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N.J.A.C. 7:26I

REGULATIONS OF THE NEW JERSEY
SITE REMEDIATION PROFESSIONAL LICENSING BOARD

Statutory authority
N.J.S.A. 58:10C-1 et seq.

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September 21, 2022

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CHAPTER HISTORICAL NOTE

Chapter 26I, Uniform System of Accounts for Solid Waste Collection and Disposal Utilities, was originally adopted as N.J.A.C. 14:9A, Uniform System of Accounts for Solid Waste Collection and Disposal Utilities (Classes I, II and III), by R.1972 d.228, effective January 1, 1973. See: 4 N.J.R. 224(a), 4 N.J.R. 310(c).

Chapter 26I, Uniform System of Accounts for Solid Waste Collection and Disposal Utilities, was recodified from N.J.A.C. 14:9A by R.1996 d.253, effective June 3, 1996. See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

The Executive Order No. 66(1978) expiration date for Chapter 26I, Uniform System of Accounts for Solid Waste Collection and Disposal Utilities, was extended by gubernatorial directive from June 3, 2001 to June 3, 2002. See: 33 N.J.R. 1915(a).

Chapter 26I, Uniform System of Accounts for Solid Waste Collection and Disposal Utilities, was repealed by R.2002 d.356, effective November 4, 2002. See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Chapter 26I, Regulations of the New Jersey Site Remediation Professional Licensing Board, was adopted as new rules by R.2016 d.005, effective January 4, 2016. See: 47 N.J.R. 45(a), 48 N.J.R. 45(a).

Chapter 26I, Regulations of the New Jersey Site Remediation Professional Licensing Board, was readopted, effective September 21, 2022. See: Source and Effective Date.

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TABLE OF CONTENTS

CHAPTER HISTORICAL NOTE	i
SUBCHAPTER 1. GENERAL PROVISIONS	1
7:26I-1.1 Purpose of chapter	1
7:26I-1.2 Scope of chapter	1
7:26I-1.3 Definitions	2
7:26I-1.4 Construction	4
7:26I-1.5 Severability	5
SUBCHAPTER 2. LICENSURE.....	5
7:26I-2.1 Purpose	5
7:26I-2.2 Scope	5
7:26I-2.3 License required to perform remediation	6
7:26I-2.4 Eligibility requirements.....	6
7:26I-2.5 Application.....	7
7:26I-2.6 Application approval.....	8
7:26I-2.7 Application denial	9
7:26I-2.8 LSRP examination	9
7:26I-2.9 Results of the LSRP examination	10
7:26I-2.10 Issuance of a license.....	10
7:26I-2.11 Renewal of a license.....	11
7:26I-2.12 Expiration of a license.....	13
7:26I-2.13 Suspension of a license	14
7:26I-2.14 Revocation of a license	15
7:26I-2.15 Inactivation of a license	16
SUBCHAPTER 3. FEES	18
7:26I-3.1 Purpose.....	18
7:26I-3.2 Scope	18
7:26I-3.3 Application fee	18
7:26I-3.4 Renewal fee.....	19
7:26I-3.5 Annual license fee	19
7:26I-3.6 Fee report	20
7:26I-3.7 Payment of fees.....	21
SUBCHAPTER 4. CONTINUING EDUCATION	22
7:26I-4.1 Purpose	22
7:26I-4.2 Scope	22
7:26I-4.3 LSRP continuing education requirements.....	22
7:26I-4.4 Board approval of continuing education programs.....	23
7:26I-4.5 Board approval of continuing education activities.....	26
SUBCHAPTER 5. AUDIT PROCEDURES	28
7:26I-5.1 Purpose.....	28
7:26I-5.2 Scope.....	29

NOTE: THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

7:26I-5.3 Selection of LSRPs to be audited.....	29
7:26I-5.4 Audit review process.....	30
7:26I-5.5 Outcome of an audit.....	31
7:26I-5.6 Failure to cooperate with an audit.....	32
SUBCHAPTER 6. RULES OF PROFESSIONAL CONDUCT	32
7:26I-6.1 Purpose.....	32
7:26I-6.2 Highest priority	32
7:26I-6.3 Professional competency.....	33
7:26I-6.4 Engineering services	34
7:26I-6.5 Notification of retention and release.....	34
7:26I-6.6 Correcting deficiencies.....	35
7:26I-6.7 Responsibility of successor LSRP or LSRP relying upon work performed by others.....	35
7:26I-6.8 Exercise of independent professional judgment	36
7:26I-6.9 Responsibility to report an immediate environmental concern.....	37
7:26I-6.10 Responsibility to report a discharge.....	37
7:26I-6.11 Deviation from workplan by client	38
7:26I-6.12 Client confidentiality.....	38
7:26I-6.13 New information after submitting report	38
7:26I-6.14 Responsibility to disassociate from unscrupulous persons	38
7:26I-6.15 Responsibility in Board and Department investigations.....	38
7:26I-6.16 Circumstances under which an LSRP is held responsible for subordinates	40
7:26I-6.17 Duty to comply with Board directives regarding disciplinary matters	40
7:26I-6.18 Duty regarding client communications	40
7:26I-6.19 Duty regarding public communications	41
7:26I-6.20 LSRP shall not induce or threaten based on connection to agency or official.....	41
7:26I-6.21 Prohibition against misrepresentation	41
7:26I-6.22 Duty to notify even if no longer employed by client	42
7:26I-6.23 Conflict of interest.....	42
7:26I-6.24 Certification.....	42
7:26I-6.25 Response action outcome.....	43
7:26I-6.26 Direct oversight.....	44
7:26I-6.27 Maintenance of data, documents, records, and information	44
7:26I-6.28 Cooperation with Department review of remediation.....	45
SUBCHAPTER 7. DISCIPLINARY PROCEEDINGS	45
7:26I-7.1 Purpose.....	45
7:26I-7.2 Scope.....	45
7:26I-7.3 Filing of complaint.....	46
7:26I-7.4 Board's determination to investigate complaint	46
7:26I-7.5 Board's investigation of complaint	47
7:26I-7.6 Board's actions in response to complaint.....	49
7:26I-7.7 Board's actions in response to violation	50
7:26I-7.8 License suspension or revocation and other sanctions.....	50
7:26I-7.9 Administrative order	51

NOTE: THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

7:26I-7.10 Civil administrative penalty	52
SUBCHAPTER 8. ADJUDICATORY PROCEEDINGS	52
7:26I-8.1 Purpose	52
7:26I-8.2 Scope	52
7:26I-8.3 Procedures for requesting and conducting an adjudicatory hearing	53
7:26I-8.4 Procedures for denying a request for an adjudicatory hearing.....	54
7:26I-8.5 Final orders and other Board decisions	54
SUBCHAPTER 9. PROHIBITION AGAINST RETALIATORY ACTION	55
7:26I-9.1 Purpose	55
7:26I-9.2 Retaliatory action prohibited.....	56
7:26I-9.3 Disciplinary action	57

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SUBCHAPTER 1. GENERAL PROVISIONS

7:26I-1.1 Purpose of chapter

The purpose of this chapter is to establish the rules of the Site Remediation Professional Licensing Board governing the licensing and performance of Licensed Site Remediation Professionals.

7:26I-1.2 Scope of chapter

(a) This chapter establishes:

1. A licensing program for site remediation professionals, including:

- i. Eligibility requirements for a license, pursuant to N.J.A.C. 7:26I-2.4;
- ii. Application for a license, pursuant to N.J.A.C. 7:26I-2.5;
- iii. Process for review and approval or denial of license applications, pursuant to N.J.A.C. 7:26I-2.6 and 2.7;
- iv. Process for examination of approved applicants, pursuant to N.J.A.C. 7:26I-2.8 and 2.9;
- v. Issuance of a license, pursuant to N.J.A.C. 7:26I-2.10;
- vi. Renewal of a license, pursuant to N.J.A.C. 7:26I-2.11;
- vii. Expiration of a license, pursuant to N.J.A.C. 7:26I-2.12;
- viii. Suspension of a license, pursuant to N.J.A.C. 7:26I-2.13;
- ix. Revocation of a license, pursuant to N.J.A.C. 7:26I-2.14; and
- x. Inactivation of a license, pursuant to N.J.A.C. 7:26I-2.15;

2. The fees necessary to support all tasks associated with the Board's duties, including application fee, renewal fee, and annual license fee, pursuant to N.J.A.C. 7:26I-3;

3. The continuing education requirements that an LSRP shall fulfill each three-year license term, and the standards and procedures for Board accreditation of educational programs and activities, pursuant to N.J.A.C. 7:26I-4;

4. The Board's procedures for auditing the submissions and conduct of an LSRP, including the process by which the Board selects an LSRP for audit, the Board's audit review

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process, the outcome of an audit, and the consequences for failure to cooperate with an audit, pursuant to N.J.A.C. 7:26I-5;

5. The standards for professional conduct of an LSRP, pursuant to N.J.A.C. 7:26I-6;

6. The procedures for disciplinary proceedings, including the filing of a complaint, the Board's investigation of a complaint, the Board's actions in response to a complaint, and the Board's actions in response to a finding of violation, pursuant to N.J.A.C. 7:26I-7;

7. The procedures for adjudicatory hearings to appeal certain Board determinations, pursuant to N.J.A.C. 7:26I-8; and

8. The prohibition of retaliatory action against an LSRP for certain actions that he or she may take in order to fulfill his or her duties and responsibilities, and the prohibition of retaliatory action by an LSRP against a person who files a complaint with the Board or provides information to the Board in the investigation of a complaint or an audit, pursuant to N.J.A.C. 7:26I-9.

7:26I-1.3 Definitions

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

“Alternative verifiable learning format” means any continuing education that is presented in a format that does not provide the ability to interact with the instructor or other participants during the presentation.

“Area of concern” means any location defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Board” means the New Jersey Site Remediation Professional Licensing Board established pursuant to N.J.S.A. 58:10C-3.

“Contaminated site” means any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Continuing education” means educational programs or activities concerning regulation of site remediation, scientific and technical principles of site remediation, and/or ethical obligations of an LSRP that are designed principally to advance the professional competence, skill and knowledge of an LSRP, and/or to expand an appreciation and understanding of the ethical and professional responsibilities of an LSRP.

“Continuing education credit” or “CEC” means a Board-approved unit of continuing education. Generally, one CEC is approved for each hour of instruction.

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“Day” means a calendar day.

“Department” means the New Jersey Department of Environmental Protection.

“Discharge” means any action or omission defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Full-time professional experience” means experience in which an applicant is required to apply scientific or engineering principles to contaminated site remediation where the resulting conclusions form the basis for reports, studies, or other documents connected with the remediation of a contaminated site. The Board may consider the applicant’s work activities, field of practice, duration of employment, and work products prepared in determining the credit to be allowed for professional experience. The Board may allow applicants with relevant advanced degrees up to two years of credit for professional experience, of which one year of credit may be awarded for applicants who have earned a master’s degree in a relevant field of study and up to two years of credit may be awarded for applicants who have earned a doctorate degree in a relevant field of study.

