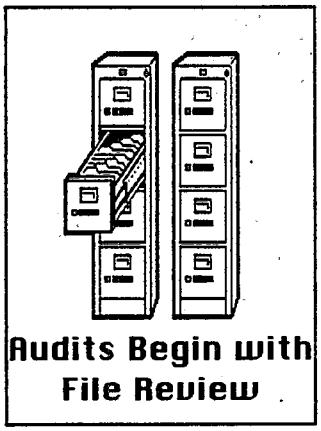
Sites may be targeted for audit based on the LSP or consultant who performed the work provided certain documentation exists. The audit regulations implicitly permit targeting sites on this basis. The regulations allow targeted audits even after five years from an RAO A or B if the Department can establish a pattern of noncompliance under 310 CMR 5.00 by the person who managed the response actions. A pattern of noncompliance consists of either two separate violations of a single regulation or three

separate violations of different regulations. In the first set of audits of work under the 1993 MCP, no sites will be targeted based on the LSP who performed since LSPs have just obtained their licenses and no documentation exists of their work. Whenever sites have been targeted based on the LSP or consultant of record, Notices of Audit must be sent to each RP, PRP or Other Person whose site is being audited and the RP, PRP or Other Person will be responsible for implementing any actions to remedy deficiencies or violations. All referrals to the LSP Board must be made through the Assistant Commissioner.

V. Overview of Audit Process

A. The Audit

Figure 5 provides a general flowchart of the auditing process. Audits will generally follow three basic steps, information gathering, evaluation, and findings:



Information gathering will generally begin with a review of information contained within the regional files. When information gathering requires audit activities more extensive than a file review, the regulations require the auditor to issue a Notice of Audit that specifies the scope of the audit and the type of audit activities to be conducted. (The first Decision Box in Figure 5). Notices of Audit will generally be sent after an auditor has performed the initial file review. Auditors will also frequently include a request for missing information with the Notice of Audit. The initial response actions to be audited will generally be determined at the time a response action or site has been selected for audit. If a response action was the particular reason a site has been selected for audit, the

audit should focus on that particular response action.

