



Attachment to LSPA Comments

2013 Public Hearing Draft – Proposed Amendments to the Massachusetts Contingency Plan, 310 CMR 40.0000

Provided below are the LSP Association’s detailed comments on the 2013 “Public Hearing Draft – Proposed Amendments to the Massachusetts Contingency Plan, 310 CMR 40.0000.”

“Page No.” refers to the pages in the Public Hearing Draft made available electronically in redline/strikeout format published in MSWord.

“MCP Reference” refers to the new citations in the Public Hearing Draft, unless otherwise noted.

The LSPA has made every effort to state the issue of concern, provide a specific example wherever possible, and propose suggested language changes where appropriate.

PERMIT/TIER CLASSIFICATION AND NUMERICAL RANKING SYSTEM		
Page No.	MCP Reference	Comment
4	NA	The LSPA concurs with the rationale for eliminating the Numerical Ranking System and Tier 1 permit process and providing a simplified method for determining which sites are Tier 1. We support this change, but have comments on the Tier 1 inclusionary criteria as noted below.
8	40.510(2)(g)	Issue: Requiring that Tier Classification submittals include the tearsheet(s) as proof of publication is logistically difficult and does not recognize the availability of greener electronic versions. Suggestion: Rewrite to include either the tearsheet(s) from the newspapers(s) containing the public notice or an internet-based version, including the date of publication and the referenced link.

9	40.510(3)(c)	Suggestion: Rewrite to allow email submittal, i.e. ...written comments shall be submitted to the Department by <i>email</i> , mail or hand delivery.
11	40.0520(2)(b)	<p>Issue #1: Assessment only IRAs are still response actions.</p> <p>Suggestion #1: Rewrite text to add an item (d) under this heading to clarify that sites that are subject to assessment only IRAs are not Tier 1.</p> <p>Issue #2: “At the time of Tier Classification..” seems to lock certain sites into the Tier 1 category</p> <p>Suggestion #2: Replace “...at the time of Tier Classification..” with “any disposal site at which, during Tier Classification:..”</p>
11	40.0520(4)	<p>Issue #1: Text states that current Tier 1A, 1B and 1C sites will automatically transition to Tier 1. It is unlikely that all of these sites would meet the new Tier I criteria. However to reclassify a site pursuant to 310 CMR 40.0530 requires new or additional data or facts.</p> <p>Suggestion #2: Add text that will allow LSPs during a specified transition period to demonstrate, based on current conditions, that the Tier I criteria are not met and the site should be reclassified as Tier II.</p> <p>Issue #2: The LSPA also supports the suggestion in the Notes to Reviewers to “... include the classification criteria on transmittal forms used for relevant response action submittals (e.g. the transmittal forms for Comprehensive Response Actions and Immediate Response Actions). If the revised classification completed at the time a transmittal is made indicates current site conditions do not meet any of the Tier I Criteria, then Department records will be simultaneously updated to reflect the revised classification.”.</p> <p>Suggestion #2: This is an opportunity for LSPs to review the classification of their site by incorporating the mechanism for reclassification on the transmittal form.</p>
15	40.0560(2)	The LSPA supports the proposed amendments at 310 CMR 40.0560(2) which are intended to provide more time for completing Phase II investigations.
16	40.0560(7)(d)	<p>Issue: The LSPA agrees with the proposal to make the extension for two years rather than just for one year. However, this section needs to be edited for greater clarity.</p> <p>Suggestion #1: Language should read that the extension is valid for 2 years from the expiration date, not 2 years from the effective date of Tier Classification.</p> <p>Suggestion #2: There should be a provision for sites that are moving out of a Temporary Solution category into active remediation (following identification of a feasible Permanent Solution during a 5-year Periodic Review, for example) where the classification may have expired more than 2 years ago.</p>

ACTIVITY AND USE LIMITATIONS		
Page No.	MCP Reference	Comment
23	Form 1075	<p>In the Notes to Reviewers, MassDEP is considering whether to amend the requirement to provide a metes and bounds description of the parcel as an exhibit to Form 1075 (currently Exhibit A), requiring either instead of, or in addition to such description, a certification as to the accuracy of the metes and bounds description in the deed.</p> <p>Issue #1: The LSPA sees no reason to eliminate the current requirement for a metes and bounds description in Exhibit A and requiring additional certification would not serve to simplify the process.</p> <p>Suggestion #1: We recommend that the metes and bounds description not be eliminated, or at a minimum that it be optional for an LSP to include them,</p> <p>Issue #2: The LSPA sees no reason that the metes and bounds description be “certified.” While MassDEP states “legal descriptions in deeds have been known to add or remove parcels of land not shown on survey plans early in the chain of title, and thus may not accurately reflect the current lot boundaries,” we suspect these occurrences are rare and even when it occurs, can be tracked and the sketch plan at Exhibit B serves to clarify. The metes and bounds description requirement matches what is relied upon for title searches, title insurance and finance ability. No “certification” is required for those common services associated with real property.</p> <p>To the extent that MassDEP would have the owner or LSP “certify” the metes and bounds description, neither are in a position to do so, and this requirement would only cause confusion on what “certify” means. It is our understanding that the only person who could “certify” a metes and bounds description is a registered surveyor. Having a surveyor do so, however, would add another professional and costs to obtaining an AUL which is contrary to MassDEP’s stated intent to streamline the process and simply the required information for documenting AULs. If, however, MassDEP is to give consideration to a “certification” requirement, it should be done only by a surveyor who would be required to certify that the AUL area is within the boundaries of the property described in Exhibit A. Where there is an Exhibit A-1 AUL (Portion of the Property), certification of a metes and bounds description on Exhibit A-1 should not be an issue or added cost because a surveyor would already be involved to create a new plan and legal description for Exhibit A-1.</p> <p>Suggestion #2: The regulations should clarify that it is not an LSP who certifies metes and bounds.</p>
23	40.1074(1)	<p>Issue: The Notes to Reviewers proposes, and the referenced section provides for elimination of the separate LSP Opinion. Apart from the unnecessary repetitive description of consistent and inconsistent activities and uses in both the AUL Opinion and Form 1075, the AUL Opinion fails to serve its purpose to provide readers who are unfamiliar with the MCP requirements and terminology with a simple narrative that allows readers to understand what has occurred at the property that gives rise to the need for an AUL. By eliminating Exhibit C, and requiring the same information in Form 1075, a less technical discussion with plain language on the site history, responses taken, contaminated media, and why the AUL is appropriate, would be expected.</p>