“Immediate environmental concern” or “IEC” means any such concern as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“License” means an approval that the Board issues to an individual pursuant to the SRRA and this chapter that authorizes the individual to act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP in the State of New Jersey.

“Licensed Site Remediation Professional” or “LSRP” means an individual who the Board has licensed as a site remediation professional pursuant to the SRRA and this chapter.

“Person” means an individual, public or private corporation, company, association, society, firm, partnership, joint stock company, the State and any of its political subdivisions or agents.

“Person responsible for conducting the remediation” means any person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Promptly” means by the date by which the Board or the Department requests a response or, if no such date is given, as soon as possible, not to exceed seven days from the date that an event occurs that triggers the requirement for an LSRP to provide a response or notification.

“Relevant professional experience” means experience working on New Jersey remediation cases. To prove relevant professional experience, the applicant shall demonstrate that he or she has:

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1. Knowledge of and experience with implementing the technical, scientific, and regulatory aspects of site remediation, including experience investigating, designing, implementing, and/or managing within each phase of the site remediation process:

- i. Preliminary Assessment;
- ii. Site Investigation;
- iii. Remedial Investigation; and
- iv. Remedial Action;

2. Produced, or participated in producing, workplans and/or reports for each phase of the site remediation process; and

3. Knowledge of and experience with meeting the Department's administrative requirements including, but not limited to, requirements pertaining to submittal of forms, regulatory and mandatory timeframes, applicable fees, presumptive remedies, remedial action permits, and public notification.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Response action outcome” or “RAO” means a written determination by an LSRP as defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Retained” means hired, individually or through a firm or other person, by or on behalf of a person responsible for conducting remediation, to perform, manage, or supervise remediation, or to periodically review and evaluate remediation performed by other persons.

“SRRA” means the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote definition “Alternative verifiable learning format”; and added definition “Retained”.

7:26I-1.4 Construction

The rules in this chapter shall be liberally construed to permit the Board to carry out its statutory functions.

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7:26I-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. LICENSURE

7:26I-2.1 Purpose

(a) The purpose of the licensing program for site remediation professionals established in this subchapter is to require that an individual applying for licensure as a site remediation professional:

1. Demonstrate that he or she meets the standards and requirements for education, training, experience, and professional conduct required for licensure; and
2. Is examined to ensure that he or she possesses sufficient knowledge of the State and Federal statutes, rules, regulations, guidance, standards, and requirements applicable to site remediation to be qualified to obtain a license.

7:26I-2.2 Scope

(a) This subchapter contains provisions that govern the:

1. Eligibility requirements for a license in N.J.A.C. 7:26I-2.4;
2. Application for a license in N.J.A.C. 7:26I-2.5;
3. Process for review and approval or denial of license applications in N.J.A.C. 7:26I-2.6 and 2.7;
4. Process for examination of approved applicants in N.J.A.C. 7:26I-2.8 and 2.9;
5. Issuance of a license in N.J.A.C. 7:26I-2.10;
6. Renewal of a license in N.J.A.C. 7:26I-2.11;
7. Expiration of a license in N.J.A.C. 7:26I-2.12;
8. Suspension of a license in N.J.A.C. 7:26I-2.13;
9. Revocation of a license in N.J.A.C. 7:26I-2.14; and

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10. Inactivation of a license in N.J.A.C. 7:26I-2.15.

7:26I-2.3 License required to perform remediation

(a) No person shall be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP unless the Board has issued a license to that person pursuant to the SRRA and this chapter and the license is current and not expired, suspended, revoked, or inactivated.

(b) Except as provided at subsection d. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3), a person who is not a licensed site remediation professional shall not perform remediation unless the remediation is managed, supervised, or periodically reviewed and evaluated by an LSRP.

(c) Except as provided at subsection d. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3), an LSRP shall not:

1. Facilitate, aid, assist, or cooperate with any person in retaining or arranging for the retention of any person who is not an LSRP to perform remediation, unless the remediation is managed, supervised, or periodically reviewed and evaluated by an LSRP retained for that purpose, and the Department has been notified of the retention; or

2. Manage, supervise, perform, engage, or participate in remediation, unless:

i. The LSRP has been retained by a person responsible for conducting the remediation, and the Department has been notified of the retention; or

ii. The remediation is being managed, supervised, or performed by another LSRP retained by the person responsible for conducting the remediation, and the Department has been notified of the retention of the other LSRP.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Section was "Proscription". Added designation (a); and added (b) and (c).

7:26I-2.4 Eligibility requirements

(a) In order to be eligible to sit for the licensing examination the Board administers, an individual shall submit an application pursuant to N.J.A.C. 7:26I-2.5 that demonstrates or certifies that he or she meets the following qualifications:

1. Holds a bachelor's degree or higher in natural, chemical, or physical science or an engineering degree in a discipline related to site remediation from an accredited institution of higher education;

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2. Has experience amounting to at least eight years of full-time professional experience in the field of site remediation, of which at least five years shall have occurred in New Jersey and at least three years shall have occurred in New Jersey within the five years prior to submission of the application;

3. Has a minimum of 5,000 hours of relevant professional experience within New Jersey over the five years immediately prior to submission of the application that is of a professional grade and character that indicates the applicant is competent to issue an RAO;

4. Has attended and completed the minimum environmental health and safety education and training pursuant to 29 CFR 1910.120, no more than one year prior to submission of the application;

5. Has completed a Board-approved course on the State's rules and regulations concerning the administrative and technical requirements for site remediation no more than 36 months prior to the date of submission of the application;

6. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related crime pursuant to Federal or state law, or any crime involving fraud, breach of trust, theft by deception, forgery, or any crime or offense that would qualify the person for registration pursuant to section 2 at P.L. 1994, c. 133 (N.J.S.A. 2C:7-2), or any other crime involving moral turpitude, or any similar or related offense pursuant to Federal or state law. For the purposes of this paragraph, a conviction or plea of guilty shall include a non vult, nolo contendere, no contest, or finding of guilt by a judge or jury; and

7. Has not had a professional license or professional certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years and has not surrendered a professional license or professional certification in response to a disciplinary investigation within the previous 10 years.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)2, substituted "within the five years" for "immediately" preceding "prior"; and rewrote (a)5, (a)6 and (a)7.

7:26I-2.5 Application

(a) An applicant for the site remediation professional license shall submit or cause to be submitted directly to the Board the following items, as per the instructions on the Board website at www.nj.gov/lsrpboard:

1. A completed application form available on the Board website at www.nj.gov/lsrpboard;

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2. The application fee as set forth at N.J.A.C. 7:26I-3;

3. A signed certification that attests that all information provided in connection with the application is true to the best of the applicant's knowledge and belief, and that any omission, inaccuracy, or failure to make full disclosure may be deemed sufficient to deny licensure or to deny renewal of or suspend or revoke a license;

4. Three separate references submitted directly to the Board by the writer of the reference on the appropriate form the Board prescribes, available on the Board website at www.nj.gov/lsrcboard, from persons with personal knowledge of the applicant's training, experience, and professional conduct who are not related to the applicant. These persons may be an LSRP, a current or past employer of the applicant from any state, or another person of the applicant's choosing; and

5. An original transcript or equivalent documentation delivered directly to the Board from each of the following institutions:

i. The educational institution(s) from which the applicant earned the degree needed to demonstrate the minimum education requirement for licensure; and

ii. The educational institution(s) from which the applicant earned relevant advanced degrees for which the applicant seeks credit for professional experience.

(b) At any time during its review of an application the Board may require the applicant to supplement the application with one or more of the following:

1. The applicant's appearance before the Board for a personal interview;

2. The submission of additional information the Board specifies; or

3. The provision of additional information from the Department, current and former employers or supervisors, educational institutions, or any other person that may have information relevant to the Board's review of the application.

(c) An application is not complete until the Board receives each item specified in (a) and (b) above.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote (a).

7:26I-2.6 Application approval

(a) The Board shall approve an application if the applicant:

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1. Submitted a complete application pursuant to N.J.A.C. 7:26I-2.5; and

2. Demonstrated in the application that he or she meets all of the eligibility requirements set forth in N.J.A.C. 7:26I-2.4.

(b) When the Board approves an application, the Board shall notify the applicant that he or she is a candidate for the LSRP examination and shall include in the notification registration information for the next scheduled LSRP examination.

7:26I-2.7 Application denial

(a) The Board shall deny an application if the applicant:

1. Did not submit a complete application pursuant to N.J.A.C. 7:26I-2.5; or

2. Did not meet any one or more of the eligibility requirements set forth in N.J.A.C. 7:26I-2.4.

(b) When the Board denies an application, the Board shall notify the applicant of the Board's findings and reasons for denial of the application and the period of time during which an applicant cannot reapply, up to three years.

7:26I-2.8 LSRP examination

(a) With Board approval of an application, the applicant may sit for an LSRP examination according to the instructions received from the Board pursuant to N.J.A.C. 7:26I-2.6(b) and this section.

(b) The Board shall provide each candidate who registers for the LSRP examination an LSRP Licensing Examination Candidate Agreement. The LSRP Licensing Examination Candidate Agreement shall contain the standards of conduct for candidates before, during, and after the examination including, but not limited to, prohibitions against:

1. Bringing into the examination room and accessing or utilizing during the examination anything that the exam administrator designates as unauthorized material including, but not limited to, books, reference material, study aides, notes, photographic or image-capturing or copying devices, communication devices, or electronic devices;

2. Taking the examination for someone else or having someone else take the examination for the candidate;

3. Removing notes, reproductions of the examination or any part of the examination, or the actual examination or any part of the examination, from the examination room;

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4. Seeking or offering help during the examination;

5. Copying or attempting to copy examination responses of other candidates;

6. Allowing another candidate to copy his or her examination responses;

7. Disrupting the examination in any way; and

8. Disclosing or discussing the contents of the examination with anyone at any time in any form including, but not limited to, verbally, in writing, or electronic format.

(c) In order to take the LSRP examination, each candidate shall:

1. Read the LSRP Licensing Examination Candidate Agreement; and

2. Sign a statement certifying that he or she has read the LSRP Licensing Examination Candidate Agreement and agrees to abide by its terms.

(d) A candidate's violation of the LSRP Licensing Examination Candidate Agreement at any time before, during, or after the LSRP examination constitutes grounds for commencement of disciplinary action pursuant to N.J.A.C. 7:26I-7.

7:26I-2.9 Results of the LSRP examination

(a) The Board shall communicate the results of the LSRP examination to each candidate. The Board shall not return the LSRP examination to the candidate.