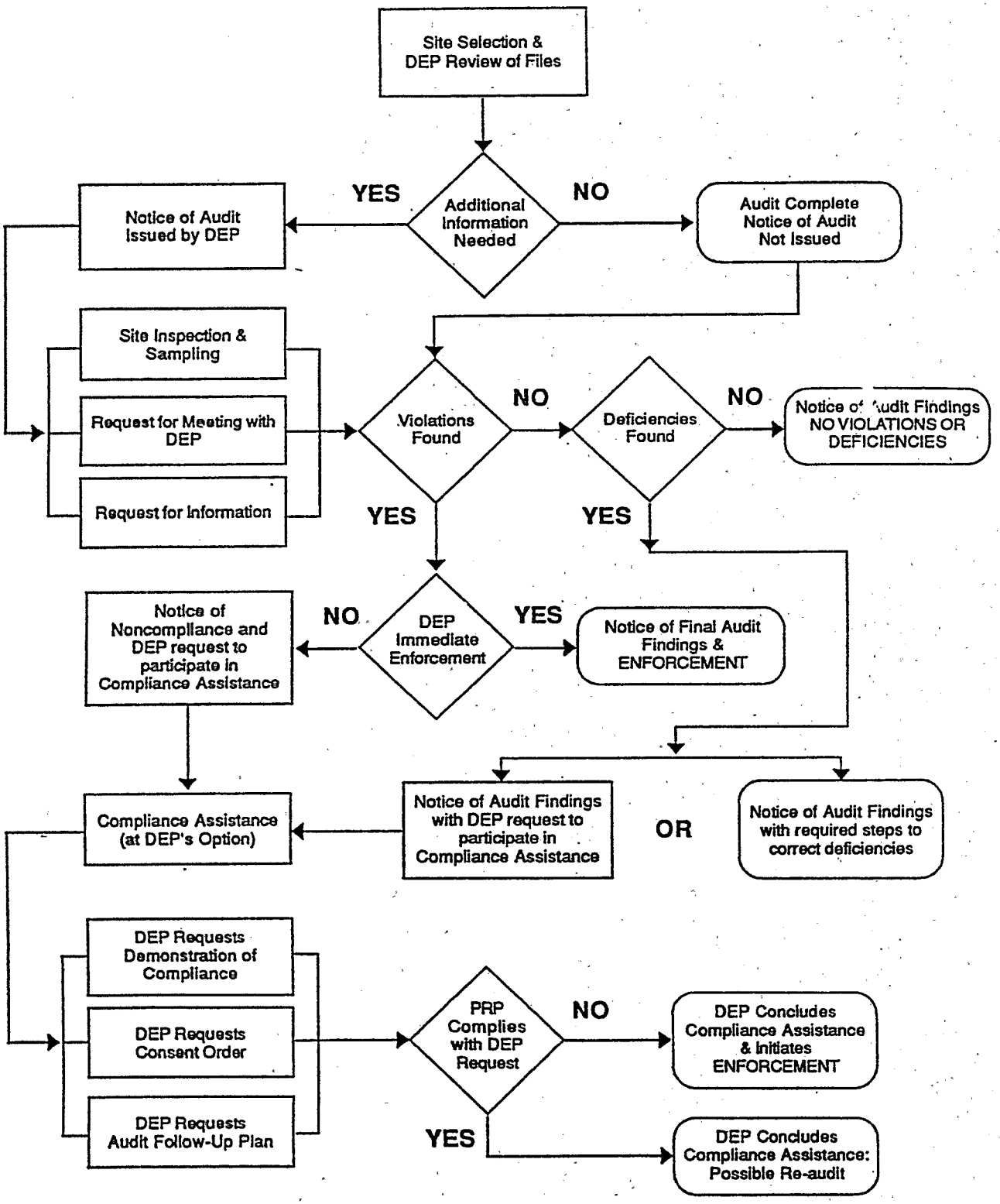
The Audit Guidance sets out the minimum level of audit activities auditors must undertake to complete an audit. Generally, that guidance requires a site visit/inspection in addition to a file review although the regulations do not require a site inspection. The guidance requires site visits/inspections to ensure that the audit program has a field presence that will create credibility for the program, identify glaring deficiencies in response actions and allow auditors the opportunity to be in the field. An auditor may rely on site inspections recently conducted by other BWSC staff. The general requirement that site inspections be performed will be reviewed after the first round of audits have been completed.

Field Inspections will ensure Auditors are not Just Paper Pushers

Information gathering focuses on obtaining the information necessary to complete evaluation activities and make audit findings. As part of information gathering, each auditor will complete the general site information portion of the audit findings form.

Evaluation focuses on compliance with the performance standards set forth in the Audit Guidance and meeting the minimum standard of evaluation for audits. The evaluation will be based on regulations, policies and guidance that applied at the time the response actions being evaluated were undertaken or documented. The Audit Guidance first lists the performance standard that response actions must meet to be sufficient under the MCP. The Guidance also contains minimum evaluation activities each auditor must perform as well as additional activities the auditor may conduct. That minimum level has been incorporated into the guidance to ensure a quality and consistency between audits necessary to create credibility for the program. Guidance also contains a

BWSC Audit Process



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listing of applicable regulations, policies and guidance that the Auditor can refer to for more detailed compliance questions. The auditor documents the results of the evaluation on the Audit Findings Form. The Audit Findings form also contains the evaluation for the minimum standard of evaluation for audits described in Section II.