		Suggestion: We agree that a separate AUL Opinion should be eliminated. We encourage MassDEP to provide guidance a template and generic examples to ensure concise language, understandable to the layperson.
24	40.1074(1)(d)	Issue: Why was this paragraph (on AULs and groundwater) deleted?
24	40.1074(2) and 40.1075	Issue: Is this intended to address National Priorities List sites only? What about RCRA Corrective Action or TSCA cleanup sites? Suggestion: Clarify or define CERCLA sites. Suggest broadening language to say “... in the case of Adequately Regulated sites, on a form developed and approved by the Department...”
25	40.1074(2)(c)	Issue: MassDEP’s proposed change to 40.1074(2)(c) by copying language from 40.1071(2)(c) is appropriate. It should be noted, however, that corporations may authorize any person, not simply officers, to sign on their behalf. Suggestion: The reference to “officer(s)” in both 1071(2)(c)(1) and (2) and 1074(2)(c)(1) and (2), should instead refer to “person(s).”
25	40.1074(2)(e) through (j)	Issue: The Notes to Reviewers proposes and the text incorporates the information previously found in the LSP Opinion as part of Form 1075. Suggestion: The LSPA supports eliminating the AUL Opinion, Exhibit C. The LSPA recommends that the corresponding AUL guidance, when published, include examples of what MassDEP would expect to see in this section of Form 1075.
26	40.1074(4)	Suggestion: The LSPA supports the elimination of the requirement for a certified registry copy of the Notice.
26 and 27	40.1074(2)(h) and 40.0923(2)	Issue: By including utility work without the requirement for a health and safety plan, it is not entirely clear what the short term exposure mitigation should be. The LSPA agrees that existing uses including emergency utility work should be covered, but we would not want to see this interpreted as a codified requirement that all utility corridors be cleaned to a condition of No Significant Risk. Suggestion: –It needs to be made clear that emergency excavation and repair of existing subsurface utilities has been considered in the risk characterization because this is always a permitted use. Please clarify whether the references to emergency utility work are meant to codify current practice.
27	40.1074(5)	Issue: MassDEP notes that a common AUL audit violation is the failure to incorporate references to an AUL in instruments of transfer and therefore would have property owners submit documentation to MassDEP to confirm the incorporation of an AUL and to future deeds. The wording of the proposed amendment, however, does not address this. Instead, we think the intended wording was to require that copies of all deeds for a property subject to an AUL be supplied to MassDEP within 30 days of recording or filing of that new deed. Suggestion #1: The last sentence at the end of 40.1075(5) should state the following: Within 30 days of recording or registering a deed for a property which is subject in whole or in part to the Notice of Activity and Use Limitation, the grantor or grantee on such deed shall submit a copy of the deed to the Department. Suggestion #2: The LSPA also suggests including a reminder to the real-estate attorney, on the AUL form, that the AUL must be incorporated into any future instruments of transfer. It may be more effective to simply include this

		requirement in the AUL form than to include it in the MCP.
57-59	40.0019 and 40.0020 and 40.0752(8)(d)	Issue: The proposed language indicates the Department shall without discretion invalidate Permanent or Temporary Solutions. Suggestion: The LSPA strongly urges MassDEP to rewrite the language to read “...the Department may deem the Permanent or Temporary Solutions to be invalid or may require appropriate steps be taken within a specified time frame to ensure a condition of No Significant Risk is achieved and maintained.”
58 - 59	310 CMR 40.0020	Issue: This provision obligates a former owner or operator of a site who obtains knowledge, perhaps through reading a newspaper article or driving past the site, to notify MassDEP if a change in site activities or exposures occurs without an LSP evaluation. Also included is “any person...” Mere knowledge without control should not create this obligation or potential liability. Suggestion: We would like MassDEP to clarify the language to exclude LSPs as “any person” from future liability.
58-59	310 CMR 40.0020	Issue: To the extent that this provision could undo a Permanent Solution filed by a prior PRP, this provision is inconsistent with the language and spirit of c. 21E, §6, ¶5, which provides liability protection to any person who achieves a Permanent Solution with an AUL against claims under c.21E or common law due to acts or failures to act of a subsequent property owner or other person that violate or are inconsistent with the AUL. Suggestion: The LSPA feels strongly that the current property owner should be the only liable party and not prior owners/operators who are not responsible for the changed activities and exposures.

VAPOR INTRUSION AND CLOSURE		
Page No.	MCP Reference	Comment
61	40.0006	Note to reviewers and added CSM definition. The LSPA concurs regarding the value of adding a CSM definition. We do not however concur with the need for an LNAPL CSM, see comments in later sections.
61	40.0006	The LSPA thinks that the Condition of Substantial Release Migration (SRM) definition casts too wide a net for IRAs; see our specific comments at 40.0313.
61	40.0006	Issue: The SRM definition refers to 40.0313(5) for a “further definition.” Suggestion: For clarity, we recommend that the SRM definition be fully described in the Definition section of the MCP 40.0006.
61	40.0006	Issue: Condition of SRM – The proposed changes to the definition of conditions that trigger the 72 hour notification (and subsequent IRA provisions and requirements) casts an overly broad “net.” The original wording that placed a time frame of one year for discharge of vapors into school buildings/occupied residences was appropriate and should be retained to properly emphasize the definition of “Substantial.” The six conditions provided at 40.0313(5)(f) are appropriate as “triggers” to conduct a more detailed vapor intrusion assessment at a Site, but not directly indicative of the need to conducted accelerated response actions. Suggestion: We recommend re-inserting the original wording regarding a one year time frame.

62	40.0006	<p>Issue #1: SRM item f is not consistent with the new language at 40.0313(5)(f) which includes “Daycare or Child Care Center”.</p> <p>Suggestion #1: Please ensure that all references to School, Daycare or Child Care Center have consistent language.</p> <p>Issue #2: It is not clear if short term child drop-off centers (associated with fitness centers and other facilities) are included in this definition.</p> <p>Suggestion #2: We recommend that these be specifically excluded from the definition.</p> <p>Issue #3: What is the rationale for the age specificity for special needs youth?</p>
62	40.0006	<p>Note to reviewers and added living or working space definition.</p> <p>Issue: This definition is helpful although the wording “evidence of the potential for more than incidental use” should be clarified.</p> <p>Suggestion: We suggest that the phrase read “...more than incidental use (use for more than one continuous hour at a time).”</p>
63	40.0006	<p>Issue: Residential Dwelling – This may be inconsistent with the VI guidance. LSPs should be able to consider multiple exposure scenarios within one mix used building.</p> <p>Suggestion: This definition needs to address “parts” or “portions” of structures (e.g., for mixed use buildings).</p>
63	40.0046	<p>Note to reviewers on application of remedial additives revision.</p> <p>Issue: DEP is recommending prescriptive regulation change.</p> <p>Suggestion: The LSPA disagrees with this approach.</p>
63	40.0046(3)	<p>Issue: DEP approval is required for application of remedial additives within 100 feet of a School, Daycare or Child Care Center or occupied Residential Dwelling. Direction of groundwater flow is apparently irrelevant. The mechanism for obtaining DEP approval is also not cited. We strongly disagree with this language as written as it will discourage and delay remedial action in many cases. There should be no restrictions on application of remedial additives within the 100 foot distances if the application point is downgradient of or hydraulically isolated from the receptor. The potential for impact on a sensitive receptor should be left to the judgment of the LSP.</p> <p>Suggestion: We urge the Department to have a streamlined mechanism for reviewing the plans and providing timely approval or a presumptive approval timeline in the cases where there is some potential for impact on sensitive receptors.</p>
63-64	40.0313	<p>Issue: Note to reviewers regarding movement of SRM definition text to 40.0313 and expansion of SRM criteria. This revision substantially expands the SRM/IRA net. The new criteria could be interpreted to require new notifications for sites that have been thoroughly characterized and for which effective remedial actions are ongoing. Several of the criteria included (such as GW-2 exceedance proximate to building) may be indicative of the need to do further assessment to define the nature and extent or potential for complete exposure pathways, such as inhalation of vapors in indoor air, or to identify CSM data gaps rather than the need to have a plan submitted to and reviewed by DEP</p>

