

Proposed Changes to the Massachusetts Waste Site Cleanup Regulations on the Way

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Several modifications are being proposed to the Massachusetts Contingency Plan (MCP) regulation (310 CMR 40.0000). The Massachusetts Department of Environmental Protection (MADEP) plans to release a public hearing draft of the changes this spring. MADEP dubs the revisions “Wave 2,” which reflect the second round of modifications that were planned by MADEP since publication of an environmental impact report on the waste site clean up program in 1999.

There are many revisions to the regulation – some that clarify existing provisions, other changes that relieve requirements, and still others that expand waste site clean up requirements. Proposed changes to the MCP are summarized below.

Clarifications and Added Flexibility

In an effort to avoid delays in construction projects, revisions are proposed to allow for “focused” risk characterization of that portion of contaminated soil located next to, or in the foot print of, a permanent structure (i.e., building) being built. To date, there has been reluctance by owners and environmental professionals to move forward on construction projects where contaminated soil is present. This change is intended to minimize impacts to site development while properly addressing environmental risk.

New provisions will also clarify

requirements for the excavation of contaminated soil at disposal sites that have achieved a Response Action Outcome (RAO) and been closed out. Other than implementing proper soil management procedures, there are no additional requirements for the excavation of contaminated soil at disposal sites that have been closed out with a Class A-1, A-2 or B-1 RAO (i.e., no Activity Use Limitation was required). For disposal sites with an AUL, up to 100 cubic yards of petroleum contaminated soil or 20 cubic yards of soil contaminated with hazardous material can be removed without notifying or seeking approval from MADEP. Removal of contaminated soil greater than these amounts must be conducted as a Release Abatement Measure.

Changes are proposed to eliminate the burdensome requirement of obtaining a Grant of Environmental Restriction to prevent the installation of private water supply wells. Instead, Activity Use Limitations (AUL) will be expanded to restrict private wells to non-drinking water uses.

Many disposal sites have reached a Class C Response Action Outcome (RAO), which declares achievement of a temporary remedial solution. MADEP believes that the ambiguity of this RAO has become an attractive alternative to more expensive permanent clean up. Revisions are proposed to clarify the performance standard of the Class C RAO and to prevent inappropriate

selection of this outcome by establishing two tiers – a Class C-1 for temporary solutions having no feasible permanent solution, and a Class C-2 for temporary solutions where a feasible permanent solution does exist. Class C-1 RAOs will be subject to periodic evaluations every 5 years as currently required while Class C-2 RAOs will continue response actions towards a Permanent Solution under a Tier 1 Permit or Tier II Classification. Guidance for determining the feasibility of achieving a permanent solution will be developed by MADEP.

A notification exemption is proposed for the presence of “naturally occurring” Arsenic and Beryllium in Worcester County and Boston Blue Clay.

More Reporting and Expanded Public Involvement

In an effort to efficiently track the growing number of disposal sites undergoing remediation and to ensure that clean up is being performed as proposed, MADEP is proposing to expand reporting under the Remedy Operation Status (ROS) to now include “passive” remediation systems. Passive systems include activities such as monitored natural attenuation and reactive barriers where equipment operation and maintenance is not required. For “active” treatment

systems, submittal of a new form, Remedial System Monitoring Report (RSMR), will be required to more closely track these clean ups. Monthly submittal of RSMRs will be required for disposal sites where an Imminent Hazard or Critical Exposure Pathway is present; otherwise quarterly submittal will be required.

Public involvement will be expanded to include issuing a copy of the Release Notification Form with a site locus map or assessor's parcel map/number to local officials, providing a summary of findings to local officials rather than the current notice of report availability, and notifying public water suppliers of releases in resource protection areas with groundwater contamination greater than GW-1 reporting thresholds. Additional requirements are proposed to include informing third party property owners of their right to obtain data if their property is sampled, informing property owners and occupants of disposal sites where an Immediate Response Action is being conducted, notifying owners if their property is part of a disposal site, and notifying abutting property owners that their property is next to a disposal site.

Asbestos

One of the more significant impacts by the proposed changes is the addition of Asbestos as a regulated compound. Asbestos in soil would be subject to release notification and clean up standards. The addition of Asbestos as an MCP regulated compound will likely become part of environmental due diligence for commercial real estate, particularly on land where fill is present or on land that has been subject to historic or prolonged development.

Soil and groundwater clean up standards will also be updated using more recent toxicity data and updated methodologies. MADEP estimates that of the universe of current disposal sites reported to the department, about 7% of the sites may require additional response actions under the revised standards. The remainder of sites will be unaffected. For disposal sites with soil contamination, about 20% of the sites may require additional response actions under the revised standards. The new standards will not affect disposal sites that have been have achieved a Class A or B RAO.

Stiffer Penalties

Finally, MADEP has proposed a significant increase to administrative penalties in 310 CRM 5.00 relating to the MCP. A penalty of up to \$25,000 per day for failure to report a release is proposed – up from \$1,000 per day. Additionally, a \$25,000 per day penalty is proposed for a violation of an Activity Use Limitation.

MADEP expects the proposed regulations to become available in late March or early April 2004. Final regulations are targeted early summer 2004. Contact Ms. Elizabeth Callahan of MADEP at (617) 348-4056 or at elizabeth.j.callahan@state.ma.us for additional information or to be added to the e-mail distribution list.

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