Auditors use the results of their evaluations to make **Audit Finding** recommendations to the Audit Section Chief as to whether violations or deficiencies exist (Decision Boxes 2 and 3 in Figure 5). Violations will be considered to have occurred when an auditor can document a clear violation of DEP regulations. Deficiencies would include situations where a RP, PRP or Other Person has failed to follow DEP policy, technical advice provided by permit staff or BRAMA, or to provide sufficient technical justification. As the Department and LSPs gain more experience, deficiencies related to policies, BRAMA and technical justification may be considered violations. Recommendations auditors may make include findings that:

- no deficiencies have been found that warrant further Department action,

- deficiencies have been found and the Notice of Audit Findings should include a statement of specific steps to correct those deficiencies;

- deficiencies have been found and the Notice of Audit Findings should request that the RP, PRP or Other Person participate in Compliance Assistance,

- violations and deficiencies have been found and the Notice of Audit Findings should include a notice of noncompliance and a statement of specific steps to correct those violations and deficiencies,

- violations and deficiencies have been found and the Notice of Audit Findings should include a notice of noncompliance and a request that the RP, PRP or Other Person participate in Compliance Assistance,

- violations and deficiencies have been found and immediate enforcement actions should be taken or the matter should be referred to other Bureaus (Decision Box #4 in Figure 5).

The Audit Findings are documented on the Audit Findings Form by the Auditor and approved by the Compliance Section

Chief. Depending upon the seriousness of the violations and deficiencies identified during an audit, audit staff and the audit section chief may decide to meet with the RP, PRP or Other Person prior to making audit findings final. Unless compliance can be confirmed at or immediately after the such meeting, Compliance Assistance should be initiated and an Audit Follow-up plan should be required. An audit will be considered completed when the audit findings form has been signed by the Audit Section Chief. Initially the regional engineers will also review audit findings.

C. Compliance Assistance

Compliance Assistance will be initiated after an audit has been completed with the approval of the Audit Section Chief. This plan does not anticipate that each audit will require the use of compliance assistance. Compliance Assistance will also be combined with enforcement when violations do not warrant immediate, independent enforcement actions. The Audit Team will develop a strategy to identify sites that require immediate enforcement as staff gain experience with audits. In general, immediate enforcement actions may be required for failures to notify of imminent hazards especially when any actual harm or further release has occurred or when an RP, PRP or Other Person has previously been provided the opportunity to participate in Compliance Assistance.

The Department's request that an RP, PRP or Other Person participate in Compliance Assistance will be contained in the Notice of Audit Findings. The Notice of Audit Findings will contain a time and a place for the Compliance Assistance meeting and any specify actions the RP, PRP or Other Person should take to prepare for that meeting.

At the meeting, the Auditor will discuss the findings of the audit and request any further information that may be readily available to confirm or demonstrate compliance. If compliance is confirmed at the meeting, the auditor will prepare a Notice of Final Audit Findings which also terminates Compliance Assistance. Unless compliance can be confirmed at or immediately after the Compliance Assistance meeting, an Audit Follow-up plan will be required.

The general outline of any Audit Follow-up Plan will be discussed at the meeting and well as DEP's role in reviewing and overseeing the implementation of the plan. The Audit Follow-up Plan will generally be required to be submitted within 14-30 days after the meeting depending upon its

complexity. The Audit Follow-up Plan approval letter will terminate Compliance Assistance unless otherwise specified.

D. Standard Forms and Correspondence

Forms under development include:

- Audit Findings Form

Correspondence Under Development Includes:

- Notice of Audit & Audit Process Flowchart
- Notice of Audit Findings + either:
  - statement of non-deficiency ("A-OK Letter")
  - statement of deficiency and/or violations
  - statement of deficiency and/or violations, and a Compliance Assistance Request
- Request for an Audit Follow-up Plan
- Approval/Disapproval of An Audit Follow-up Plan
- Letter Terminating Further Compliance Assistance

VI. Audit Guidance

The purpose of Audit Guidance is to establish the minimum standard of evaluation for conducting particular types of audit. The Audit Guidance will focus particularly on the Performance Standards established in the MCP. For response actions that lack specific MCP performance standards, the Audit Team will develop a standards consistent with the MCP requirements with that response action for review within BWSC. Guidance will require certain audit and evaluation activities be performed to assist auditors determine whether the performance standards have been met.

