

MCP

Massachusetts Contingency Plan

Q & A

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Subpart B

Best Response Action Management Approach

- Q:** *May "innovative technologies" be applied at a disposal site when conducting assessment and remediation under the new MCP?*
- A:** Yes. DEP encourages the use of technologies which recycle, detoxify or destroy oil and/or hazardous material and minimize the need for long-term management of contaminated media [see 310 CMR 40.0191(3)(a)]. The performance standard set by the new MCP and described as the Best Response Action Management Approach ("BRAMA") provides opportunities to utilize innovative methods during assessment and remediation of disposal sites, provided these techniques are scientifically defensible and are adequately documented in response action submittals [see 310 CMR 40.0017(2)(c) and 40.0191]. In this regard, innovative technologies may be implemented to achieve a solution that could potentially be more effective in reducing oil and/or hazardous material in the environment than conventional technologies.

Subpart C

Notification

- Q:** *What are the notification requirements for a release where the detection limit for the analytical method I am using is higher than the Reportable Concentration (RC) in the Massachusetts Oil and Hazardous Material List (MOHML)?*
- A:** The MCP does not impose specific sampling or analytical protocols for site assessments which may result in notification to DEP. LSPs/Consultants should use up-to-date analytical methods which are scientifically valid, available and generally accepted by the profession [see 310 CMR 40.0017(1) and 40.0191(2)(b)]. In a situation where the Method Detection Limit (MDL) for a contaminant is higher than the RCs, the PRP would have to notify DEP only if he/she obtained analytical results showing contamination levels at or above the detection limit for the chosen method. DEP is re-evaluating the RCs to determine whether some are below Practical Quantitation Limits (PQLs) as part of the MCP revision process.

However, if the detection limit for a specific sample is elevated above the MDL due to contaminant interferences and this prevents direct comparison of the analytical results to RCs, then you should assume that these results exceed RCs unless resampling demonstrates otherwise. Additionally, while the MCP does not mandate the use of specific analytical protocols, a PRP could be violating the MCP by his/her "willful,

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knowing or negligent avoidance of learning about the fact or facts in question" if the PRP purposely selects an analytical method to avoid encountering a contaminant that was likely to be present at a site in a concentration exceeding RCs and below the MDL (see definition of "Knowledge" in 310 CMR 40.0006).

Subpart D

Immediate Response Action Plans

Q: *Should an Immediate Response Action Plan (IRAP) be submitted for assessment-only site activities within the 60-day timeframe if neither an Immediate Response Action Completion Statement (IRAC) nor a Response Action Outcome Statement (RAO) can be filed?*

A: Yes. Although LSPs conducting assessment-only IRAs do not need to obtain DEP approval before proceeding with response actions, an IRAP is required within 60 days of notifying DEP of the need to conduct an IRA (provided an IRAC or RAO is not submitted) [see 310 CMR 40.0420(3) and 40.0420(5)]. The rationale for this provision is that DEP should receive information to monitor site activities with an option to become involved if warranted. The only exception to the requirement for an IRAP is if the IRA consists only of fence construction or the posting of signs [see 310 CMR 40.0420(5)(b)].

Subpart D

Utility-related Abatement Measures

Q: *In order to undertake a Utility-related Abatement Measure (URAM), notification to DEP is always required. However, can a utility company perform a Limited Removal Action (LRA) and avoid notification if the volume of contaminated soil is within the excavation limits prescribed for LRAs?*

A: Yes. A utility company may perform a LRA instead of a URAM if the entire release falls within the criteria for LRAs. LRAs may be conducted prior to notifying DEP of releases which trigger the 120-day notification criteria and which do not require excavation of more than 100 cubic yards of oil or waste oil contaminated soil or 20 cubic yards of soil contaminated with hazardous material. Please note: URAMs cannot be initiated or continued at any site where a "2-Hour" or "72-Hour" release has occurred until an IRA has been undertaken and an IRAC submitted to DEP.

If a utility company chooses to undertake a LRA instead of a URAM, the utility must remove all of the contaminated soil that exceeds the RCs, manage the remediation waste according to 310 CMR 40.0030, and document the removal of contaminated soil [see 310 CMR 40.0318(7)].