(b) A candidate who does not pass the examination who wishes to retake the examination shall submit an application pursuant to N.J.A.C. 7:26I-2.4 through 2.8.

7:26I-2.10 Issuance of a license

(a) The Board shall issue a non-transferable license with a three-year term to each candidate who:

1. Obtains a passing score on the LSRP examination; and

2. Pays the annual license fee as set forth in N.J.A.C. 7:26I-3.

(b) A license shall be effective on the date specified on the license, and shall expire pursuant to N.J.A.C. 7:26I-2.12.

(c) Upon issuance of a license, the Board will list the LSRP's name and contact information on the list of active LSRPs maintained on the Board website at www.nj.gov/l srpboard.

NOTE: THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

(d) An LSRP shall notify the Board of any change in contact information within 15 days of the change, so that the Board may maintain current and accurate contact information for each LSRP on the Board website at www.nj.gov/l srpboard.

7:26I-2.11 Renewal of a license

(a) In order to continue to be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP, without interruption, an LSRP shall renew his or her license prior to the expiration date of the license.

(b) In order to be eligible to renew his or her license, an LSRP shall submit an application pursuant to (c) below that demonstrates or certifies that he or she meets the following qualifications:

1. Has attended and completed the minimum environmental health and safety education and training pursuant to 29 CFR 1910.120 no more than one year prior to submission of the application for license renewal;

2. Has fulfilled the continuing education requirements set forth at N.J.A.C. 7:26I-4;

3. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related crime pursuant to Federal or state law, or any crime involving fraud, breach of trust, theft by deception, forgery, or any crime or offense that would qualify the person for registration pursuant to section 2 at P.L. 1994, c. 133 (N.J.S.A. 2C:7-2), or any other crime involving moral turpitude, or any similar or related offense pursuant to Federal or state law. For the purposes of this section, a conviction or plea of guilty shall include a non vult, nolo contendere, no contest, or finding of guilt by a judge or jury;

4. Has not had a professional license or professional certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years, and has not surrendered a professional license or professional certification in response to a disciplinary investigation within the previous 10 years; and

5. Has no outstanding annual license fees due to the Board.

(c) An applicant for renewal of the site remediation professional license shall submit or cause to be submitted directly to the Board at least 90 days and no more than 120 days prior to the expiration of his or her license the following items:

1. A completed application form available on the Board website at www.nj.gov/l srpboard; and

2. The renewal fee as set forth in N.J.A.C. 7:26I-3.

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(d) At any time during its review of an application for license renewal, the Board may require the applicant to supplement the application with one or more of the following:

1. The applicant's appearance before the Board for a personal interview;
2. The submission of additional information the Board specifies; or

3. The provision of additional information from the Department, current and former employers or supervisors, continuing education providers, or any other person that may have information relevant to the Board's review of the application for license renewal.

(e) An application for license renewal is not complete until the Board receives each item specified in (c) and (d) above.

(f) The Board shall approve an application for license renewal if the applicant:

1. Submitted a complete application for license renewal pursuant to (e) above; and
2. Demonstrated in the application that he or she meets all of the eligibility requirements set forth in (b) above.

(g) When the Board approves an application for license renewal, the Board shall notify the applicant and provide the applicant with a renewed license.

(h) The Board shall deny an application for license renewal, if the applicant did not:

1. Submit a complete application for license renewal pursuant to (e) above; or
2. Meet any one or more of the eligibility requirements set forth in (b) above.

(i) When the Board denies an application for license renewal, the Board shall notify the applicant of the following:

1. The Board's findings and reasons for denial of the application and the period of time during which an applicant cannot reapply, up to three years;

2. Instructions for reapplying for license renewal, which shall include resubmission of a complete application as required at (c) and (d) above; and

3. The procedures for an applicant to request a hearing on the license renewal denial and a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/l srpboard.

NOTE: THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote (b)3, (b)4, and (i); and deleted (j).

7:26I-2.12 Expiration of a license

(a) An LSRP's license shall immediately expire on the expiration date stated on the license, if not renewed pursuant to N.J.A.C. 7:26I-2.11.

(b) An individual may surrender his or her license to the Board. A license that is surrendered is considered to be expired, may not be renewed, and the provisions at (f) below do not apply.

(c) An individual with an expired license shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP until the license has been renewed pursuant to N.J.A.C. 7:26I-2.11 or the individual obtains a new license.

(d) No later than 15 days after the date of the expiration of the license, if not renewed, the individual whose license has expired shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board and the Department at the address in N.J.A.C. 7:26I-3.7(b), that he or she is no longer an LSRP; and

2. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on pursuant to N.J.A.C. 7:26I-6.27.

(e) The Board shall remove all individuals with expired licenses from the list of active LSRPs on the Board website at www.nj.gov/lrspboard.

(f) An individual whose license has expired may apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date.

1. If more than 12 months have passed since the license expiration date, the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote the section.

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7:26I-2.13 Suspension of a license

(a) Whenever, on the basis of available information, the Board finds that an LSRP has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may suspend the license of the LSRP.

(b) Suspension is the temporary removal of a license. When the Board has suspended an individual's license, that individual shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP until the end of the period of suspension.

(c) An individual may resume practicing as an LSRP immediately following the last day of the suspension period, if his or her license expiration date has not yet been reached.

(d) An individual whose license has expired while suspended may apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date. If more than 12 months have passed since the license expiration date the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

(e) When issuing the suspension, the Board may impose conditions on the reinstatement of the license including, but not limited to, a requirement for earning additional continuing education credits beyond the requirements of N.J.A.C. 7:26I-4.

(f) No later than 15 days after the date of the final order of suspension, the individual whose license has been suspended shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), that for the duration of the suspension he or she will not be an LSRP;

2. Submit an LSRP Notification of Dismissal through the Online Business Portal at <https://www.nj.gov/dep/online> for each contaminated site for which he or she had submitted a Notification of Retention; and

3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on pursuant to N.J.A.C. 7:26I-6.27.

(g) The Board shall maintain a list of all LSRPs whose licenses are suspended on the Board website at www.nj.gov/lrspboard.

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History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (f)2, substituted “Online Business Portal at <https://www.nj.gov/dep/online>” for “as found on the Department website at www.nj.gov/dep/srp/srra/forms”; and in (f)3, inserted “pursuant to N.J.A.C. 7:26I-6.27”.

7:26I-2.14 Revocation of a license

(a) Whenever, on the basis of available information, the Board finds that an LSRP has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may revoke the license of the LSRP.

(b) Revocation is the termination of a license. When the Board has revoked an individual’s license, that individual shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP.

(c) An individual whose license has been revoked one time may apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10 after three years, unless a shorter period is specified by the Board.

(d) Upon the second revocation of a license, an individual is permanently prohibited from applying for a license.

(e) If the Board determines that the conduct of the LSRP is so egregious as to pose an imminent threat to public health and safety and the environment if the LSRP is allowed to remediate contaminated sites pending a hearing on a revocation of the license, the Board may summarily suspend the license prior to the outcome of the hearing.

(f) No later than 15 days after the date of the final order of revocation, the individual whose license has been revoked shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), that as of the date of the final order of revocation he or she is no longer an LSRP;

2. Submit an LSRP Notification of Dismissal through the Online Business Portal at <https://www.nj.gov/dep/online> for each contaminated site for which he or she had submitted a Notification of Retention; and

3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on pursuant to N.J.A.C. 7:26I-6.27.

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(g) The Board shall maintain a list of all LSRPs whose licenses are revoked on the Board website at www.nj.gov/lsrpboard.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (f)2, substituted “Online Business Portal at <https://www.nj.gov/dep/online>” for “as found on the Department website at www.nj.gov/dep/srp/srra/forms”; and in (f)3, inserted “pursuant to N.J.A.C. 7:26I-6.27”.

7:26I-2.15 Inactivation of a license

(a) An LSRP may inactivate his or her license by submitting to the Board a written certification of inactivation on the appropriate form the Board prescribes, available on the Board website at www.nj.gov/lsrpboard, which demonstrates or certifies that:

1. He or she has ceased to be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP for a specific period of time not to exceed the expiration date of his or her license;

2. His or her employment in New Jersey, if any, is not in any way related to the work typically performed by site remediation professionals, licensed or not, including, but not limited to:

- i. The investigation or remediation of contaminated sites;
- ii. The investigation or remediation of discharges from, or the removal of, underground storage tanks, regulated or not;
- iii. The assessment of sites for environmental conditions; or
- iv. The preliminary assessment or site investigation of contaminated sites for the purpose of conducting all appropriate inquiries into the previous ownership and uses of the property as provided at N.J.S.A. 58:10-23.11.g;

3. He or she does not render assistance or advice to persons engaged in site remediation, including, but not limited to, site remediation professionals, licensed or not, or persons responsible for conducting the remediation;

4. He or she has notified each of his or her clients by whom he or she has been retained as an LSRP, in writing, with a copy to the Board at the address at N.J.A.C. 7:26I-3.7(b), of his or her intent to become an inactive LSRP;

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5. He or she has submitted an LSRP Notification of Dismissal through the Online Business Portal at <https://www.nj.gov/dep/online> for each contaminated site for which the LSRP had submitted a Notification of Retention; and

6. He or she has provided for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on pursuant to N.J.A.C. 7:26I-6.27.

(b) Upon the receipt of a certification of inactivation pursuant to (a) above, the Board shall summarily inactivate the license for the requested duration by removing the LSRP's name and license number from the list of active LSRPs on the Board website at www.nj.gov/lsrpboard.

(c) The inactivation of a license shall not extend the expiration of the license beyond the expiration date the Board has indicated on the license.

(d) An individual with an inactive license may apply to have the Board reactivate his or her license for the original term of the license if the license has not expired. The Board shall summarily reactivate the license, and reactivation shall occur on the date the Board relists the LSRP's name and license number on the list of active LSRPs on the Board website at www.nj.gov/lsrpboard.

(e) An individual with an inactive license whose license has expired while inactive may reactivate his or her license by applying for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date. If more than 12 months have passed since the license expiration date the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

(f) An individual with an inactive license shall pay the annual fee for any calendar year in which he or she is active for one or more days in the calendar year.

(g) If the Board selects an individual with an inactive license for an audit, the Board may determine whether to defer the audit until the license becomes active again. The Board shall not defer an audit or complaint investigation that is pending at the time the LSRP becomes inactive, and the inactive LSRP shall meet all obligations as set forth in N.J.A.C. 7:26I-5 and 7.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)2iv, substituted "inquiries" for "inquiry", "at" for "in" following "provided", and "N.J.S.A. 58:10-23.11.g" for "N.J.S.A. 58:10-23.11g"; in (a)4, inserted a comma following "LSRP" and substituted "at" for "in" following "address"; in (a)5, substituted "Online Business Portal at <https://www.nj.gov/dep/online>" for "as found on the Department website at www.nj.gov/dep/srp/srra/forms"; and in (a)6, inserted "pursuant to N.J.A.C. 7:26I-6.27".