VII. Training

A. Internal

Audit training and workshops will be conducted to keep audit staff apprised of developments within the audit program. Introductory training has already been conducted on the general concepts of the the audit regulations. A Workshop has been scheduled to provide auditors an opportunity to review an audit problem, apply the audit guidance, propose audit findings and to discuss any audits they may have already initiated. A conflict resolution case study is being developed to train auditors in how to avoid creating unnecessary conflicts.

Auditors have also participated in training on the new

MCP and will participate in future trainings on the MCP, policies and technical developments in waste site cleanup technology. BWSC anticipates that external training seminars will include audit staff and LSPs.

B. External Training

Audits have been mentioned as one of the new compliance tools under the new MCP at Compliance Assistance Training (CAT) sessions under the new MCP. A presentation has been made on the audit program to the LSP Association and another one will be performed in approximately six months with members of the audit team. The Boston Audit Coordinator will communicate general audit themes that give the regulated community a general sense of what areas the audit program will focus on in the future.

Results of audits will be publicly available and can be used to inform the regulated community regarding DEP's interpretation of the MCP. The Audit Team may prepare technical advisories as the result of audits which will also guide LSPs when making opinions. BWSC will actively encourage distribution of audit findings, technical advisories and other appropriate MCP guidance.

VIII. Program Evaluation

The number of audits to be conducted by each region will be discussed between the Boston and regional BWSC management to allow incorporation of the number of audits into the program plans for each region. BRP and BWP will also develop estimates of the number of audits they expect to be involved with each year. The number of response actions and sites subject to audit, including those eligible for the 20% target, will be determined based on totals for the past fiscal year. Appropriate adjustments will be made for any large number of transition sites that become subject to audit during the new fiscal year. Mid-year adjustments may be made if a large number of response actions subject to audit are received in the first six months of the fiscal year.

Response actions and sites that pay annual compliance fees and that will be counted towards the 20% target include:

1. Releases older than 120 days (if not RAO or Tier IA permit submitted),(120 days runs from 10/1/93 for releases reported since 8/1/93)
2. Waivers submitted between 8/1/93 - 10/1/93
3. RAMs
4. Any Tier IB or IC site

5. Any Tier II site

An audit of a response action or site will be counted towards the 20% target if:

(1) an annual compliance fee or other type of compliance fee has been or is required to be paid in the fiscal year in question, or such a fee was paid in the prior fiscal year, (2) an audit has been initiated.

Other compliance activities such as site inspections and audits of waiver sites and LSP evaluation opinions will also be tracked. Compliance activities at sites subject to the annual compliance fees will be counted towards the 20% goal of auditing. Counting those compliance activities towards the 20 % goal is consistent with the intentions of those who proposed the audit program. The programmatic distinction being made between audits and and other compliance activities results from legal considerations not necessarily considered when the 20% goal was adopted by the Legislature. For instance, the December 1990 report that first proposed the audit program did not distinguish between audits and other compliance activities. In any event, BWSC will make a good faith effort to perform a Subpart K audit at 20% of the sites subject to annual compliance fees.

For the first fiscal year an estimated 100-300 sites will be subject to annual compliance fees depending upon the number of priority sites that become Tier IB sites. In the following years more sites will become subject to audits as waivers expire and LTBIs, unclassified sites and non-priority sites transition to become Tier IC or Tier II sites.

An annual BWSC Audit, Compliance and Enforcement report will summarize the number of:

- audits actually conducted;
- sites at which violations or deficiencies were not noted;
- sites at which violations or deficiencies were noted;
- audits that resulted in compliance assistance;
- hours that the average audit and compliance assistance activities take; and
- other compliance activities BWSC has conducted that do not qualify as audits or otherwise count towards the 20% goal.

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