

January 24, 2013

Secretary Richard Sullivan
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Board of Registration of Hazardous Waste Site Cleanup Professionals

Dear Secretary Sullivan:

The LSP Association is writing to share our observations and express our concerns about the current operation of the Commonwealth's Board of Registration of Hazardous Waste Site Cleanup Professionals (the LSP Board).

The LSP Association (LSPA) is the non-profit, professional society for Licensed Site Professionals (LSPs), the environmental consultants licensed by the LSP Board to oversee the investigation and remediation of hazardous waste sites in Massachusetts, and for other professionals (attorneys, laboratory personnel, contractors, etc.) involved in these activities. Through education, information, and advocacy, we work to help our nearly 1,000 members achieve and maintain high standards of practice in overseeing the assessment and remediation of hazardous waste disposal sites. We work closely with MassDEP in all aspects of waste site assessment and remediation; we participate in policy development workgroups, and comment on draft guidance and regulations. We also interact regularly with the LSP Board. We attend their public meetings, monitor their decisions, and track the Board's handling of complaints and legal actions involving LSPs.

The success of the Commonwealth's innovative, privatized waste site cleanup program is dependent on high performance from all three "arms" of the program: highly competent and accountable LSPs, a strong regulatory framework and enforcement presence, and a credible and consistent licensing board. It is for that reason that over the past year, and specifically in the past few months, the LSPA has become increasingly concerned about several Board-related issues, including:

1. Board Vacancies and Succession Planning: A Board with all eleven seats filled, and an explicit transition plan for the succession of Board members, is imperative to the credibility of the LSP Board; it is also necessary to prevent over-burdening the ten volunteer Board members, all of whom have other job-related time commitments. Regrettably, this is not the current situation. The labor seat of the Board has been vacant for more than four years. With the exception of two Board members who are still within their four-year terms, Board members have between 5 and 16 years tenure. There is no strategic plan or timetable for the transition of current members off the Board or for recruiting and bringing new members onto the Board. The resignation of some of the long-serving members would decimate the institutional and historical memory of this Board. A mass resignation, forced or voluntary, of all those whose four years have expired would severely impact the work of the Board and the Commonwealth's waste site cleanup program – with devastating impacts.

Moreover, the LSPA is concerned that when applications for new Board members are submitted to the Governor's Office for review, years can pass before a nominee is approved for a Board seat. The last two appointees to the



Board waited two years for their applications to be approved. This delayed the departure of two Board members who had served long beyond their terms and were eager to move on.

The LSPA believes it is imperative that the LSP Board develop and implement a succession plan to ensure that a predictable and consistent process is in place for transitioning from current to new Board members. We strongly recommend that the process for vetting and appointing a new member to the Board takes no more than one year.

2. Board Meeting Schedule: The public and LSPs expect the LSP Board to have a schedule of meetings, including locations, which are established in advance and publicized. The meeting schedule should ensure that the key functions of the Board continue in a consistent and predictable manner and not cause delays. This is not the current situation. The Board meets only on alternate months; when quorums are not achievable, this further delays meetings. Meeting cancellations, in turn, delay Board deliberations and votes on continuing education courses, licensing issues, exam applications, and disciplinary actions. Board meeting dates and locations are typically not known or announced until just weeks ahead of time, making it difficult for stakeholders to plan for and attend meetings.

The LSPA has learned that the absence of a meeting calendar, set a year in advance, is a significant deterrent to recruiting possible new Board members. The LSPA recommends that the LSP Board post an annual calendar of meeting dates and locations, with more than six meetings a year. This is a practice carried out by most if not all other Professional Licensure Boards in the Commonwealth.

3. Adherence to Due Process: An LSP with a complaint before the Board has his or her professional reputation and standing at stake. Prompt and fair due process is expected and deserved. We are disheartened to know that there is one case that has been before the Board since June 2008. According to the matrix of active disciplinary cases, this is a high priority case. It is our understanding from monitoring this case for over four years that progress has been delayed due, primarily, to the lack of time devoted to it by the Board members and Board staff to whom it was assigned. In general, delays occur because Board members are unavailable for Complaint Review Teams (CRTs) or because CRTs do not have quorums. There is no reasonably predictable timetable to assist an LSP in gauging how a disciplinary process might proceed. This is unacceptable.

The LSPA strongly recommends that the LSP Board determine timeframes for each step in the disciplinary process starting from when a complaint is received by the LSP Board, that the LSP Board track their own accountability to these timeframes, and communicate this information to stakeholders.

4. Administrative and Technical Issues: The Board is responsible for administering each LSP's license renewal every three years. The Board also administers the LSP exam twice annually. Attention to administrative detail and the ability to support the program with dependable technology are critical to the day-to-day operations of the Board. This has not been the case. The LSP Board recently informed the LSPA that it was experiencing technical difficulties in processing invoices for renewals. The information in the email we received did not match the information on the Board website. For example, it was not clear to what address renewal checks should be sent. Understandably, LSPs are wary of sending checks without an invoice to a "Commonwealth Master Lockbox" address. This has left LSPs extraordinarily uneasy about the renewal status of their professional licensure. Today we learned that some LSPs, whose licenses will expire at the end of this month, just received the appropriate paperwork for renewing their licenses.



In addition, at a June 2012 exam session (one of only two offered annually), two computers crashed during the exam and one test-taker was not allowed to finish his exam. He was forced to wait another six months to take the exam again. It is discouraging to learn that the Board is unable to consistently carry out these basic responsibilities without significant and disruptive glitches.

The LSPA urges the LSP Board to mobilize the resources necessary to address technology and administrative issues promptly. The LSPA also suggests that the LSP Board provide electronic communication to stakeholders before or shortly thereafter a technical or administrative situation becomes problematic. Communication, early and often, can go a long way toward alleviating concerns.

The LSPA urges EOEEA to support the LSP Board in attending to these issues immediately. There is a deep concern within the professional community that the LSP Board is currently very fragile. It appears that, after twenty successful years, this arm of our innovative and successful program is suffering. We view the recent appointment of Ben Ericson, MassDEP Assistant Commissioner, as LSP Board Chair as indicative of the weight MassDEP and EOEEA give this position.

The LSPA is extremely proud of our practice and the program we have helped build. We are highly invested in ensuring that the LSP Board continues to be a credible, responsive, and high-functioning entity in this privatized program. The success of the entire program depends on it.

We are eager to assist in whatever ways we can. Please do not hesitate to call on us.

Sincerely,
The LSP Association

Handwritten signature of Cole E. Worthy, III in blue ink.

Cole E. Worthy, III, LSP
LSPA President

Handwritten signature of Wendy Rundle in black ink.

Wendy Rundle
LSPA Executive Director

Cc:
Ken Kimmell, Commissioner, MassDEP
Ben Ericson, Chair, LSP Board of Registration and Assistant Commissioner MassDEP-BWSC
Beverly Coles-Roby, Executive Director, LSP Board of Registration