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SUBCHAPTER 3. FEES

7:26I-3.1 Purpose

This subchapter identifies and describes the fees and the methodology for the calculation of fees to support all tasks associated with the Board's duties.

7:26I-3.2 Scope

(a) This subchapter contains:

1. The fees and the factors the Board uses to calculate each fee, including the:
 - i. Application fee at N.J.A.C. 7:26I-3.3;
 - ii. Renewal fee at N.J.A.C. 7:26I-3.4; and
 - iii. Annual license fee at N.J.A.C. 7:26I-3.5;
2. The requirements for the Site Remediation Professional Licensing Board Fee Calculation Report at N.J.A.C. 7:26I-3.6; and
3. The method for the payment of fees at N.J.A.C. 7:26I-3.7.

7:26I-3.3 Application fee

(a) The Board shall annually recalculate the application fee, if the Board determines that the current fee does not cover the Board's costs to process and review license applications.

1. The Board shall calculate the application fee by multiplying the average number of hours to process and review a license application by the projected hourly salary and overhead costs of Board staff processing and reviewing the license application.

2. The Board shall provide notice in the New Jersey Register of any change to the application fee in subsequent years.

(b) The Board shall not return the application fee to an applicant, regardless of the outcome of the license application.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Deleted former (a)2 and recodified former (a)3 as (a)2.

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7:26I-3.4 Renewal fee

(a) The Board shall annually recalculate the license renewal fee, if the Board determines that the current fee does not cover the Board's costs to process and review license renewal applications.

1. The Board shall calculate the renewal fee by multiplying the average number of hours to process and review a license renewal application by the projected hourly salary and overhead costs of Board staff processing and reviewing the license renewal application.

2. The Board shall provide notice in the New Jersey Register of any change to the renewal fee in subsequent years.

(b) The Board shall not return the renewal fee to an applicant, regardless of the outcome of the license renewal application.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Deleted former (a)2 and recodified former (a)3 as (a)2.

7:26I-3.5 Annual license fee

(a) The Board shall annually recalculate the annual license fee, if the Board determines that the current fee does not cover the Board's costs as set forth in the annual budget.

1. The Board shall set its budget by estimating the dollar amount needed to accomplish all tasks associated with the Board's duties. Such tasks include, but are not limited to:

i. The Board's administrative functions;

ii. Legal support of the Board;

iii. Development and maintenance of data systems;

iv. Development and maintenance of the Board website;

v. Development and administration of LSRP examinations; and

vi. Any additional tasks the Board identifies that are necessary to carry out its duties and responsibilities as articulated in the SRRA and this chapter.

2. The Board shall project the collection amounts anticipated in the upcoming calendar year from application fees and renewal fees;

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3. The Board shall subtract the projected collection amounts as described in (a)2 above from the budget estimated in (a)1 above, and divide the result by the number of LSRPs holding licenses in the current calendar year, rounding up to the nearest 10.00 dollars; or if the number of LSRPs holding licenses in the current calendar year is projected to significantly change in the upcoming calendar year, the Board shall subtract the projected collection amounts as described in (a)2 above from the budget estimated in (a)1 above, and divide the result by the number of LSRPs projected to be holding licenses in the upcoming calendar year, rounding up to the nearest 10.00 dollars;

4. The Board shall adjust the final annual license fee as necessary to account for any shortfall or surplus in funds from the previous calendar year.

(b) The Board shall provide notice in the New Jersey Register of any change to the annual license fee in subsequent years.

(c) The Board shall invoice each LSRP for the annual license fee on or about November 1 of each year.

(d) Each LSRP shall pay to the Board the annual license fee no later than 60 days after his or her receipt of the Board's annual license fee invoice.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Deleted former (b) and (f); and recodified former (c) through (e) as (b) through (d).

7:26I-3.6 Fee report

(a) Each calendar year, the Board shall prepare an Annual Site Remediation Professional Licensing Board Fee Calculation Report, which shall:

1. Be based on the Board's proposed budget produced pursuant to N.J.A.C. 7:26I-3.5; and
2. Include:
 - i. The factors used to calculate each fee included in this subchapter; and
 - ii. Each of the fees that shall be due and payable for the following calendar year.

(b) Beginning October 2015, and each October thereafter, the Board shall:

1. Publish in the New Jersey Register a notice that includes:

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i. A summary of the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board's budget; and

ii. A notice that the full report is available on the Board website at www.nj.gov/lsrpboard; and

2. Post on the Board website at www.nj.gov/lsrpboard the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board's budget.

(c) Until the first day of the calendar year following the Board's approval and publication of the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board's budget, the fees shall be as follows:

1. An application fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.3;

2. A renewal fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.4; and

3. An annual license fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.5.

7:26I-3.7 Payment of fees

(a) Any person required to pay a fee pursuant to the SRRA or this chapter shall make payment of fees by:

1. A certified check, attorney check, personal check, or money order, made payable to "Treasurer, State of New Jersey"; or

2. An e-check or credit card after the Board posts a notice of availability of this method of payment on the Board website at www.nj.gov/lsrpboard.

(b) Payments shall be mailed to the following address, unless otherwise indicated on the billing invoice:

New Jersey Site Remediation Professional Licensing Board
PO Box 420
Mail Code 401-06
401 East State Street
Trenton, NJ 08625-0420

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (b), updated the address.

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SUBCHAPTER 4. CONTINUING EDUCATION

7:26I-4.1 Purpose

(a) This subchapter establishes:

1. The mandatory continuing education requirements to be met by each LSRP during each three-year license term in order to renew his or her license; and
2. The Board's procedure to approve continuing education credit for educational programs and activities.

7:26I-4.2 Scope

(a) This subchapter contains provisions that govern the:

1. LSRP continuing education requirements at N.J.A.C. 7:26I-4.3;
2. Board approval of continuing education credit for educational programs at N.J.A.C. 7:26I-4.4; and
3. Board approval of continuing education credit for educational activities at N.J.A.C. 7:26I-4.5.

7:26I-4.3 LSRP continuing education requirements

(a) The Board approves continuing education credit in the categories of ethics education, regulatory education, scientific and technical education, and individual professional development of LSRPs.

(b) Each LSRP shall complete 36 continuing education credits during each three-year license term, as follows:

1. Three continuing education credits in ethics education;
2. Ten continuing education credits in regulatory education;
3. Fourteen continuing education credits in scientific and technical education; and
4. Nine continuing education credits distributed amongst any one or more of the categories of ethics education, regulatory education, scientific and technical education, and individual professional development of LSRPs.

(c) Each LSRP shall earn the required 36 continuing education credits by:

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1. Attending Board-approved continuing education programs; or

2. Participating in Board-approved continuing education activities, as described in N.J.A.C. 7:26I-4.5.

(d) No more than 18 continuing education credits per three-year license term may be earned from Board approved alternative verifiable learning format programs.

(e) No more than 18 continuing education credits per three-year license term may be earned from Board-approved continuing education activities, as described at N.J.A.C. 7:26I-4.5.

(f) No more than 18 continuing education credits per three-year license term may be earned through credits that are verified by affidavit of the attendee.

(g) An LSRP may not earn continuing education credits by attending or instructing the same continuing education program more than once during each three-year license term.

(h) No LSRP may apply continuing education credits earned during one license term toward another license term, provided, however, that an LSRP may apply continuing education credits earned toward his or her next license term beginning the 89th day before his or her license expires, which is the day after the close of the license renewal period.

(i) It is the responsibility of the LSRP to:

1. Track fulfillment of the continuing education requirements described in this subchapter; and

2. Demonstrate fulfillment of continuing education requirements when applying for license renewal.

History

Modified by Executive Order No. 103(2020), effective June 18, 2020.

See: 52 N.J.R. 1362(b).

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote the section.

7:26I-4.4 Board approval of continuing education programs

(a) In order for the Board to approve a continuing education program for continuing education credits, the Board shall find that the program:

1. Has significant intellectual, educational, or practical content;

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2. Has as the primary purpose to increase each participant's professional competence as an LSRP;

3. Is developed and conducted by a person or persons the Board deems qualified, based on practical and academic experience; and

4. Constitutes an organized program of learning that includes subject matter related to the:

i. Regulation of site remediation;

ii. Scientific and technical principles of site remediation;

iii. Ethical obligations of LSRPs; and/or

iv. Individual professional development of LSRPs.

(b) In addition to the requirements at (a) above:

1. Continuing education approved for ethics credit shall have educational content that is designed to advance the LSRP's understanding of the tenets of ethical conduct with respect to the provision of professional services as an LSRP in New Jersey. Approvable ethics credit shall include education regarding the differences between ethical and unethical behavior and shall incorporate the rules of professional conduct of LSRPs found in the SRRA and this chapter with direct examples of situations that an LSRP may face during performance of his or her duties at contaminated sites in New Jersey;

2. Continuing education approved for regulatory credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate site remediation in New Jersey in compliance with applicable statutes, rules, and guidance. Approvable regulatory credit shall include education regarding understanding and complying with the broad range of statutory and regulatory requirements applicable to site remediation in New Jersey;

3. Continuing education approved for scientific and technical credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate the scientific and technical components of site remediation. Approvable scientific and technical credit shall include education regarding site remediation, although it may include more general scientific and technical principles if they are clearly relevant to the scientific and technical components of site remediation; and

4. Continuing education approved for individual professional development credit shall have educational content that is designed to advance the ability of an LSRP to provide professional services. Approvable individual professional development credit shall include education regarding professional practice of LSRPs, including, but not limited to, project

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management, communication, both written and verbal, preparation of written reports, use of databases, and preparation of the technical components of proposals and scopes of work.

(c) The provider of a continuing education program or an LSRP may request Board approval of a continuing education program by submitting the application found on the Board website at www.nj.gov/lsrcboard. The applicant shall submit a completed application within 90 days after the program was held for the first time, or for an LSRP, within 90 days after attending the program. Such application shall include, but not be limited to:

1. A full description of the program, including the title, name of the provider, and date(s), time(s), and location(s) that the program will be or was offered;
2. The number and type of continuing education credits requested;
3. A written outline or syllabus of the continuing education content;
4. A written statement describing the continuing education and establishing its relevance to the regulation of site remediation, scientific and technical principles of site remediation, ethical obligations of LSRPs in New Jersey, and/or individual professional development of LSRPs in New Jersey;
5. The credentials of the instructor(s);
6. A statement that the provider will or did:
 - i. Utilize sign-in and sign-out sheets to verify attendance;
 - ii. Maintain the sign-in and sign-out sheets for a minimum of seven years; and
 - iii. Provide the sign-in and sign-out sheets to the Board for inspection at the Board's request;
7. A statement that the provider will or did provide certificates of attendance to each attendee no later than 30 days after successful completion of the continuing education program;
8. A statement that the provider will or did, at the completion of the continuing education program, conduct and retain for the Board's inspection for a period of three years a confidential evaluation of the continuing education and the continuing education instructor(s);
9. A statement that the provider will or did allow the Board or its authorized representatives, without charge or need for advance registration or notice, to monitor the program without earning any continuing education credits;

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10. For an in-person attendance format program, a statement describing the provider's policy on partial credit when an attendee misses a portion of the continuing education program; and

11. For an alternative verifiable learning format program, an examination or other mechanism that the Board shall approve on an individual basis that an LSRP taking the program shall successfully complete in order to verify attendance and thereby earn continuing education credits; and

12. For a large format conference that does not utilize sign-in and sign-out sheets, an affidavit from the LSRP applying for continuing education credit for attending the conference that enumerates the continuing education programs attended, the number of hours in 0.5-hour increments that the LSRP spent in each continuing education program, and the type of continuing education credit that is appropriate for each continuing education program.