		and/or to take accelerated response actions. These new criteria seem to go beyond the intent of the “SRM” and “IRA” provisions under the MCP. Suggestion: We recommend that the exemptions to new SRM notifications be clarified as part of the new regulations and that the transition provisions be clarified.
65	40.0313(5)(f)(1)	Issue: Soil impacted with VOCs at any concentration within 6 feet horizontally and 10 feet vertically from a S/DC/R triggers SRM. This would include trace levels of relatively non-toxic VOCs that are ubiquitous in the environment or commonly found as laboratory artifacts (acetone, toluene, etc.). There should be some room for judgment by the LSP regarding the significance of a trace VOC detection. Suggestion: It may be more appropriate to have a concentration criterion that is a fraction of the S-1 RC than any detection.
65	40.0313(5)(f)(2)	Issue: Some judgment regarding the direction of groundwater flow or the existence of a hydraulic connection should be incorporated into this criterion.
65	40.0313(5)(f)(3)	Issue: Establishing a 10x GW-2 criterion within 100 feet of S/DC/R at any depth without regard to groundwater flow direction or the existence of a hydraulic connection is overly restrictive. This would needlessly drag many more sites into the IRA process and result in additional regulatory filings and paperwork that run counter to the intent of these regulatory revisions. Note that the concentration trigger for trichloroethene (TCE) for this criterion under the new regulations would be 50 ppb. This is a large universe of sites and represents a huge burden on the regulated community. Suggestion: The LSPA recommends that this criterion be eliminated.
65	40.0313(5)(f)(4)	Issue: What constitutes “near” for this criterion? Additionally, the comments above for 40.0313(5)(f)(1) regarding de minimis levels of relatively non-toxic VOCs apply to this criterion as well. Suggestion: Please clarify “near.” Please qualify regarding de minimis levels as suggested for 40.0313(5)(f)(1).
65	40.0313(5)(f)(6)	Suggestion: Change language from “... the potential for vapor migration along preferential pathways exists.” to “that would result in the potential for vapor intrusion into occupied living/workspaces or result in significant risk to utility workers.”
65	40.0425	Note to reviewers regarding reporting requirements for CEPs. The LSPA concurs with the revisions that reduce the reporting requirements for CEPs that do not pose an Imminent Hazard (IH).
67	40.0425(7)c	The LSPA supports the reduction in RMR frequency for non IH CEPs.
77	40.0926(6)(7)	Issue: This is a very prescriptive change that essentially eliminates any modeling approach for EPCs. Even the guidance document acknowledges that modeling can be used as part of a “lines of evidence” approach – just that it can’t be used as the sole line of evidence. Such a change would likely result in virtually all undeveloped sites needing SSDS installed as part of any construction, and at a minimum, an AUL (passive system) OR maybe permit and AUL (active system) as currently presented. Suggestion: The LSPA strongly urges MassDEP to return to the previous MCP wording. LSPs should be afforded the flexibility as allowed in the current VI guidance. The use of modeling and modeling assumptions are allowed if they are technically justified, clearly documented, and not the sole line of evidence

78	40.0942(1)(d)	<p>Suggestion: The second “or” should be changed back to “and”. 40.313(5) (f) (1)- uses “and” and the LSPA recommends “and” for consistency.</p>
80	40.0006(12) and (12) (a)	<p>Issue: Proposed Definition of Historic Fill LSPA appreciates the approach that the Department has used to introduce the various subcategories of Background and in particular the Department’s attempt to introduce the definition of “historic fill” and how it fits into the overall framework of Background within the MCP.</p> <p>Suggestion #1: The phrase “non-indigenous material” is imprecise. Indigenous is defined by Webster as “originating in and characteristic of a particular region” which is overly broad and could apply to almost all solid materials used for fill, derived from anywhere in Massachusetts or from another portion of the property of concern. LSPA suggests that this phrase be eliminated.</p> <p>Suggestion #2: The phrase “deposited to raise the topographic elevation of the site” should be replaced by the simpler, “emplaced on the site.” It may or not be possible to ascertain the purpose for which fill was emplaced on a site decades previously.</p> <p>Suggestion #3: The resulting introductory phrase would read: “Historic Fill means material emplaced on the site that:” The concept of “fill”, and the various uses proposed to manage site grades and topographic relief are well understood and defined by decades of engineering practice. There is no need to reintroduce a overly confined definition here.</p> <p>Suggestion #4: Insert “poorly sorted soils and/or reworked soils” before “..construction...”</p> <p>Suggestion #5: There is no reason to specify or prescribe the chemistry or the chemical constituents contained within the fill materials The universe of anthropogenic chemicals in fill materials is quite broad- there certainly are many hydrocarbons that are outside of the “semi volatile” class in historic fill materials. If DEP specifies a class of compounds, LSPs may imply the need to use a specific test method to determine whether anthropogenic materials are actually within historic fill ranges prescribed by this definition. The LSPA suggests using the term “contain certain chemical constituents including but not limited to metals and/or hydrocarbons...”</p> <p>Suggestion #6: The LSPA agrees that the exclusion of PCBs is appropriate due to their multi-jurisdictional regulatory paradigm.</p> <p>Suggestion #7: There is no reason to specify that the materials have to be “weathered.” This will simply create confusion and add no value, for any material that has been out in the environment for even a very short period of time will have undergone some degree of weathering and be “weathered”. Please delete “weathered.”</p>
80	40.0006(12) (b-e)	<p>Issue: The requirements of sections (b) through (e) will be difficult, if not impossible, to meet at many historic fill sites. For example, the language in (c) will likely be problematic because materials from demolished site buildings that are buried and then built upon, are certainly connected with the operations at the location of emplacement. In LSPA’s</p>

		<p>experience, the vagueness of a statement such as “was not a result of illegal disposal of waste material at the time of placement” in (e), will lead to a broad range of the standard of practice of how LSPs will interpret the definition. Current owners will have little to no certain knowledge or business interest in the (very far back) past practices of prior owners.</p> <p>Suggestion #1: The LSPA strongly suggests DEP delete this overly broad section and urges DEP to convene a workgroup to assist with guidance as soon as possible to clarify certain aspects of this definition.</p> <p>Suggestion #2: The LSPA proposes the following revision to this definition with the assumption that further clarification will be available in guidance, developed with the assistance of a workgroup:</p> <p>Historic Fill means fill materials emplaced on the site by humans that:</p> <ul style="list-style-type: none"> (a) May contain certain chemical constituents including but not limited to metals and hydrocarbons (excluding PCBs), including poorly sorted soils and soils, construction and demolition debris, dredge spoils, incinerator residue, fly ash, coal ash, wood ash or other non-hazardous solid waste material; (b) Was contaminated prior to emplacement (c) The chemical constituents within such Historic Fill are not connected with the operations at the location of emplacement; and (d) Is not hazardous waste, chemical production waste, or waste from processing of metal or mineral ores, residues, slag or tailings.
80	40.0902	Note to reviewers regarding elimination of reference equating background with No Significant Risk. The LSPA supports this.
80	40.0006	Definition of Anthropogenic Background The LSPA agrees with this definition.
81	40.0923	Note to reviewers regarding Permanent Solution with Conditions provisions. The LSPA supports these revisions.
80	310 CMR 40.0902(3)	Issue: The use of the word “all” indicates that if all OHM regardless of source or relationship to the identified disposal site is reduced to background then a Permanent Solution has been achieved. Suggestion: Change language to “Disposal sites at which OHM associated with the disposal site have been reduced to background levels ...”
81	40.1020(1)	Issue: Requiring that response actions achieve background at <i>any site where a Permanent Solution exists or has been achieved</i> is impractical in certain circumstances. Sites for which a PS exists and no response actions have been conducted (i.e. former Class B-1 RAO) should not be required to achieve background. Suggestion: The LSPA requests that DEP clarify whether the intent is to now require feasibility of achieving background for all sites, not just those for which response actions are undertaken. The LSPA suggests maintaining the current language which indicates that this requirement need be met only in the event that one or more remedial actions are undertaken to achieve a Permanent Solution.
81	40.1020(3)	Suggestion: Insert “applicable” similar to the modifications at 1020 (1) and 1020(2), so that it reads “...except where it