Subpart D

Utility-related Abatement Measures

Q: *Do steam pipes qualify as "utilities" under the provisions for URAMs?*

A: Yes. Steam pipes are considered conduits of the type envisioned in 310 CMR 40.0461(2)(c). Therefore, a URAM may be conducted to manage contamination encountered during the installation, repair, replacement or decommissioning of steam pipes, after notifying DEP.



Subpart F

Priority Disposal Sites

Q: *If my site was classified as a Priority Disposal Site according to the 1988 MCP and it is now categorically a Tier IA site according to the revised MCP [see 310 CMR 40.0640(1)(b)], can I submit a Permit Modification application to change the site status to Tier IB, IC or Tier II, prior to receiving a Transition Permit from DEP?*

A: Yes. According to the MCP, DEP can issue either a Tier IA or Tier IB Transition Classification and Permit Statement (Transition Statement) to Priority Disposal Sites [see 310 CMR 40.0640(3)(a)]. Prior to receiving a Transition Statement, a RP or PRP may submit an application for a Major Permit Modification to downgrade a Tier IA site. Similarly, after a site receives a Tier IA Transition Permit from DEP, the PRP may also submit an application for a Major Permit Modification. In either situation, the application should be based upon available data, including Phase I information, provided that it is sufficient to support the Numerical Ranking Scoresheet (NRS), which is a required element in the permit modification application. DEP will review this information when considering approval of the application.

Please note: The provision in 310 CMR 40.0707(1)(b) which stipulates that downgrading a disposal site is only allowed at the completion of a Phase II investigation was not intended to address Transition Permit sites. This clarification will be reflected in the upcoming revisions to the regulations.

Subpart I

Method 1 Risk Characterization

Q: *If I am using Method 1 to perform a risk characterization, can I average the groundwater contaminant concentrations found in the monitoring wells across the site, or must each well meet the applicable groundwater standards?*

A: You must consider the contaminant concentration at each groundwater monitoring well as a separate exposure point and meet the applicable cleanup standard at each monitoring well location. According to the MCP, existing water supply wells and monitoring wells are considered current or potential exposure points for a Method 1 Risk Characterization [see 310 CMR 40.0973(3)(a)]. Additionally, exposure point concentrations must be determined for each oil and/or hazardous material at each exposure point and they must be representative of the actual concentration at that exposure point, unmodified by other exposure assumptions [see 310 CMR 40.0973(4)]. Contaminant concentrations from different exposure points (i.e., different monitoring wells) cannot be averaged across an area of the site and subsequently compared to the Method 1 standards.

It is acceptable, however, to average contaminant concentrations from multiple sampling rounds at the same well or exposure point if the average value is considered representative of current and reasonably foreseeable concentrations at that exposure point [see 310 CMR 40.0926(3)]. The Risk Assessment Guidance Document under development by DEP's Office of Research and Standards will provide additional guidance on this topic.



Subpart I

Method 1 Risk Characterization

Q: *Can I average the soil contaminant concentrations detected in different soil borings across my site when performing a Method 1 risk characterization?*

A: Yes, under specific conditions. Unlike groundwater monitoring wells, which are considered separate exposure points, soils within the same soil category are considered a single exposure point. Therefore, soil contaminant concentrations measured across a contiguous contaminated area belonging to the same soil category may be averaged and compared to Method 1 soil standards [see 310 CMR 40.0973(3)(b)].

Subpart I

Upper Concentration Limits

Q: *Can I compare the Upper Concentration Limits (UCLs) listed in 310 CMR 40.0996(4) to the arithmetic mean of soil and groundwater contaminant levels or should I compare them to the highest contaminant concentrations observed?*

A: When using Method 3 to characterize the potential future risk of harm to public welfare and the environment, the arithmetic average of contaminant concentrations in soil and groundwater across an area of the site should be compared to the UCLs [see 310 CMR 40.0994(3) and 40.0995(5)]. This average may also include the exposure point concentration for a "Hot Spot" and/or "Non-Detect" within the area of contamination, provided the concentrations for the Non-Detects are calculated to equal one-half of the Sample Detection Limit (SDL). However, the average contaminant concentration for soil and/or groundwater should not include any sample (either positive or Non-Detect) beyond the area of contamination.

