

BANKER & TRADESMAN

THE REAL ESTATE, BANKING AND COMMERCIAL WEEKLY FOR MASSACHUSETTS

A PUBLICATION OF THE WARREN GROUP

NEW PRIORITIES

MassDEP Issues Sweeping Amendments To Mass. Contingency Plan

Revised Clean-Up Regulations Mix Burdens With Benefits

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SPECIAL TO BANKER & TRADESMAN

The Massachusetts Department of Environmental Protection (MassDEP) is adopting sweeping amendments to the Massachusetts Contingency Plan (MCP), the regulations that prescribe standards and procedures for cleaning



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up contaminated sites. Many changes, including new categories of permitted final outcomes, may provide greater flexibility for reaching regulatory closure. Others will make the process more cumbersome and costly. Following is a summary of changes that may materially affect the scope and cost of work to clean up sites in Massachusetts.

Clean-up standards: MassDEP has updated the toxicity and background numbers it uses to calculate risks from several chemicals. As a result, the criteria for cleaning up groundwater, soil and indoor air have changed. These changes cut both ways. For example, clean-up standards for two common contaminants, trichloroethene and lead, now are more stringent. Standards for other metals in soil, by contrast, were made more lenient.

New MCP outcomes: As amended, the MCP no longer uses the term “response action outcome” (RAO). MCP endpoints now will be known as “temporary solutions,” “permanent solutions with no conditions” or “permanent solu-

tions with conditions.” Permanent solutions with conditions include sites that have activity and use limitations (AULs), recommended best management practices for home gardening or historic fill. They also include vacant land where construction of a new building would trigger more stringent groundwater cleanup standards to protect against vapor intrusion.

Urban fill: Significant parts of Massachusetts, including much of Boston and Cambridge, are built on filled land. Material historically used as fill often does not meet MCP soil standards. MassDEP has defined a new category of material, “historic fill,” which may be left in place even if it contains concentrations of chemicals above those standards. Historic fill, among other things, must have been deposited prior to 1983 and cannot contain waste from chemical production, manufacturing or on-site operations. Sites where historic fill remains must be closed with a “condition” to provide notice of its presence.

Active vapor mitigation systems: MassDEP’s guidance states a preference for active systems to prevent vapor migration into buildings. Under the MCP prior to the amendments, these systems did not qualify for a permanent solution. This limitation, which was problematic, has been removed by the amendments. However, the amendments impose substantial new financial assurance, automated monitoring and reporting, stakeholder notification, and certification requirements for such systems.

Immediate response action triggers: MassDEP has expanded the list of conditions that will trigger immediate response actions (IRAs). These changes are aimed primarily at situations which MassDEP has concluded have the “potential” to cause vapor mi-

gration into buildings. These include any instance in which volatile organic compounds (VOCs) are detected in excess of groundwater standards within 30 feet of a building, or in soil within six feet of a building “at concentrations that are likely to discharge vapors into the structure.”

Updated requirements for oil and separate phase liquids: The amendments update the MCP’s requirements for evaluating and addressing instances in which oil or other separate phase liquids (NAPLs) are present in the subsurface. Currently the presence of one-half inch or more of NAPL at a site precludes a permanent solution. The amendments allow for a permanent solution even if NAPL is present, provided the NAPL is stable and not migrating, and an AUL is recorded.

Source control: MassDEP has raised the bar regarding “sources” of contamination. Again, the principal focus of MassDEP’s new source definitions and standards is VOCs in soil or bedrock that continue to contaminate soil gas or groundwater and cause vapor intrusion. MassDEP has added a new “migration control” provision that requires vapor-phase contamination be stable, contracting, or otherwise controlled or mitigated to the extent feasible.

Streamlining: MassDEP has streamlined some MCP requirements. For example, Tier I permits have been eliminated. Sites will be classified by inclusionary criteria rather than a numerical ranking process. These criteria include the need to conduct response actions to address vapor intrusion. Requirements and forms for AULs have been simplified, and AULs now may be used at Superfund sites. A new require-

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ment has been added, however, requiring notice to MassDEP whenever title to property subject to an AUL is conveyed.

Green remediation: MassDEP has added provisions requiring consideration of sustainability issues in the remedy selection process. MassDEP continues to favor resource intensive strategies, like source removal and active mitigation systems, but it will require consideration

of such issues as energy and water use, greenhouse gas emissions and waste minimization during remedy implementation.

MassDEP's amendments will be comprehensive. Many reflect advances in scientific knowledge, including new toxicity data and better understanding of NAPL behavior. Others reflect changes in MassDEP's priorities, particularly its heightened concern about vapor intrusion, and

its overall goal of increasing regulatory efficiency. For better and worse, the amendments will materially affect requirements for completing cleanups in Massachusetts. ■

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