		can be demonstrated that <i>applicable</i> background levels have been met.”
80	Anthropogenic Background and Historic Fill	Issue: Burden of Proof for Identifying Extent of Anthropogenic Background and Historic Fill Suggestion: The LSPA recommends that MassDEP address implementation issues associated with the proposed definitions, in a workgroup and technical update, to identify what the Department is expecting in terms of burden of proof under the current and proposed regulations and guidance policies.
80	Anthropogenic Background and Historic Fill	Issue: The proposed definitions of Anthropogenic Background and Historic Fill imply that they are exempt from notification under 40.0321 and that 40.0370 would apply. Suggestion: The LSPA requests clarification on the reporting requirements for Anthropogenic Background and Historic Fill, as the proposed definitions imply that they are exempt from notification. Clarification is also needed on whether or not 40.0370 applies. The LSPA urges DEP to convene a workgroup for the development of guidance on this topic to further flesh out details.
83 - 84	40.0006	Note to reviewers and revisions to definitions for Active Exposure Pathway Elimination Measures (AEP EMs). Issue: The revisions use generation of waste for disposal/recycling as the distinction between Active Remedial Systems and “Exposure Pathway Elimination Measure” (EPEM). The current language may discourage the use of granular activate carbon as a voluntary measure to control emissions. Suggestion: The LSPA recommends revising this definition since AEP EMs may indeed generate waste in the form of spent granular activated carbon (GAC) for vapor emission controls. The potential use of GAC (or other absorbent media) for AEP EMs should be acknowledged or the waste disposal language should be deleted from both definitions.
84	40.0006	Note to reviewers regarding replacement of RAO language with Permanent Solution or Temporary Solution. The LSPA supports this change.
85	Part 40.0000 Subpart G	To the extent MassDEP will require a permit, the LSPA agrees that it should be essentially a permit-by-rule to reduce MassDEP and LSP time and effort.
85	40.0700	Note to reviewers regarding new section outlining the permit requirements for AEP EMs. Issue: While we support the concept of allowing Permanent Solutions with an operating permit for active sub-slab systems, the permit requirements seem overly burdensome. The requirement for immediate notification to MassDEP for system shutdown in all cases appears to be excessive; we recommend that the immediate notification provision be limited to those situations where a brief system shutdown would pose potential significant risks. Suggestion: The LSPA does not believe that both a permit and an AUL should be required for these situations. The permit alone would appear to adequately address the required restrictions.
86	40.0701(4)	Issue: An AEP EM cannot be used to support a Permanent or Temporary Solution if suspension of such measure for 60 days would result in an IH. Suggestion: We suggest that this language be revised to read an AEP EM “alone” cannot be used in this situation. We do not see any reason why an AEP EM could not be used in conjunction with some other remedial approach in this scenario.
86	40.0701(2)	Issue: This provision states that Subpart G applies to AEP EMs necessary to support a level of No Significant Risk as a component of a Permanent Solution or No Substantial Hazard as a component of a Temporary Solution. This is

		accurate but not complete, because provisions 40.0710, 40.0711 and 40.0712 appear to apply to more than just the post-RAO operation, they pertain to design, installation, etc. Suggestion: The LSPA requests that this language issue be clarified as it confuses applicability.
86	40.0711 etc.	Issue: This section does not acknowledge the use of a RAM for installation of an AEPPEM, rather only IRAs and comprehensive response actions are referenced. Why would a RAM not be an appropriate avenue for an AEPPEM? Suggestion: Please clarify how AEPPEMs will apply to other response actions e.g. ROS, RAM and if AEPPEMs can be installed under a RAM.
87	40.0711(5)	Issue: The proposal for telemetry may result in alarm overkill, as they may be triggered by even transient blackouts, which can be common. Suggestion #1: Instead of writing “immediately upon failure of the system” we suggest “if at any time the system shuts down for more than 24 hours.” The auto-dialers can be programmed to dial after a delay if the system does not come back on. This could avoid multiple short power interruption alarms. Suggestion #2: The LSPA recommends that DEP re-think the terms “immediate” and “monitoring notification process.” The LSPA believes the term “immediate” is inconsistent with the 60 day time period in the language at 40.0701(4).
87	40.0711(5)	Issue: This provision would require all AEPPEMs to be equipped with remote monitoring that will alert building occupants immediately upon failure of the system. This requirement could have the effect of alarming the people the system is designed to protect. Suggestion: The LSPA feels strongly that the decision to alert building occupants needs to be a risk-based decision, made by the LSP, on site specific information.
87	40.0712(3)	Issue: The provision would require the operating regimen for the AEPPEM to identify the longest duration of shutdown consistent with Imminent Hazard, Substantial Hazard, and No Significant Risk (NSR). NSR does not apply to Temporary Solutions. Suggestion: The LSPA recommends changing the language at 40.0712(3)(c) to read that AEPPEMs are only used to achieve a permanent solution.
88	40.0720(1)(c)	Issue: An AEPPEM is not defined as a remedial system so achieving background is not relevant. Suggestion: Delete section C.
88	40.0720(2)	Issue: In order to terminate operation of the AEPPEM, the proposed regulations require (a) an LSP Opinion; (b) a risk characterization; (c) a feasibility analysis; and (d) a major permit modification to terminate the permit. While not identified in 40.0720(2), a revised Permanent or Temporary Solution and termination of the AUL will also be required, which will substantially duplicate the submittals required by 40.0720(2). Suggestion: Delete “c” because it will have been previously submitted and the AEPPEM is not an active remediation system.
88	40.0720(3)	The LSPA supports the provision allowing voluntary operation of an AEPPEM without the rigorous permit and documentation requirements following a determination that it is no longer necessary to maintain a Permanent