(d) At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

(e) The Board shall determine the number and type(s) of continuing education credits to approve for each continuing education program on an individual basis.

(f) The Board shall post on the Board website at www.nj.gov/lsrpboard, a table of each Board-approved continuing education program and the number and type(s) of continuing education credits approved for each program.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)4ii, deleted "and/or" from the end; in (a)4iii, substituted "; and/or" for the period at the end; added (a)4iv; and rewrote (b) and (c).

7:26I-4.5 Board approval of continuing education activities

(a) An LSRP may request continuing education credit for the following continuing education activities:

1. Instructing a continuing education program that the Board has approved pursuant to N.J.A.C. 7:26I-4.4;

2. Preparing and giving a presentation; and

3. Authoring a paper published in a professional publication or peer-reviewed proceedings of a conference.

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(b) An LSRP may request approval of continuing education credits for instructing a continuing education program that the Board has approved pursuant to N.J.A.C. 7:26I-4.4 according to the following requirements:

1. The LSRP shall make the request no later than 90 days after the date of the program, and shall include the information on the continuing education application for instructors, which is found on the Board website at www.nj.gov/l srpboard. Such information shall include, but is not limited to:

- i. A full description of the program, including the title, name of the provider, and date(s), time(s), and location(s) of the program;
- ii. The number and type of continuing education credits requested;
- iii. A written outline or syllabus of the continuing education content; and
- iv. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

3. The Board shall determine the number and type(s) of continuing education credits to approve for instructing each continuing education program on an individual basis.

(c) An LSRP may request approval of continuing education credits for preparing and giving a presentation according to the following requirements:

1. The LSRP shall make the request no later than 90 days after the date of the presentation, and shall include the information on the continuing education application for presenters, which is found on the Board website at www.nj.gov/l srpboard. Such information shall include, but is not limited to:

- i. A full description of the presentation, including the title, name of the provider, and date(s), time(s), and location(s) of the presentation;
- ii. The number and type of continuing education credits requested;
- iii. A copy of the presentation; and
- iv. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

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3. The Board shall determine the number and type(s) of continuing education credits to approve for preparing and giving each presentation on an individual basis.

(d) An LSRP may request approval of continuing education credits for authoring a paper published in a professional publication or peer reviewed proceedings of a conference.

1. The LSRP shall make the request no later than 90 days after the date of publication and shall include the information on the continuing education application for publications, which is found on the Board website at www.nj.gov/l srpboard. Such information shall include, but is not limited to:

- i. A full description of the journal or proceedings;
- ii. The number and type of continuing education credits requested;
- iii. A copy of the paper;
- iv. The date of publication; and
- v. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

3. The Board shall determine the number and type(s) of continuing education credits to approve for authoring each paper published in a professional publication or peer reviewed proceedings of a conference on an individual basis.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Added new (a); and recodified former (a) through (c) as (b) through (d).

SUBCHAPTER 5. AUDIT PROCEDURES

7:26I-5.1 Purpose

(a) This subchapter:

1. Describes the Board's process to audit the performance of an LSRP to determine compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto and the LSRP's application of appropriate guidance; and

2. Establishes the audit compliance requirements for an LSRP.

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(b) The Board's auditing of the submissions and conduct of LSRPs is separate and distinct from the Department's inspection and review of documents and information submitted by an LSRP and review of the performance of a remediation pursuant to N.J.S.A. 58:10C-21.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)1, inserted "and the LSRP's application of appropriate guidance".

7:26I-5.2 Scope

(a) This subchapter establishes:

1. The Board's audit selection process at N.J.A.C. 7:26I-5.3;
2. The Board's audit review process at N.J.A.C. 7:26I-5.4;
3. The outcome of an audit at N.J.A.C. 7:26I-5.5; and
4. The consequences to an LSRP who fails to cooperate with an audit at N.J.A.C. 7:26I-5.6.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)1, inserted "audit selection" and deleted "for selecting LSRPs for audit" following "process".

7:26I-5.3 Selection of LSRPs to be audited

(a) The Board shall calculate the number of LSRPs to be audited at or prior to the beginning of each calendar year.

(b) The Board shall audit at least 10 percent of the total number of LSRPs in each calendar year.

(c) The Board shall not divulge to anyone outside of the Audit Review Team the name of an LSRP being audited, until the audit is complete.

(d) An LSRP under Board investigation pursuant to N.J.A.C. 7:26I-7 shall be exempt from an audit until such time as the investigation is complete.

(e) The Board shall not audit an LSRP within 24 months of the date of completion of his or her previous audit.

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7:26I-5.4 Audit review process

(a) Except as provided in (b) below, each month the Audit Committee shall assemble an Audit Review Team consisting of two or more Board members, including at least one Board member who is not an LSRP and at least one Board member who is an LSRP, to conduct the audits for the month.

(b) For audits of LSRPs who are Board members, the Audit Review Team shall consist of four Board members, including:

1. The Chairperson of the Board or the State Geologist;
2. A Board member who represents the environmental community;
3. The Board member who represents the business community or the Board member that represents the academic community; and
4. A Board member who is an LSRP.

(c) Should any Board member designated by (b) above be unable to serve on the Audit Review Team, the Audit Committee may select any other Board member as a replacement for that Board member, provided that the Audit Review Team includes at least one Board member who is not an LSRP and at least one Board member who is an LSRP.

(d) Prior to serving on an Audit Review Team, each member shall certify that he or she is:

1. Free of conflict with each LSRP to be audited; and
2. Can fairly and objectively conduct the audits.

(e) If any Board member has a conflict with the LSRP to be audited or cannot fairly and objectively conduct the audit, the Audit Committee may select any other Board member as a replacement for that Board member, provided that the Audit Review Team includes at least one Board member who is not an LSRP and at least one Board member who is an LSRP.

(f) Following selection of an LSRP to be audited, the Board staff shall notify the LSRP of the commencement of the audit. The notification shall include an audit questionnaire, which is found on the Board website at www.nj.gov/lsrpboard, that the LSRP shall complete and return to the Board within 30 days of receipt.

(g) At any time during its review, the Audit Review Team may require the LSRP being audited to supplement the questionnaire with additional information as the Board may specify.

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(h) At any time during its review, the Audit Review Team may request information from the Department, current and former employers or supervisors of the LSRP being audited, continuing education providers, or any other person that may have information relevant to the audit.

(i) The Audit Review Team shall review the submissions and the conduct of the LSRP to:

1. Evaluate the LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto and the LSRP's application of appropriate guidance; and

2. Determine that the LSRP has not knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (i)1, inserted "and the LSRP's application of appropriate guidance".

7:26I-5.5 Outcome of an audit

(a) Upon conclusion of its review, the Audit Review Team shall determine whether the LSRP's submissions and conduct have met the standards in N.J.A.C. 7:26I-5.4(i).

(b) Upon determining that the LSRP has met the standards in N.J.A.C. 7:26I-5.4(i), the Audit Review Team shall report to the Audit Committee:

1. The name of the LSRP audited;
2. The Audit Review Team's findings; and
3. A recommendation that the audit review is complete.

(c) Upon receiving a recommendation that an audit review is complete, the Audit Committee shall determine to:

1. Conclude the audit; or
2. Refer the audit back to the Audit Review Team for further review.

(d) Upon the Audit Committee's determination that the audit is concluded:

1. The Audit Committee shall report to the Board the name of the LSRP;
2. The Board shall notify the LSRP of the outcome of the audit; and

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3. The Board shall post the LSRP's name and audit outcome on the Board website at www.nj.gov/lsrcboard.

(e) Upon determining that the LSRP has not met the standards in N.J.A.C. 7:26I-5.4(i), the Audit Review Team shall submit a report to the Audit Committee stating:

1. The name of the LSRP audited;
2. The Audit Review Team's findings; and
3. A recommendation that the LSRP be further investigated.

(f) Upon receiving a recommendation that the LSRP be further investigated, the Audit Committee shall file a complaint pursuant to N.J.A.C. 7:26I-7.3.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote (f).

7:26I-5.6 Failure to cooperate with an audit

(a) The LSRP, the person responsible for conducting the remediation, and any other person having information regarding an LSRP's submissions and conduct shall cooperate with the Board in the conduct of an audit and shall provide any information the Board requests.

(b) Failure to cooperate with the Board in the conduct of an audit shall be grounds for commencement of disciplinary action pursuant to N.J.A.C. 7:26I-7.

SUBCHAPTER 6. RULES OF PROFESSIONAL CONDUCT

7:26I-6.1 Purpose

This subchapter sets forth the rules of professional conduct that an individual shall implement in the performance of professional services as an LSRP.

7:26I-6.2 Highest priority

An LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.

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7:26I-6.3 Professional competency

(a) An LSRP shall know and apply the applicable statutes, rules, regulations, and appropriate guidance concerning the remediation of contaminated sites including, but not limited to, the remediation requirements set forth at N.J.S.A. 58:10C-14.c:

1. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12;
2. The Remediation Standards rules at N.J.A.C. 7:26D;
3. The indoor air standards adopted by the Department of Health pursuant to N.J.S.A. 52:27D-130.4;
4. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
5. The Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C;
6. The rules adopted by the Board pursuant to sections 5 and 6 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-5 and 6);
7. The mandatory remediation timeframes and expedited site-specific timeframes adopted by the Department pursuant to N.J.S.A. 58:10C-28;
8. The presumptive remedies adopted by the Department pursuant to N.J.S.A. 58:10B-12; and
9. Any other applicable standards, rules, or regulations adopted pursuant to law.

(b) An LSRP shall apply any available and appropriate technical guidance concerning site remediation as issued by the Department.

(c) When there is no specific guidance issued by the Department, or in the independent professional judgment of the LSRP, the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed at (a) above, the LSRP may use the following additional guidance provided that the LSRP includes in the appropriate report a written scientific, technical, or other rationale concerning why the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed at (a) above, and justifies the use of the guidance or methods that were utilized.

