

October 23, 2020

Commonwealth of Massachusetts  
Executive Office of Labor and Workforce Development  
Department of Labor Standards  
Charles F. Hurley Building  
19 Staniford Street, 2<sup>nd</sup> Floor  
Boston, MA 02114

Attn: Michael Flanagan, Director

**Subject: Comments on Draft Asbestos Regulation: 454 CMR 28.00 The Removal, Containment, Maintenance or Encapsulation of Asbestos**

Dear Mr. Flanagan,

The LSPA appreciates the opportunity to comment on the *Draft Asbestos Regulation (454 CMR 28.00)* and applauds the Department for its efforts to clarify its requirements regarding the management of asbestos.

The LSP Association (LSPA) is the non-profit association of Licensed Site Professionals (LSPs) and related practitioners. LSPs are the scientists, engineers, and public health specialists licensed by the Commonwealth to work on behalf of property owners, operators, and other involved parties to oversee the assessment and cleanup of oil and hazardous materials released to the environment. LSPA members also include environmental attorneys, toxicologists, and other practitioners. Our members work with their institutional, non-profit, government, and private clients to remediate contaminated sites, often brownfield sites, so these properties can be placed back into active and productive use to benefit the Commonwealth.

LSPs are frequently involved in the remediation of sites with asbestos containing building material (ACBM) found in soil excavations, which are also regulated under the Massachusetts Contingency Plan (MCP, 310 CMR 40) and the Massachusetts Air Pollution Control Regulations (310 CMR 7). The proposed 454 CMR 28.00 regulation, particularly Sections 28.13, 28.10(4)(d)6, and 28.07, will have a major impact on the work we do and we request that the comment period be extended to allow for meaningful and substantive review and comment by LSPs and the MassDEP Bureau of Waste Site Cleanup. Our preliminary comments are below:

**The proposed regulation will no longer allow Licensed Site Professionals who are not also Asbestos Project Designers to perform work currently required by 310 CMR 40 at sites with ACBM in soil.**

- Section 28.02 Definitions- The definition of Asbestos Consulting Services includes asbestos risk assessment and asbestos management planning. Under a broad construction of 453 CMR 6.0,

this definition could be construed to include certain services which are currently provided by Licensed Site Professionals on sites with ACBM and/or associated debris in soil as required under the Massachusetts Contingency Plan (310 CMR 40). Where abatement of ACBM in soil is warranted and performed, the LSP works together with an Asbestos Project Designer to develop a Non-Traditional Asbestos Abatement Work Plan (pursuant to 310 CMR 7) and the LSP separately prepares an MCP soil management/response action plan (such as an Immediate Response Action Plan or Release Abatement Measure Plan). However, for MCP Disposal Sites where ACBM in soil is present but will not be disturbed, the LSP must still perform a risk assessment and, as necessary, develop an Activity and Use Limitation to achieve regulatory closure under the MCP. Since we believe it is not the intent of this regulation to require that LSPs must also be Asbestos Project Designers (only that they work in conjunction with Asbestos Project Designers where already required by 310 CMR 7), we request that “asbestos risk assessment and asbestos management planning” be deleted from the definition of Asbestos Consulting Service requiring certification under Section 28.07, or that these terms be clearly defined to exclude the work conducted by LSPs under 310 CMR 40.

- Section 28.13, Paragraph 4b specifies that individuals preparing and signing “Soil Characterization and Management Plans” must have current Asbestos Project Designer licensure. The term “Soil Characterization and Management Plans” is not defined within the Regulation, and has the potential to significantly overlap and conflict with 310 CMR 40 which requires that Licensed Site Professionals prepare various soil characterization and management plans at regulated Sites, including at Sites with asbestos containing building material in soil. Under current regulations (310 CMR 40 and 310 CMR 7), soil management plans for sites with ACBM in soil are already required to be prepared by an Asbestos Project Designer (requiring Non-Traditional Asbestos Abatement Work Plans under 310 CMR 7) and at some Sites, a separate soil management/response action plan must be prepared by a Licensed Site Professional (Immediate Response Action Plans or Release Abatement Plans under 310 CMR 40). To avoid inconsistency with 310 CMR 40 and 310 CMR 7, we request that the language be changed to “Individuals preparing and signing Non-Traditional Asbestos Abatement Work Plans for characterization and management of ACBM in soil must have a current Asbestos Project Designer licensure...”

**Since buried ACBM can be unexpectedly encountered at many sites where filling occurred or former buildings previously existed, the proposed regulation would require nearly all workers conducting subsurface investigations or excavation to have asbestos awareness training.**

- Section 28.13, Paragraph 3a refers to worker requirements for individuals performing “soil-disturbing activities where asbestos-contaminated soil may be encountered”. Often, it is not known whether asbestos containing building material is buried at a site until it is encountered during subsurface investigations (such as soil borings or test pits) or excavation for construction. For this reason, we request the language be changed to “soil disturbing activities at sites where asbestos-contaminated soil is known or likely to be present”

We appreciate your consideration of our comments on *Draft Asbestos Regulation (454 CMR 28.00)*.

Respectfully,  
The LSP Association



Michele Paul, LSP  
President



Wendy Rundle  
Executive Director

Cc: Paul Locke, Assistant Commissioner, MassDEP Bureau of Waste Site Cleanup