		Solution.
90	40.0752(5)	Issue: This provision requires financial assurance for each AEPPEM regardless of size or complexity and the nature of the Permittee. Suggestion: This is already covered in 40.0170(6) and so is redundant. Please delete.
90	40.0752(8)	Issue: This provision requires a so-called “Certification of Acceptance” from the landowner on which an AEPPEM will be operated. However, no formal “certification” is required. Suggestion: Change heading to “Letter of Acceptance.”
91	40.0752 etc	Suggestion: Please clarify that SSDSs will require permits only if they become AEPPEMs.
92	40.0755(1)(b)	Issue: In the list of circumstances in which minor modification of the permit is appropriate, use of the word “omissions” is confusing. Suggestion: Please confirm and clarify that this reference is to typographical, grammatical, or other such errors.
92	40.0760(2)	Issue: 21-day presumptive approval runs from receipt of a complete application. However, the regulations do not indicate how the applicant will know that the application is complete. Suggestion: Please clarify that the applicant can assume the application is complete if it receives no response from MassDEP during the 21-day presumptive approval period.
93	40.0761(2)	Issue: This provision would require notice to MassDEP immediately upon failure of the AEPPEM to operate for 30 consecutive days. We agree that notification to MassDEP when the system has been down for 30 consecutive days is appropriate. We think that “immediately” should be more specifically defined. Suggestion: Change to the Department should be notified prior to the end of the 30 th consecutive day.
93	40.0761(3)	Issue: While we believe this is a reasonable requirement, no formal certification is required; rather it is an update or report to the Department. Suggestion: Change to “status report” or “operational summary.”
93	40.0761(4)(b)	Issue: This provision would require written notice to MassDEP upon a decision by the Permittee to stop operating the system. This seems inconsistent with 40.0720(2) and insufficient to effect termination, and therefore may be confusing. Suggestion: The LSPA suggests eliminating 40.0761(4)(b)(2).
93	40.0761(4)(e)	Issue: This provision requires the permittee to provide access to MassDEP at reasonable times. This provision may create confusion because the scope of access appears different from that required from landowners in 40.0752(8) and because it uses the phrase “Exposure Pathway Elimination Measures” instead of AEPPEM. Suggestion: This language is likely intended to be redundant with 40.0752(8) (b) (1) and therefore not necessary. However, if it is to remain, please ensure clarity by changing to “: “if the land on which the AEPPEM is located is owned by the permittee, authorization for employees, agents and contractors of the Department to enter that land, at reasonable times and upon presentation of credentials, to inspect the AEPPEM.”
94	40.0761(4)(f)	Issue: This provision is inconsistent with a permit-by-rule because it imposes an unknown condition on the Permittee. Suggestion: Eliminate 40.0761(4)(f).
94	40.0763	To the extent that MassDEP will require a permit, the LSPA agrees that no renewal should be required and that the

		permit should remain in place as long as the system remains required by the Permanent or Temporary Solution.
107	40.1055	<p>Note to reviewers regarding Class C-2 RAOs.</p> <p>Issue: These will not transition as Temporary Solutions but rather into the current phase of work. This will likely leave many sites in Class C-2 status in a non-compliance situation since a Permanent or Temporary solution will not have been achieved within the 5-year deadline.</p> <p>Suggestion: We recommend providing a pathway for keeping C-2 RAOs as Temporary Solutions. This can have significant impacts on cost for sites moving towards permanent closure. There might be issues with lenders because a site that had been closed with a Temporary Solution would now be an open site. We also recommend that a more specific transition category be established for these sites or that they just become Temporary Solutions.</p>
111	40.1057(2)(b)	<p>Issue: Language varies from 40.1050(1) which allows for elimination, control or mitigation of sources. Mitigation has been deleted from this section.</p> <p>Suggestion: We recommend that mitigation be added back for parallel construction with 40.1050(1)</p>
114	40.1067(7)	<p>Issue: This section apparently eliminates the potential to conduct further response actions following submittal of a Temporary Solution as RAMs or post-RAO “definitive and enterprising steps toward a Permanent Solution” which is allowed under the current regulations. Such actions must now be conducted as formal Phase IV Comprehensive Remedial Response Actions. This limits the flexibility associated with voluntary, sensible response actions for Temporary Solution sites, increases the paperwork burden and may discourage appropriate remedial action.</p> <p>Suggestion: We recommend that the language be changed back to the previous wording and allowing some flexibility in the nature of the response action.</p>

RISK ASSESSMENT AND MCP STANDARDS		
Page No.	MCP Reference	Comment
124	40.0993(5)	<p>Issue: The LSPA does not agree that the toxicity value hierarchy belongs in the MCP regulations. The recommended references will become dated with time and newer references may be applicable, which would then not be included in the regulations. Furthermore, the LSPA maintains that it should be the LSP and/or risk assessor who should determine the appropriate risk reference, based on site conditions, relevance of toxicity reference documents, and sound science, rather than relying on a “standard” hierarchy.</p> <p>Suggestion: The LSPA feels strongly that the toxicity hierarchy should be removed from the regulations. A subsequent guidance document should be generated to discuss / clarify toxicity value hierarchy and include appropriate references, which can be updated periodically through updated guidance. MassDEP has provided a toxicity hierarchy in the Guidance for Disposal Site Risk Characterization which we suggest that MassDEP revise and supplement, as needed, to revise the toxicity hierarchy that they recommend the LSP-regulated community use at MCP sites.</p>
127 - 152	40.0975	<p>Issue: The LSPA agrees with the revised background value for lead of 200 mg/Kg. However, MassDEP has proposed two Method 1 standards for lead. The two standards reflect 1) a standard for unconditional site use, which is equal to background (a revised value of 200 mg/kg) and 2) a higher standard (300 mg/kg) associated with conditions. The LSPA finds this approach confusing and the 300 mg/Kg standard appears to have no scientific basis. In addition, the “conditions” for the 300 mg/Kg standard would involve Best Management Practices (BMP) for gardening, which DEP has not defined. Additionally, BMP sources in the public domain can be inconsistent with the proposed dual lead standard. For example, UMass Extension Agriculture and Landscape program, considers 100 mg/Kg as the soil lead limit.</p> <p>Suggestion: The 300 mg/kg standard should be deleted and the 200 mg/kg standard, which represents background conditions, should be maintained as the Method 1 S-1 and RCS-1 standard.</p>
127 - 152	40.0975	<p>Suggestion: The LSPA recommends that the RCS-1 standard for lead should be changed to 200 mg/kg to be consistent with the revised background concentration and proposed Method 1 S-1 soil standard of 200 mg/kg (also see above).</p>
127 - 152	40.0975	<p>Issue: No change to tetrachloroethylene (PCE) standards was included in the proposed revisions. The LSPA understands that MassDEP is currently reviewing PCE cancer values; however, we strongly support including an updated PCE value with these regulation changes since PCE is of concern at many MCP sites.</p> <p>Suggestion: The LSPA recommends adopting the EPA IRIS value and revising the PCE standards with this revision of the MCP.</p>