1. Any relevant guidance from the U.S. Environmental Protection Agency or other states; and

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2. Any other relevant, applicable, and appropriate methods and practices to ensure the protection of public health and safety and the environment.

(d) An LSRP shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed.

(e) An LSRP shall not provide professional services outside his or her areas of professional competence, unless the LSRP has relied upon the technical assistance of another professional whom the LSRP has reasonably determined to be qualified by education, training, and experience.

(f) An LSRP shall not install, close, test the tank of, or analyze the corrosion protection system of an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq., or install, close, test the tank of, or analyze the corrosion protection system of an unregulated heating oil tank system, or otherwise provide underground storage tank services, unless he or she is certified to do so in accordance with N.J.A.C. 7:14B-13 and 16.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In the introductory paragraph of (a), deleted “technical” following “appropriate”; added new (a)6; recodified former (a)6 through (a)8 as (a)7 through (a)9; rewrote (c); and added (f).

7:26I-6.4 Engineering services

An LSRP shall not perform services that constitute the practice of professional engineering, unless the LSRP is a professional engineer licensed in the State of New Jersey.

7:26I-6.5 Notification of retention and release

(a) An LSRP retained by a person responsible for conducting the remediation shall submit an LSRP Notification of Retention or Dismissal through the Online Business Portal at <https://www.nj.gov/dep/online> no later than 15 days after:

1. The person responsible for conducting the remediation retains the LSRP; and
2. The person responsible for conducting the remediation releases the LSRP from responsibility for remediation, if the release occurs prior to issuance of the RAO.

(b) When an LSRP decides to terminate his or her position as the retained LSRP prior to issuing an RAO, the LSRP shall, within 15 days after terminating his or her position:

1. Communicate this directly in writing to the person responsible for conducting the remediation; and

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2. Submit a Notification of Dismissal through the Online Business Portal at <https://www.nj.gov/dep/online>.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote the section.

7:26I-6.6 Correcting deficiencies

An LSRP shall, in accordance with timeframes the Department establishes, correct any deficiency the Department identifies and resubmit the document to the Department.

7:26I-6.7 Responsibility of successor LSRP or LSRP relying upon work performed by others

(a) An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another site remediation professional, licensed or not, provided that the LSRP:

1. Reviews all available documentation on which he or she relies;
2. Conducts a site visit to observe current conditions and to verify the status of as much of the work previously performed as is reasonably observable; and
3. Concludes, in the exercise of his or her independent professional judgment, that there is sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.

(b) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, shall correct all material deficiencies in a document submitted by the previous site remediation professional including, but not limited to, those the Department identifies, in accordance with timeframes the Department establishes.

(c) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, before the issuance of a final remediation document, and who learns of material facts, data, or other information concerning any phase of the remediation for which a report was submitted to the Department and the material facts, data, or other information were not disclosed in the report, shall promptly notify the LSRP's client and the Department in writing of those material facts, data, or other information and circumstances.

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History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Section was "Responsibility of successor LSRP".

7:26I-6.8 Exercise of independent professional judgment

(a) An LSRP shall exercise independent professional judgment, apply appropriate guidance, and comply with the requirements and procedures set forth in the SRRA and any rule, regulation, and order adopted or issued pursuant thereto. In the exercise of independent professional judgment an LSRP shall:

1. Apply independent professional judgment to all actions during the entire course of the remediation;
2. Describe and document the LSRP's decision-making;
3. Provide documentation of the scientific, technical, or other factors supporting his or her decision to vary from regulations or deviate from guidance when performing remediation;
4. Make decisions and conduct remediation free from outside influence that is not protective of public health and safety and the environment; and
5. Be responsible for the decisions he or she makes even when the LSRP considers information, advice, and opinions of others.

(b) An LSRP shall notify the person responsible for conducting the remediation, in writing, when in his or her independent professional judgment based on site history any one or more applicable regulatory timeframes referenced at N.J.A.C. 7:26C-3 is unlikely to be met.

(c) An LSRP shall notify the person responsible for conducting the remediation and the Department, in writing, on the appropriate form provided by the Department, when in his or her independent professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced at N.J.A.C. 7:26C-3 is unlikely to be met.

(d) An LSRP shall 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 contaminated site for which he or she is retained that are in the possession of the owner of the property, the Department, or that are otherwise available, and identify and obtain additional data and other information that the LSRP deems necessary.

(e) An LSRP shall disclose and explain in any document submitted to the Department any facts, data, information, qualifications, or limitations the LSRP knows that do not support the conclusions reached in the document.

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History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote the section.

7:26I-6.9 Responsibility to report an immediate environmental concern

(a) If an LSRP obtains specific knowledge of a previously unreported condition at a contaminated site that in his or her independent professional judgment is an immediate environmental concern, the LSRP shall:

1. Immediately verbally advise and confirm, in writing, to the person responsible for conducting the remediation of the condition and of that person's duty to notify the Department of the condition provided that the person is known to the LSRP; and

2. Immediately notify the Department of the condition by calling the Department's telephone hotline at 1-877-WARNDEP.

(b) If an LSRP obtains specific knowledge of a previously unreported condition in an unoccupied structure that in the LSRP's independent professional judgment constitutes an immediate environmental concern, and the person responsible for conducting the remediation provides to the Department a written certification from the property owner that the building is not occupied, will not be occupied, and will be demolished, then no further remediation relative to the immediate environmental concern in the unoccupied structure shall be required, provided the conditions of the certification are maintained. Nothing in this subsection shall be construed to limit the responsibility of an LSRP to comply with the notification requirements at (a) above, or the responsibility to report a discharge pursuant to N.J.A.C. 7:26I-6.10.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote (a) and added (b).

7:26I-6.10 Responsibility to report a discharge

(a) If an LSRP retained to perform remediation at a site or any portion of a site obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred at any location on the site, the LSRP shall:

1. Immediately notify the person responsible for conducting the remediation of the discharge and of that person's duty to notify the Department of the discharge;

2. Immediately notify the Department of the discharge by calling the Department's telephone hotline at 1-877-WARNDEP; and

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3. Immediately notify any other LSRP that is working on the contaminated site of the discharge.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a), inserted “retained to perform remediation at a site or any portion of a site”, and substituted “at any location on the site” for “on a contaminated site for which he or she is responsible”.

7:26I-6.11 Deviation from workplan by client

If an LSRP learns of a client’s action or decision that results in a deviation from the remedial action workplan or other report concerning the remediation, the LSRP shall promptly notify the client and the Department, in writing, of the deviation.

7:26I-6.12 Client confidentiality

An LSRP shall not reveal information obtained in a professional capacity, except as may be authorized or required by law, without the prior consent of the client, if the client has notified the LSRP, in writing, that the information is confidential. The provisions of this section shall not apply to information that is in the public domain.

7:26I-6.13 New information after submitting report

An LSRP who learns of material facts, data, or other information subsequent to the completion of a report concerning any phase of remediation, which would result in a report with material differences from the report submitted, shall promptly notify the client and the Department in writing of those facts, data, information, and circumstances.

7:26I-6.14 Responsibility to disassociate from unscrupulous persons

An LSRP shall not allow the use of his or her name by a person, and shall not associate with a person in a business venture, if the LSRP knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of an LSRP.

7:26I-6.15 Responsibility in Board and Department investigations

(a) An LSRP shall cooperate in an investigation by the Board or the Department by furnishing, in response to requests, orders, or subpoenas, any information the Board or the Department, or persons duly authorized by the Board or the Department, deems necessary to perform its duties, by the date the Board or the Department specifies.

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(b) An LSRP shall, in the time and manner the Board or the Department prescribes, provide all information the Board or the Department requests including, but not limited to:

1. The LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto and the LSRP's application of appropriate guidance; and

2. A description of and the status of any remediation the LSRP has participated in including, but not limited to:

- i. Investigative and remedial activities completed to date;
- ii. Investigative and remedial activities required or planned to be completed in the future;
- iii. The LSRP's role in the remediation;
- iv. Any other person's role in the remediation;
- v. Each natural resource or environmental media included in the investigation or remediation;
- vi. Data and information collected or available concerning the remediation;
- vii. A projection of the cost for investigative and remediation activities required or planned to be completed in the future; and
- viii. Any information that an LSRP may have that any person has violated (c) below.

(c) In response to a Board or Department investigation an LSRP shall not:

1. Knowingly make a false statement of material fact;
2. Fail to disclose a fact necessary to correct a material misunderstanding known by the LSRP to have arisen in the matter;
3. Knowingly and materially falsify, tamper with, alter, conceal, or destroy any data, documents, records, remedial systems, or monitoring devices that are relevant to the investigation, without obtaining the prior approval of the Department; or
4. Knowingly allow or tolerate any employee, agent, or contractor of the LSRP to engage in any of the foregoing activities.

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History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (b)1, substituted “and the LSRP’s application of appropriate guidance; and” for the comma at the end.

7:26I-6.16 Circumstances under which an LSRP is held responsible for subordinates

(a) An LSRP shall be jointly responsible for a violation of any provision of this subchapter committed by another site remediation professional, licensed or not, whose work he or she supervises or reviews if:

1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another site remediation professional, licensed or not, under his or her supervision;
2. The LSRP knows or should know that the professional services constitute a violation of the SRRA, or any rule, regulation, or order adopted or issued pursuant thereto; and
3. The LSRP fails to take reasonable steps to avoid or mitigate the violation.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Section was “Circumstances under which an LSRP is held responsible for subordinate LSRP”. In the introductory paragraph of (a) and in (a)1, substituted “site remediation professional, licensed or not,” for “LSRP”; and in (a)2, inserted “or should know” following “knows”.

7:26I-6.17 Duty to comply with Board directives regarding disciplinary matters

An LSRP shall comply with all conditions the Board imposes as a result of a license suspension, revocation, or other Board disciplinary proceeding.

7:26I-6.18 Duty regarding client communications

(a) An LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication by promptly providing the client or prospective client with written documentation of these assumptions, limitations, or qualifications.

(b) An LSRP shall inform a client of:

1. Each regulatory, mandatory, and expedited site-specific timeframe that the LSRP can reasonably ascertain for each contaminated site for which the LSRP has been retained;

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2. The dates by which each component of the remediation shall be completed in order to meet the timeframes in (b)1 above; and

3. The penalties and consequences set forth in applicable statutes and regulations, if the timeframes in (b)1 above are not met.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (b)1, deleted “the client has hired” following “which”, and inserted “has been retained”.

7:26I-6.19 Duty regarding public communications

(a) An LSRP shall respond to public inquiries for information when the person responsible for conducting the remediation designates the LSRP as the point of contact for public inquiries pursuant to N.J.A.C. 7:26C-1.7(o).