Subpart J

Response Action Outcomes

Q: *Must all stockpiled or containerized waste be removed from a disposal site prior to filing a RAO Statement?*

A: Yes. To achieve a Permanent Solution RAO, response actions must result in a level of No Significant Risk [see 310 CMR 40.1035(2)(a)]. Additionally, to achieve a Temporary Solution RAO, any substantial hazard at the disposal site must be eliminated [see 310 CMR 40.1050(1)]. These requirements include removal of remediation waste, which could pose a potential exposure route if left onsite. In both instances, all documentation supporting the RAO, including Bills of Lading which have not been previously submitted, must be sent to DEP [see 310 CMR 40.1056(2)] and the removal indicated on the RAO Statement (see RAO Form, BWSC-004, Box G).

Q: *How should I support the remediation of a sudden spill to pavement in a RAO, where the release was confined to the pavement (i.e., the release did not reach the soil, groundwater or surface water)? I have no analytical data which documents the achievement of the cleanup levels.*



- A:** It is possible to support a RAO without laboratory data demonstrating attainment of applicable cleanup levels. In this case, you have other "data", such as visual observations and first-hand knowledge of the nature and extent of the release. Following an adequate cleanup of the pavement, the site may be considered restored to "background" and a Class A-1 RAO Statement may be filed. There is no need to indicate on the RAO Form which risk characterization method or soil or groundwater standards were used because this information is not applicable (see 310 CMR 40.0901). However, the LSP must attach sufficient information (i.e. a description of remedial actions, visual observations and/or field screening) to support his/her finding that background was achieved. It is important to note that this "no analytical data" scenario is only appropriate for very small releases where you are confident that the release has been entirely contained and cleaned up.

Subpart J

Activity and Use Limitations

- Q:** *Can I use an Activity and Use Limitation (AUL) to restrict current activities that could result in exposure to residual contamination that remains at my site?*

- A:** Yes, but with certain limitations. AULs are tools by which potential exposures may be eliminated or reduced by modifying or restricting peoples' actions in contaminated areas. They are, in effect, a form of remedial action and the distinction between *proposed* AULs and *implemented* AULs becomes important in the risk characterization process (just as there is a difference in exposure potential at a site where there has been a completed soil excavation and one where the excavation is simply being proposed for the future).

The MCP requires that the risk assessment evaluate the current site uses in order to protect receptors who may be currently exposed [see 310 CMR 40.0923(2)]. If an AUL is in place and effective in reducing or eliminating exposures, then it may be considered in the current use scenario (again, the AUL is treated similarly to already excavated soil).

Proposed (or ineffective) AULs, on the other hand, cannot be used in the risk characterization to assume limited exposures from current site activities and cannot justify a risk assessment which does not adequately evaluate current exposures [see 310 CMR 40.0923(4)(a)]. Proposed AULs are intended to eliminate potential future exposures from site activities which could result in significant risk of harm due to residual contamination that remains on the property [see 310 CMR 40.0923(3)(b)]. A proposed AUL may be evaluated as a potential remedial measure, but the current exposures without the AUL must also be included in the risk characterization.

310 CMR 4.00

Annual Compliance Assurance Fees

- Q:** *Are municipalities exempt from paying fees related to activities conducted under the MCP?*

- A:** No. Local departments, boards and authorities must pay Annual Compliance Assurance Fees. 310 CMR 4.03(2) states that "Agencies of the Commonwealth shall be exempt from annual compliance assurance



fees." In this context, "Agencies of the Commonwealth" means state-level agencies and does not include local departments or boards. State agencies, however, are only exempt from paying Annual Compliance Assurance Fees (i.e., Tier IA, IB, IC, Tier II, RAM, RAO and Operation and Maintenance Fees). They are not exempt from paying Permit Fees.

For questions regarding the new MCP, call the "MCP HotLine", which is part of DEP's InfoLine, during regular business hours. HotLine staff are available to answer your questions and provide you with information on current policies, guidance and fact sheets and will return voicemail messages within one business day, in the order that they are received. From area code 617 and outside Massachusetts, call (617) 338-2255. From area code 413 and 508, call (800) 462-0444.