127 - 152	40.0975	<p>Issue: <u>Vanadium:</u> The existing standard (600 mg/kg) is based on vanadium pentoxide toxicity and the proposed standard (30 mg/kg) is based on background, but was derived based on vanadium and its soluble inorganic compounds other than vanadium pentoxide.</p> <p><u>Levels of Vanadium in soil and likely forms:</u> Current reference literature from NIH and ATSDR indicate that natural releases of vanadium occur due to weathering of rocks and soil erosion involving the oxidation of V+3 to V+5 (pentavalent) forms and for anthropogenic sources, ~ 90% of the vanadium released into the atmosphere (deposition) comes from oil and coal combustion in the form of vanadium pentoxide. Vanadium levels in the US soils range from <7 to 500 mg/Kg with a 90th percentile at 130 mg/kg – a level significantly higher than the proposed standard. Concentrations of vanadium in Boston Blue Clay are also consistently higher than the 30 mg/Kg proposed RCS-1 level.</p> <p><u>Analytical Method for Vanadium speciation:</u> Environmental laboratories analyze for Total Vanadium. Speciation of vanadium into different forms, including vanadium pentoxide, requires specialized analyses not commonly performed at environmental laboratories.</p> <p>Suggestion: Since the proposed vanadium standard is below soil background levels and because speciation of vanadium is not a readily available analysis in environmental laboratories, the LSPA recommends that the proposed vanadium Method 1 standards should be removed from this revision and remain as the existing standard. The LSPA also recommends that further discussion of vanadium include evaluation of the most likely oxidation state of vanadium in MA soils and at hazardous waste sites and then use toxicity factors to develop Method 1 Standards based on the most prevalent oxidation state.</p>
127 - 152	40.0975	<p>Issue: <u>1,4-Dioxane:</u> The calculated risk-based concentration at a 10-6 risk limit is 0.53 ug/L; however, the proposed GW-1 standard for 1,4-dioxane is set at the ORSGL of 0.3 ug/L. This difference may be due to rounding issues in the ORSGL calculation. The lower 1,4-dioxane standard requires a specialized analytical method (GC/MS-SIM). At these ppt levels, it is anticipated that 1,4-dioxane may be ubiquitously detected from sources other than site sources (for example, from consumer products). This will confuse the evaluation of site contaminants.</p> <p>Suggestion: The LSPA recommends recalculating the ORSGL for 1,4-dioxane (rounding to one significant digit at the end) and the Method 1 GW-1 Standard. Additionally, LSPA recommends evaluation of background concentrations of 1,4-dioxane in the derivation of the Method 1 GW-1 Standard.</p>
127 - 152	40.0975	<p>Issue: The LSPA understands that short-term exposure to TCE may have potential developmental effects based on recent studies. This impacts how TCE is handled in evaluation of human health risk. DEP does not have flexibility in setting the Hazard Quotient (HQ) for TCE, which must be 10, regardless of the length of exposure.</p> <p>Suggestion: LSPA recommends that DEP re-visit the HQ and IH evaluations of TCE with the focus of developing more flexibility in chemical-specific and toxicity-specific evaluation and how best to evaluate</p>

		carcinogens, in general, in IH evaluations where “long-term” exposure durations may not be applicable to site conditions.
127 - 152		<p>Issue: The current public review draft includes Freshwater Hardness-based criteria for 6 metals based on Hardness of 20 mg/L. MassDEP indicated during an April 5, 2013 public meeting that it will be revising the calculation of GW-3 Standards to reflect a Hardness of 25 mg/L. The National Recommended Water Quality Criteria values (USEPA, 2013), used for assessment of impact to aquatic environments for dissolved metals, are based on a hardness of 100 mg/L. MassDEP’s proposed use of 25 mg/L for hardness is inconsistent with the EPA water quality criteria and not necessarily representative of the various surface water bodies across the state. For example, the Town of Concord reports water hardness between 15-90 mg/L while USGS hardness maps show < 60 mg/L in the eastern part of the state and ~ 60-120 mg/L in western MA.</p> <p>Suggestion: The LSPA recommends that the GW-3 standards for the six metals (cadmium, chromium, lead, nickel, silver, and zinc) affected by hardness be consistent with the current NRWQC, with an allowance to perform site-specific hardness calculations. The LSPA suggests clarification that site-specific criteria may be appropriate since the ecological impact of these dissolved metals is inter-dependent with surface water hardness.</p>

NON-AQUEOUS PHASE LIQUID AND SOURCE CONTROL		
Page No.	MCP Reference	Comment
154	40.0006 (12)	The LSPA agrees with the removal of NAPL thickness as an indicator of a Hotspot; this more accurately reflects scientific thought on NAPL behavior in the environment as well as risk-based site assessment.
155	40.0006	<p>Issue: A specific designation of LNAPL Conceptual Site Model (LCSM) versus a Conceptual Site Model (CSM) is unnecessary and creates confusion.</p> <p>Suggestion: The generic term CSM should be re-defined to include “the body of fundamental scientific principles describing the behavior of fluid flow in porous media necessary to assess NAPL in subsurface strata.” And NAPL should be defined.</p>
155	40.0006	<p>Issue: It is not necessary to include in regulations how the existence of NAPL is indicated. This level of detail is better placed in guidance as it may change over time due to the complexity of the issues and advancement of science.</p> <p>Suggestion: Delete the second sentence of this definition - “The existence of NAPL in subsurface strata is indicated by its presence in a well, excavation or any other subsurface depression.”</p>
155	40.0006	Issue: Non-Stable NAPL is defined as NAPL that is: (a) migrating along or within a preferred flow path; (b)

		<p>discharging or periodically discharging to a subsurface structure, utility or surface water body; or (c) spreading or expanding laterally or vertically as a bulk fluid through or from subsurface strata.</p> <p>Suggestion #1: Please define what “bulk fluid: means.</p> <p>Suggestion #2: The means of determining the behavior of this NAPL should be presented in guidance, not regulations.</p>
155	40.0006	<p>Stable NAPL – The LSPA agrees with this definition; it is simple and easy to understand.</p>
156	40.0006	<p>Issue: It is problematic to include this specific definition of transmissivity in the regulations because of lack of consensus and diversity of opinion about it. In addition, this definition may, over time, be too prescriptive as science advances.</p> <p>Suggestion: Delete this definition from the regulations and add it to the guidance.</p>
156	40.0006	<p>Suggestion #1: Source of OHM Contamination – remove “,” after the word “media” so that it doesn’t read as if it is the point of discharge that is migrating.</p> <p>Suggestion #2: Add “or have a component or a by-product that is likely to migrate” after “likely to migrate”. This will allow the inclusion of degradation products and components of petroleum products.</p> <p>The first sentence would then read “Source of OHM Contamination means a point of discharge of OHM into environmental media and/or OHM that is migrating within environmental media or is likely to migrate, or have a component or a by-product that is likely to migrate, in a dissolved or vapor state or as a separate phase liquid.”</p> <p>Suggestion #3: In recognition of the issues associated with the definition of NAPL, Item 5 should be changed to “Non-stable Nonaqueous Phase Liquids.” The stable NAPLs are addressed under Item 3 “contaminated fill, soil and sediment”. This change shows the importance of recognizing the issues associated with the definition of Nonaqueous Phase Liquid.</p>
157	40.0006	<p>The LSPA appreciates the language clarifying “Known Source” and “Unknown Source” to DPS submittals; this creates much greater clarity in the regulations.</p>
157	40.0313	<p>Issue #1: The term “subsurface depression” is ambiguous. The LSPA believes the 1/2 inch value now in the current regulations should be maintained.</p> <p>Suggestion #1: Change to “(1) a release....., excavation, or depression in the ground surface at a measured thickness equal to or greater than 1/2 inch.”</p> <p>Suggestion #2: Additionally, we recommend deleting this criterion from the 72 hour notice provisions and placing it</p>