(b) Information that the LSRP shall provide, when his or her client has designated the LSRP as the point of contact for the public pursuant to (a) above, shall include:

1. Information that is required to be provided to the public pursuant to N.J.A.C. 7:26C-1.7;

2. Information that has been submitted to the Department; and

3. Any additional information that is important for the public to know in order to protect their health and safety.

(c) An LSRP shall not communicate to the public information that he or she knows is false, inaccurate, misleading, or incomplete. An LSRP shall be deemed to have provided incomplete information when he or she withholds information that is encompassed within (b) above.

(d) The client confidentiality requirements of N.J.A.C. 7:26I-6.12 apply to this section.

7:26I-6.20 LSRP shall not induce or threaten based on connection to agency or official

An LSRP shall not state or imply, as an inducement or a threat to a client or prospective client, an ability to improperly influence a government agency or official.

7:26I-6.21 Prohibition against misrepresentation

(a) In any proposal or description of qualifications, experience, or ability to provide services, an LSRP shall not knowingly:

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1. Make a material misrepresentation of fact;
2. Omit a fact when the omission results in a materially misleading description; or
3. Make a statement that, in the Board's opinion, is likely to create an unjustified expectation about results the LSRP may achieve, or state or imply that the LSRP may achieve results by means that violate the provisions of applicable environmental statutes, rules, or regulations, including the SRRA and any rule, regulation, order, or guidance adopted or issued pursuant thereto.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In the introductory language of (a), inserted "proposal or" following "any"; and in (a)3, substituted "order, or guidance adopted" for "or order adopted".

7:26I-6.22 Duty to notify even if no longer employed by client

An LSRP shall provide any notification to the Board and the Department required pursuant to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto if the notification requirement arises during the LSRP's retention, even if the client discharges the LSRP, or the LSRP discharges himself or herself, prior to providing the notification.

7:26I-6.23 Conflict of interest

(a) An LSRP shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from two or more persons whose interests are adverse or conflicting, unless the circumstances are fully disclosed and agreed to by all persons engaging the LSRP.

(b) An LSRP shall not be a salaried employee of the person responsible for conducting the remediation, or any related entities, for which the LSRP is providing remediation services.

(c) An LSRP shall not allow any ownership interest, compensation, or promise of continued employment, of the LSRP or any immediate family member, to affect the professional services the LSRP provides.

7:26I-6.24 Certification

(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP makes a good faith and reasonable effort to determine that the information in the submission is true, accurate, and complete, and has:

1. Managed, supervised, or performed the work that is the basis of the submission;

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2. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or

3. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable, pursuant to N.J.A.C. 7:26I-6.7.

(b) For documents that the person responsible for conducting the remediation submits to the Department that require LSRP certification, the LSRP shall certify that:

1. The work was performed;

2. The LSRP has:

i. Managed, supervised, or performed the work that is the basis of the submission;

ii. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or

iii. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable pursuant to N.J.A.C. 7:26I-6.7; and

3. The work and the submitted documents conform to, and are consistent with, the remediation requirements in N.J.A.C. 7:26I-6.3(a).

(c) An LSRP shall certify electronic submissions he or she makes to the Department concerning the remediation of a contaminated site. The LSRP shall attest that no other person is authorized or able to use any password, encryption method, or electronic signature that the Board or the Department has provided to the LSRP.

(d) An LSRP shall not knowingly make any false statement, representation, or certification in any document or information submitted to the Board or the Department.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote the introductory paragraph of (a); and added (d).

7:26I-6.25 Response action outcome

(a) Upon completion of the remediation, the LSRP shall not issue an RAO to the person responsible for conducting the remediation until:

1. In the LSRP's opinion, the contaminated site or area of concern has been remediated so that it is in compliance with all applicable statutes, rules, and regulations protective of public health and safety and the environment; and

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2. The person responsible for conducting the remediation has paid to the Department all fees and oversight costs.

(b) The LSRP shall file the RAO with the Department no later than 30 days after issuing it to the person responsible for conducting the remediation.

7:26I-6.26 Direct oversight

For any contaminated site subject to direct oversight pursuant to the SRRA and N.J.A.C. 7:26C-14, the LSRP shall provide all submissions concerning the remediation that the Department requires simultaneously to the Department and the person responsible for conducting the remediation.

7:26I-6.27 Maintenance of data, documents, records, and information

(a) An LSRP shall, for each contaminated site for which he or she has been retained, maintain and preserve all data, documents, records, and information concerning the remediation that the LSRP has managed, supervised, or performed, and concerning the work performed by other persons that the LSRP has reviewed and evaluated or relied upon including, but not limited to, technical records, contractual documents, raw sampling data, and monitoring data. This obligation exists whether or not the data, documents, records, and information concerning the remediation was developed by the LSRP or the LSRP's divisions, employees, agents, accountants, contractors, or attorneys.

1. The period of time during which an LSRP shall maintain all data, documents, records, and information concerning remediation activities at a contaminated site shall be a minimum of 10 years following the later of the following dates:

- i. The date that the LSRP submits a notification of dismissal to the Department;
- ii. The date that the LSRP issues his or her last area of concern specific or entire site RAO for the site; or
- iii. The date that the LSRP completes his or her obligations with respect to any remedial action permit.

(b) No one, including without limitation an LSRP's employer and/or clients, shall restrict the LSRP from personally maintaining and preserving all data, documents, records, and information specified in (a) above in the format and location that the LSRP chooses.

(c) An LSRP shall submit to the Department an electronic copy of the data, documents, records, and information specified at (a) above at the time the response action outcome is submitted to the Department.

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History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Rewrote (a); and added (c).

7:26I-6.28 Cooperation with Department review of remediation

(a) An LSRP shall provide any data, documents, records, and information the Department requests to conduct a review of the remediation of a contaminated site pursuant to N.J.S.A. 58:10C-21, by the date the Department specifies.

(b) Unless the Department directs otherwise, the LSRP may continue to remediate the contaminated site on behalf of the person responsible for conducting the remediation while the Department conducts any inspection or additional review of documents pursuant to N.J.S.A. 58:10C-21.

SUBCHAPTER 7. DISCIPLINARY PROCEEDINGS

7:26I-7.1 Purpose

(a) This subchapter describes the procedures the Board shall follow to:

1. Investigate complaints against any person suspected of violating the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, not applying appropriate guidance, or knowingly making any false statement, representation, or certification in any document or information submitted to the Board or the Department;

2. Take disciplinary action against any person the Board finds to have violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or to have knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department; and

3. Maintain on the Board website a record of the disposition of complaints and provide the public with information upon request.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)1, inserted “not applying appropriate guidance,” following “thereto”.

7:26I-7.2 Scope

(a) This subchapter governs the:

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1. Filing of a complaint at N.J.A.C. 7:26I-7.3;
2. Board's determination to investigate a complaint at N.J.A.C. 7:26I-7.4;
3. Board's investigation of a complaint at N.J.A.C. 7:26I-7.5;
4. Board's actions in response to a complaint at N.J.A.C. 7:26I-7.6; and
5. Board's actions in response to any person's violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto at N.J.A.C. 7:26I-7.7, which include license suspension or revocation (N.J.A.C. 7:26I-7.8), issuance of an administrative order (N.J.A.C. 7:26I-7.9), and issuance of a civil administrative penalty (N.J.A.C. 7:26I-7.10).

7:26I-7.3 Filing of complaint

(a) Any person may file a complaint with the Board alleging that a person has:

1. Violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto or did not apply appropriate guidance; or
2. Knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

(b) A person shall make a complaint to the Board on the form available on the Board website at www.nj.gov/lsrpboard.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)1, inserted "did not apply appropriate guidance".

7:26I-7.4 Board's determination to investigate complaint

(a) Upon receipt of a complaint, Board staff shall:

1. Acknowledge receipt of the complaint to the complainant;
2. Redact the identities of the subject of the complaint and the complainant; and
3. Forward the complaint with the identities of the subject of the complaint and the complainant redacted to the Professional Conduct Committee.

(b) The Professional Conduct Committee shall review each complaint and determine if there are grounds to investigate the complaint.

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(c) If the Professional Conduct Committee finds grounds to investigate the complaint it shall assemble a Complaint Review Team consisting of two or more Board members, including at least one Board member who is not an LSRP and at least one Board member who is an LSRP, to investigate the complaint.

(d) If the Professional Conduct Committee finds there are no grounds to investigate the complaint, it shall refer the complaint to the Board with a recommendation that the complaint be dismissed.

1. If the Board decides to dismiss the complaint the Board shall:

i. Notify the subject of the complaint and the complainant that the complaint has been dismissed; and

ii. Publish a summary of the complaint, including the reason(s) for dismissal on the Board website at www.nj.gov/lsrpboard.

2. If the Board decides to investigate the complaint despite the Professional Conduct Committee's recommendation to dismiss the complaint, the Board shall remand the complaint to the Professional Conduct Committee for investigation pursuant to N.J.A.C. 7:26I-7.5.

7:26I-7.5 Board's investigation of complaint

(a) Upon the convening of a Complaint Review Team pursuant to N.J.A.C. 7:26I-7.4(c), the Board staff shall inform the Complaint Review Team of the identities of the subject of the complaint and the complainant.

(b) Each Complaint Review Team member shall certify that he or she is free of conflict with the subject of the complaint and the complainant, and can fairly and objectively investigate the complaint.

(c) The Board staff shall notify the subject of the complaint that a complaint has been received. The notification letter shall include:

1. The name of the complainant;

2. A copy of the complaint form; and

3. A request for information and a response to the allegations of the complaint.

(d) If the Complaint Review Team determines that the investigation of the complaint could be undermined by notifying the subject of the complaint, the Complaint Review Team may delay notification until a later date.

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(e) The Complaint Review Team shall take such actions it deems necessary to thoroughly investigate the allegations of the complaint. The Complaint Review Team may expand its investigation beyond the allegations of the complaint to investigate whether the subject of the complaint has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, has not applied appropriate guidance, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

(f) The Complaint Review Team has the authority to take any one or more of the following actions:

1. Request, order, or subpoena the subject of the complaint, the complainant, and any other person that may have information regarding the facts of the complaint to:

- i. Submit to questioning or interviews;
- ii. Produce data, documents, records, and information;
- iii. Respond to inquiries from the Complaint Review Team; and
- iv. Make sites, remedial systems, monitoring devices, or other equipment available for inspection;

2. Enter, at reasonable times and in a reasonable manner, any known or suspected site, vessel, or other location, whether public or private, for the purpose of investigating, sampling, inspecting, or copying any records, condition, equipment, practice, or property relating to activities subject to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto. In the event entry is denied or the Board does not wish to provide prior notice, the Board shall seek a warrant authorizing entry before entering the site; and

3. Seize any records, equipment, property, or other evidence relating to activities subject to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto when the Complaint Review Team has reason to believe that any person has made fraudulent representations to the Board or the Department or has destroyed or concealed evidence.