		<p>in the 120 day criteria to replace 40.0315(4). A 72-hr criterion should remain for detections of LNAPL that represent a Condition of Substantial Release Migration and/or meet other 72-hr reportable criteria.</p> <p>In addition, observation of non-stable NAPL in an excavation during UST removal should be added as a 72-hr reportable condition.</p> <p>Suggestion #3: Please consider replacing inch criteria with measurements in units of feet, the measurement units of interface probes. A 1/2 inch criteria would be rounded to 0.05 feet.</p>
157	40.0315	The LSPA supports removal of the 120 day reporting requirement of >1/8 inch and <1/2 inch.
160	40.0483(1)(e)(5)	<p>Issue: The LSPA feels strongly that this level of field work to determine nature and extent is not appropriate during a Phase I investigation</p> <p>Suggestion: Change language to “5. NAPL, if present at reportable levels. “ Restricting the wording to NAPL at reportable levels eliminates confusion in having to conduct NAPL stability and saturation analyses that are more appropriately conducted as part of subsequent site assessment (Phase II and Permanent/Temporary Solution reports).</p>
160	40.0483(1)(h)	Suggestion: Revised text should read: “(h) <u>Conclusions.</u> The Phase I Report shall include a Conclusions section containing a summary of findings and statement of conclusions with respect to the site, present a preliminary disposal site Conceptual Site Model, and....”
163	40.0835(4)(e)(3)	Suggestion: This line should be amended to change “LNAPL” to “NAPL”. It should read as “3. an evaluation of the potential for soil, groundwater or NAPL to be a source of vapors of oil”
163	40.0835(4)(f)	Suggestion: The term “stability” should be inserted so this sentence reads “Nature and Extent of Contamination, including a characterization of the nature, and vertical and horizontal extent of oil and/or hazardous material in the environment, including any and all source(s), the presence, distribution, and stability of any NAPL...”
163	40.0835(4)(i)	Suggestion: The language in parentheses is not necessary because it is covered under CSM. As stated earlier, the LCSM should be removed. A discussion of all hazardous materials in whatever forms present should be included. It should read “(i) <u>Conclusions,</u> including a summary of the Phase II Comprehensive Site Assessment findings. The Conclusions section shall provide a thorough discussion of the final disposal site Conceptual Site Model, the...”
164	40.0924(b)(3)(d)	<p>Issue: Stable NAPL is not a source. Stable NAPL, by definition, is controlled</p> <p>Suggestion: add the term "Non-Stable" so the text reads “It has been demonstrated that the source control requirements at 310 CMR 40.1003 have been met to address any non-stable NAPL present.” As recommended in the source elimination/control section, source elimination/control should focus on Non-Stable NAPL.</p>
167	40.0996(6)	The LSPA agrees with removal of the ½-inch UCL for NAPL as it is consistent with scientific thought on NAPL behavior in the environment as well as risk-based site assessment.
168	Note to Reviewers	Issue: The implication is that any site with NAPL remaining after response actions will require an AUL. This

		<p>seems overly conservative for sites that have LNAPL at concentrations well below residual saturation, especially if vapor migration and dissolved phase impacts are demonstrated to not be a risk</p> <p>Suggestion: The LSPA feels strongly that an AUL should only be required where the risk characterization demonstrates that one is necessary. .</p>
168	Note To Reviewers	<p>Issue: The final line “Sites with any type of NAPL must demonstrate the reduction of NAPL through remedial and/or recovery measures to reduce NAPL volumes to the extent feasible. implies that active remediation of a NAPL plume is required in all cases even if the criteria for a Permanent Solution exists at the time of notification and assessment.</p> <p>Suggestion: This discussion belongs in a guidance document.</p>
168	Note to Reviewers	<p>Issue: The tools to complete a CSM and evaluate a release to the environment and potential sources are already well defined in the MCP. The indicators, with comments outlined below, make more sense to define an uncontrolled source. The alternative, to presume a source is uncontrolled with a mechanism for rebutting the presumption, seems overly complicated.</p> <p>Suggestion: This discussion is more appropriate in guidance than in regulations.</p>
168	40.0006	<p>Issue: In this definition for “Source of OHM” the phrase “or is likely to migrate....or as a separate phase liquid” needs clarification throughout the proposed regulations.</p> <p>Suggestion: Please replace “separate phase liquid” in this section, and in all locations throughout, with “non-stable NAPL.”</p>
169	40.1003(5)(a) & 40.1003(5)(b)	<p>Issue #1: The current wording of the criteria for Permanent and Temporary Solution and Source Control implies that active remediation of a NAPL plume is required in all cases even if the criteria for a Permanent Solution exists at the time of notification and assessment.</p> <p>Suggestion #1: The wording of parts (a) and (b) along with the subsequent definition of Source Control in (c) is confusing. While part (c) includes a feasibility analysis as part of determining if source elimination/control has been achieved, part (a) and (b) indicate that only a Temporary Solution is possible if a source elimination/control is conducted to the extent feasible. This needs clarification.</p> <p>Issue #2: The requirement that all Permanent Solutions with NAPL present require an Activity and Use Limitation (AUL) is too conservative. NAPL that does not present a risk for current or unrestricted site use (present at a low concentrations, stable, and/or at depths greater than 15-feet below grade (for example) may not require an AUL to be protective of future site use.</p> <p>Suggestion #2: The LSPA feels strongly that an AUL should only be required where the risk characterization demonstrates that one is necessary.</p>
169	40.1003(d) former	<p>Suggestion: The exemption of defining the downgradient edge of a dissolved plume as a source of oil/hazardous material should be maintained. The new vapor intrusion guidance and draft regulations adequately address vapor intrusion concerns and requirements for when an assessment and/or mitigation are required.</p>
169	40.1003(5)(c)(2)	<p>Issue: The requirement that Non-Stable NAPL is absent as a condition of demonstrating source elimination/control</p>