(g) The Complaint Review Team may review information from other persons regarding an LSRP that is the subject of the complaint including, but not limited to:

1. Records from other cases that the LSRP is or was involved in;
2. Prior complaints; and
3. Prior disciplinary actions.

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(h) Upon completion of its investigation, the Complaint Review Team shall prepare and submit a report to the Professional Conduct Committee with the identities of the subject of the complaint and the complainant redacted, which shall contain the following information:

1. A summary of the complaint;
2. An opinion as to the validity of the complaint;
3. A statement of the Complaint Review Team's findings of fact; and
4. A statement of the Complaint Review Team's findings with respect to any violation(s).

(i) The Professional Conduct Committee shall review the findings of the Complaint Review Team and present the Complaint Review Team's report and its own recommendation to the Board in executive session.

(j) In the executive session the Professional Conduct Committee shall not disclose to the Board the identity of the complainant and the subject of the complaint.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (e), inserted "has not applied appropriate guidance,"; in (h)3, inserted "and" at the end; in (h)4, substituted a period for "; and"; deleted former (h)5; and in (i), deleted "and recommendations".

7:26I-7.6 Board's actions in response to complaint

(a) The Board shall review the findings and recommendations of the Complaint Review Team and Professional Conduct Committee in executive session.

(b) The Board shall take one of the following actions with regard to the complaint:

1. Refer the complaint back to the Professional Conduct Committee for further investigation of specific issues;
2. Determine that no violation has been identified; or
3. Determine that the subject of the complaint has committed one or more violations of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made one or more false statements, representations, or certifications in any document or information submitted to the Board or the Department.

(c) Upon a determination pursuant to (b)3 above, the Board may exercise any of the remedies provided by the SRRA or this chapter.

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(d) The identities of the subject of the complaint and complainant shall remain confidential until the Board makes a determination pursuant to (b)2 or 3 above.

(e) Upon the Board's determination pursuant to (b)2 or 3 above, a summary of the complaint and its disposition shall be made available on the Board website at www.nj.gov/lsrcboard.

7:26I-7.7 Board's actions in response to violation

(a) Whenever the Board determines that a person has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may:

1. Suspend or revoke the license of an LSRP or impose another sanction on the LSRP;
2. Institute a civil action in Superior Court;
3. Issue an administrative order;
4. Bring an action in Superior Court for a civil penalty;
5. Assess a civil administrative penalty;
6. Petition the Attorney General to bring a criminal action; or
7. Issue a letter of warning or admonition.

(b) The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)5, deleted "or" from the end; in (a)6, substituted "; or" for the period at the end; and added (a)7.

7:26I-7.8 License suspension or revocation and other sanctions

(a) In each notice of intent to suspend or revoke the license of an LSRP or impose another sanction, the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;
2. Specify the provision(s) of the statute, rule, regulation, or order violated;

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3. Specify the license to be suspended or revoked, or the sanction to be imposed;
4. If suspension, specify the term of suspension and any conditions on the reinstatement of the license;
5. Order the LSRP to provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on pursuant to N.J.A.C. 7:26I-6.27;
6. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and
7. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrpboard.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

Section was "License suspension or revocation". In (a)5, inserted "pursuant to N.J.A.C. 7:26I-6.27".

7:26I-7.9 Administrative order

(a) In each administrative order the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;
2. Specify the provision(s) of the statute, rule, regulation, or order violated;
3. Order the violator to comply with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, including, but not limited to, the provision(s) violated;
4. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and
5. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrpboard.

(b) In each administrative order, when determined to be required as part of the corrective action, the Board may:

1. Require the production or analysis of samples;
2. Require the production of data, documents, records, and information; and

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3. Impose restraints on or require action by the violator.

(c) In each administrative order, when determined to be appropriate, the Board may assess and recover the costs of:

1. Any investigation incurred by the Board and any other State agency; and

2. Preparing and successfully enforcing a civil administrative penalty pursuant to this subchapter.

(d) Issuance of an order pursuant to this section shall not preclude, and shall not be deemed an election to forego, any action to suspend or revoke a license, recover damages, or seek injunctive relief, civil, or criminal penalties, or any other remedy.

7:26I-7.10 Civil administrative penalty

(a) In each civil administrative penalty the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;

2. Specify the provision(s) of the statute, rule, regulation, or order violated;

3. State the amount of the civil penalty to be assessed, which shall not be more than \$ 10,000 for a first violation and not more than \$ 20,000 for every subsequent violation;

4. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and

5. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrcpboard.

SUBCHAPTER 8. ADJUDICATORY PROCEEDINGS

7:26I-8.1 Purpose

The purpose of this subchapter is to establish the procedures for requesting an adjudicatory hearing to appeal any of the Board's determinations set forth in N.J.A.C. 7:26I-8.3(a).

7:26I-8.2 Scope

(a) This subchapter contains provisions that govern the procedures for:

1. Requesting and conducting an adjudicatory hearing at N.J.A.C. 7:26I-8.3;

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2. Denying a request for an adjudicatory hearing at N.J.A.C. 7:26I-8.4; and
3. Issuing final orders and other Board decisions at N.J.A.C. 7:26I-8.5.

7:26I-8.3 Procedures for requesting and conducting an adjudicatory hearing

(a) A person may request an adjudicatory hearing to appeal any of the following Board actions:

1. A denial of a person's application for an LSRP license renewal pursuant to N.J.A.C. 7:26I-2.11;
2. License suspension or revocation, or other sanction, pursuant to N.J.A.C. 7:26I-2.13, 2.14, and 7.8;
3. An issuance of an administrative order pursuant to N.J.A.C. 7:26I-7.9; and
4. An assessment of a civil administrative penalty pursuant to N.J.A.C. 7:26I-7.10.

(b) The person requesting a hearing pursuant to (a) above shall:

1. Have 35 days after receipt of notification of the Board's action within which to request a hearing;
2. Comply with all procedures in (c) below; and
3. Deliver all items specified at (c) below to the following:

New Jersey Site Remediation Professional Licensing Board
PO Box 420
Mail Code 401-06
401 East State Street
Trenton, NJ 08625-0420

(c) A person requesting a hearing shall do so in writing on the Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrpboard, and include at a minimum each item specified below:

1. The disciplinary document, disciplinary document number, and dates issued and received;
2. The name, mailing address, email address, and telephone number of the petitioner and petitioner's attorney;

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3. The time required for the hearing;
4. Whether a barrier-free location is required;
5. A list of all specific issues being appealed;
6. A document in which the petitioner admits, denies, or makes a statement of insufficient knowledge for each specified paragraph in the disciplinary document;
7. A list of all information and copies of written documents the petitioner intends to rely on to support the appeal of the disciplinary document;
8. A list of all defenses, stated in short and plain terms, to each of the findings in specified paragraphs in the disciplinary document; and
9. A statement of willingness to negotiate settlement with the Board or with mediation.

(d) The Board shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (b)3, substituted “at” for “in” following “specified” and rewrote the address; and in (c)9, deleted “through the Department’s Office of Dispute Resolution”.

7:26I-8.4 Procedures for denying a request for an adjudicatory hearing

- (a) The Board shall deny the hearing request if the petitioner does not:
1. Submit a request within 35 days after receipt of notification of the Board’s action; or
 2. Comply with the requirements for requesting a hearing at N.J.A.C. 7:26I-8.3.

7:26I-8.5 Final orders and other Board decisions

(a) A notice of denial of an application for a renewed LSRP license shall become a final order upon the occurrence of any of the following:

1. The Board’s issuance of a final decision after an adjudicatory hearing;
2. The Board’s denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

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(b) A notice of intent to suspend or revoke the license of an LSRP, or to impose another sanction, shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(c) An administrative order shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(d) A notice of assessment of a civil administrative penalty shall become a final order and the penalty due and payable upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

SUBCHAPTER 9. PROHIBITION AGAINST RETALIATORY ACTION

7:26I-9.1 Purpose

(a) In the performance of his or her duties and obligations pursuant to the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, or in the LSRP's application of appropriate guidance, an LSRP may be required to take action that is adverse to a client, an employer, or another person in order to protect public health and safety and the environment or otherwise carry out his or her professional services in compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, or in the LSRP's application of appropriate guidance.

(b) This subchapter is intended to deter a person from retaliating against an LSRP in the performance of his or her professional services.

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(c) This subchapter is intended to deter an LSRP from retaliating against a person who files a complaint with the Board about the LSRP, or who provides information to the Board during the conduct of an audit or investigation of the LSRP.

(d) Retaliatory actions shall include, but not be limited to, reprisal by discharge, suspension, demotion, or other adverse employment action taken against an employee in the terms and conditions of employment, or otherwise terminating a person's employment or contract to provide professional services.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a), substituted "pursuant to" for "under" following "obligations", and inserted "or in LSRP's application of appropriate guidance" twice.

7:26I-9.2 Retaliatory action prohibited

(a) No person shall take or threaten to take retaliatory action if an LSRP:

1. Discloses, or undertakes to disclose, to the Board or to the Department an activity, policy, or practice that the LSRP reasonably believes:

i. Is a violation of law, or a rule or regulation adopted pursuant to law, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity; or

ii. Is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the LSRP reasonably believes may defraud any client, customer, the Board, the Department, or any other governmental entity;

2. Provides notice to the Department, in writing, when in his or her independent professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced at N.J.A.C. 7:26C-3 is unlikely to be met;

3. Provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of law, or rule or regulation adopted pursuant to law, by a client or customer with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity, or provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into the quality of remediation of a contaminated site;

4. Reports a discharge or immediate environmental concern to the Department; or

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5. Objects to, or refuses to participate in, any activity, policy, or practice that the LSRP reasonably believes:

i. Is in violation of law, or a rule or regulation adopted pursuant to law, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity;

ii. Is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the LSRP reasonably believes may defraud any client, customer, the Board, the Department, or any other governmental entity; or

iii. Is incompatible with a clear mandate of public policy concerning the protection of public health and safety and the environment.

(b) No LSRP shall take or threaten to take retaliatory action against a person who files a complaint with the Board against an LSRP or provides information to the Board during an investigation of a complaint pursuant to the SRRA and this chapter or provides information to the Board during an audit pursuant to the SRRA and this chapter.

History

Amended by R.2023 d.131, effective November 20, 2023.

See: 54 N.J.R. 1998(a), 55 N.J.R. 2324(b).

In (a)2, inserted commas preceding and following “in writing”, inserted “independent”, and substituted “at” for “in” following “referenced”.

7:26I-9.3 Disciplinary action

Any person who violates any provision of this subchapter shall be subject to disciplinary action by the Board pursuant to N.J.A.C. 7:26I-7.