		<p>is overly protective. There are scenarios when minor amounts of Non-Stable NAPL may be present but a site-specific assessment of conditions can demonstrate that the Non-Stable NAPL will not migrate to any sensitive receptors and non-migrate off the property.</p> <p>Suggestion: The LSPA would like this language removed. It should be the LSP’s opinion as to whether or not source elimination/control can be achieved while non-stable NAPL is present at a site.</p>
169	40.1003(5)(c)(3)	<p>Issue: This language is very conservative: “the removal of any LNAPL to the extent feasible, based upon cost-benefit analysis using current LCSM principles which may include...” Stable LNAPL will generally imply that LNAPL is close to or below residual saturation, and is thus unlikely to be recoverable. In this case, remediation may still be necessary for vapor or dissolved phase migration issues. However, remediation is unlikely to consist of “removal” as normally understood (e.g. pumping). In these situations (LNAPL < Cres) remediation is likely to consist of removal or in-situ destruction technologies.</p> <p>Suggestion: Change language to read: “...the removal of non-stable LNAPL to the extent feasible, and clear guidance should be developed so LSPs can demonstrate stability.”</p>
169	40.1003(5)(c)(3)	<p>Issue: Inclusion of Transmissivity, Residual Saturation and/or decline curve analysis here is vague and also prescriptive, especially without associated standards attached to transmissivity</p> <p>Suggestion: Delete this item entirely; it belongs in guidance and not regulations. Reduction of OHM mass to extent feasible is already in the regulations so this is redundant and can be addressed through feasibility guidance. In addition, if something is really a source, it should never be a matter of feasibility to achieve a permanent solution.</p>
169	40.1003(5)(c)(4)	<p>Issue: This requirement would preclude achievement of even a Temporary Solution for sites where concentrations of DNAPL constituents exceed 1% of solubility. This requirement would result in a non-compliance status for many sites where aggressive remedial action is ongoing. Moreover, the definition of DNAPL source control requires further evaluation of recent scientific literature.</p> <p>Suggestion: This requirement for demonstrating source control should be eliminated. This discussion belongs in guidance and not regulations.</p>
170	Note to Reviewers	<p>Issue: This introduction suggests that all stable LNAPL needs an AUL; there may be certain exceptions.</p> <p>Suggestion: The LSPA feels strongly that an AUL should only be required where the risk characterization demonstrates that one is necessary.</p>
171	40.1012(2)(d)	<p>Suggestion: This provision is overly conservative and impractical for sites with low levels or stable levels of LNAPL in soil. The LSPA feels strongly that an AUL should only be required where the risk characterization demonstrates that one is necessary.</p>

MISCELLANEOUS, CROSS REFERENCING AND GENERAL		
Page No.	MCP Reference	Comment
172	Note to Reviewers	The LSPA agrees wholeheartedly that a transitional timeline is needed to implement these regulations. We propose a six month transition period following promulgation of the regulations.
174	40.0006	Issue: Definition of “Threat of release” - This change relates to threats of release that are reported when no reportable release has occurred. Suggestion: LSPA recommends that there should be an opportunity to retract report of a threat of release if there ultimately ends up being no release to the environment.
175	Note to Reviewers	Issue: Zone A Definition –310 CMR 22.02 does not use the word "adjacent" which can be interpreted in several ways. Instead, distances in feet are given. Suggestion: The LSPA suggests that the definition would be clarified if the meaning of the word "adjacent" was defined in the same terms as in 310 CMR 22.
176	40.0045(3)1.	Issue: Requirement to meet drinking water standards for downgradient discharges. It is unclear why this is required if the site is not in a GW-1 area. In some cases systems have to be augmented to remove non-COC contaminants to meet this discharge criterion even if they are not in a GW-1 area and remove COCs to below background. Suggestion: The LSPA Suggests noting that the language in 1) applies for GW-1 areas, but if a site is not in a GW-1 area, then it must meet 2). Proposed language is: 1. for sites in GW-1 areas, the concentrations of the oils and hazardous materials discharged are below the Standards and Guidelines for Contaminants in Massachusetts Drinking Waters, and below the applicable Reportable Concentrations established by 310 CMR 40.0300 and 40.1600; 2. for sites not in GW-1 areas and with oil or hazardous materials for which there is no Massachusetts Drinking Water Standard or Guideline or applicable Reportable Concentration, the concentrations of the oils and hazardous materials discharged are below background or a concentration determined by a site-specific evaluation not to exacerbate existing conditions;
176	40.0046(1)(c)	Issue: This section states that Remedial Additives/By-Products cannot exceed groundwater standards/guidelines, or if no standards, that the additives/by-products do not exceed background concentrations 50 ft or more down-gradient of the point of application. Suggestion: The LSPA would like clarification regarding if there is a list of groundwater background concentrations or if, by default, all sites must have site-specific evaluations to determine that concentrations do not exceed background concentrations.
177	40.0049(3)(a)	Issue: Why are industrial facilities not included in the list? Suggestion: The LSPA suggests removing reference to “residential dwellings, schools, or commercial buildings” in

		order to broaden the applicability of this section. It would then read: “(a) are from a sub-slab depressurization system installed to prevent the migration of subsurface vapors”
178	40.0049(6)	<p>Issue #1: The monitoring requirements for remedial air emissions are prescriptive and would be better suited for a guidance document that can be easily updated to keep pace with science and technological advancements</p> <p>Suggestion #1: The LSPA requests that the text remain simple and broad to allow for LSP discretion.</p> <p>Issue #2: The language as it currently reads would discourage voluntary use of off-gas controls. Some off-gas control systems are employed on a voluntary basis (e.g. for an SSDS that emits less than 100 pounds of VOCs per year) and they should not be subject to these requirements.</p> <p>Suggestion #2: The LSPA requests that the language be clarified to read that off-gas control systems that are employed on a voluntary basis would not be subject to these monitoring requirements.</p>
186-187	40.0191(3)(e)	<p>Issue: This new section in RAPS requires reducing non-renewable energy use, air pollutants during all response actions.</p> <p>Suggestion: The LSPA thinks this is a laudable goal but it does not belong in the RAPS section. It is more appropriate in Phase III. This is too broad a requirement that will add to the complexity of MCP submittals. Moreover, this does not streamline the MCP process – it doesn’t go back to the main purpose of the MCP to reduce risk at release sites.</p>
189	40.0318(4)(a)	Issue: Do the oil blends containing fuel oil additives include MTBE?
191	40.0006	Suggestion: The LSPA thinks it would be helpful for some of the now obsolete definitions to be retained in the MCP, with reference to the new definition (similar to RAO).
194	40.0861(2)(e) (f) and (i)	<p>Issue: The requirement to add the projected timeframes for meeting “all” of the requirements for a Permanent Solution is very restrictive; often an LSP is able to estimate the general timeframes for the projects, but not for all requirements. It raises several questions including Why is this needed? What is the implication for inaccurate time line projection?</p> <p>Suggestion: The LSPA strongly suggests deleting the proposed additional language. This will not help streamline the MCP process.</p>
197	40.0874(3)(b)1.	<p>Issue: Why is the projected timeframe needed for achieving Permanent or Temporary Solutions? What is the implication for inaccurate time line projection?</p> <p>Suggestion: The LSPA strongly suggests deleting the proposed additional language. This will not help streamline the MCP process.</p>
202	40.0891(3)	Suggestion: Delete second “pursuant”
207	40.1403(6)(b)1. and 2.	Suggestion: Please change language to indicate that the submittal of a copy of the public notice and the disposal site map may be made by mail, in person, or by electronic submittal to the Chief Municipal Officer and the Board of Health.
211	Notes to Reviewers	The LSPA supports additional time to submit the tearsheets from the newspaper demonstrating publication of a public notice.

		Suggestion: The LSPA strongly urges DEP to also allow the substitution of an actual tearsheet from the newspaper with an electronic submittal. It is very difficult to get copies of the newspaper and, often times, the papers forget to send a copy to the LSP. Electronic submittals will provide the same information, while streamlining this submittal process.
212	40.1600	The LSPA supports the change of ethanol RQ from pounds to gallons.
212 - 213	40.1600	The LSPA supports the change of vegetable based hydraulic oil RQ to 55 gallons.
213	40.0006 And Notes to Reviewers	Issue: The VOC definition has been modified to exclude VPH aliphatic and aromatic hydrocarbon fraction ranges. Suggestion: The LSPA supports this change because it is technically correct.