



May 17, 2013

Massachusetts Department of Environment Protection
Bureau of Waste Site Cleanup, 6th Floor
One Winter Street
Boston, Massachusetts 02108
Attn: Elizabeth Callahan

RE: **LSP Association Comments**
*Public Hearing Draft – Proposed Amendments to the
Massachusetts Contingency Plan, 310 CMR 40.0000*

Dear Ms. Callahan:

The LSP Association (LSPA), a professional non-profit association of over 900 LSPs and other environmental professionals, is pleased to submit comments and suggestions to MassDEP on the *Public Hearing Draft – Proposed Amendments to the Massachusetts Contingency Plan, 310 CMR 40.0000* which was published electronically and opened for public comment in March 2013.

The LSPA recognizes the significant undertaking of this regulatory reform effort and commends MassDEP for initiating such important changes to the MCP with the goals of streamlining, improving efficiency, and adding clarity. In addition, the LSPA greatly appreciates the level of commitment MassDEP has shown over the past year and a half, during the development of the public hearing draft, toward an inclusive and participatory public process. This has enhanced the process and benefitted all stakeholders.

As you know, LSPA members have worked closely with MassDEP during the development process of these amendments to provide comments and suggestions on approaches to the various topics, through workgroups and related meetings. Since the publication of the public hearing draft, under the direction of the LSPA Regulations Committee Co-Chairs, Dot McGlincy and Marilyn Wade, a core group of more than 30 LSPA members, along with the LSPA Board of Directors, have met, digested, debated and collaborated on the comments you see summarized below and in the attached detailed list.



The 2013 Proposed Amendments to the MCP document is organized into six topic-specific sections. This letter provides our general comments on the overall draft package, followed by a topical summary of the key observations and issues we have identified that are of greatest concern to our members and the regulated community they serve. Attached to this letter is a separate document with our detailed comments, section-by-section, as they relate to the 2013 Proposed Amendments to the MCP.

General Observations

Overall, the LSPA commends MassDEP for proposing a streamlined MCP process. Particularly beneficial streamlining opportunities will be realized through elimination of the Numerical Ranking System and with some of the revised AUL language. The reforms reflected in the document make strides in the right direction in providing clarity of language that will undoubtedly assist stakeholders. For example, the definition of Historic Fill is a significant step forward, although there will be more work needed to further flesh it out as part of guidance.

The LSPA is appreciative of the changes made in an effort to reflect scientific and technological advances since the last MCP revision; this is particularly effective in the management of Non-Aqueous Phase Liquid (NAPL). We also applaud the concept of allowing operating permits for site-specific operating systems. We recognize MassDEP's willingness to approach the MCP regulations in a manner that is supportive of brownfields reuse and environmentally sensitive economic development.

The LSPA's main concern in the 2013 Proposed Amendments to the MCP is the inclination for MassDEP to be overly prescriptive in its approach. In many instances, the revised language may restrict and, in some cases, eliminate entirely the ability of an LSP to be innovative and develop models and endpoints that reflect current and emerging science. The LSPA notes that, typically, risk-based decision making, taking into account site-specific conditions, will lead to more successful overall cleanup and compliance approaches that still adhere to Response Action Performance Standards (RAPS). Some of the proposed reforms may create more stress on limited financial resources and serve as a disincentive to returning brownfields and under-utilized properties to more viable and beneficial uses. One example of this is the proposed requirement for MassDEP approval for application of remedial additives within 100 feet of a School, Daycare or Child Care Center or occupied Residential Dwelling. The focus in many of the suggested revisions appears to be on the exceptional or worst case scenarios. The LSPA strongly urges MassDEP to rethink the proposed amendments to maximize the applicability of each change for the most commonly encountered waste site cleanup circumstances and rely on its existing enforcement authority to address the outlying cases.



The LSPA's key comments are provided below for each of the six categories of proposed amendments.

Permit/Tier Classification and Numerical Ranking System

The LSPA strongly supports the elimination of the Numerical Ranking System in its entirety and the corresponding elimination of the Tier 1 permit and layers of Tier 1 classifications. Clarification is needed, however, regarding the transition of current Tier classifications for existing sites into the new classification system. We also support the change in the deadline for submittal of the Phase II Report from two years to three years. This is a more realistic duration given the amount of assessment work and multiple or seasonal rounds of sampling that may be required, as well as the often time-consuming task of obtaining off-site access. This work is key to an accurate conceptual site model.

Activity and Use Limitations

The single largest concern from the LSPA in this section is the language present in multiple locations which states that MassDEP *shall* invalidate permanent and temporary solutions. The elimination of MassDEP's discretion (*shall vs. may*), the criteria by which such actions will be taken, and the message this sends to the regulated community relative to the permanence and reliability of past outcomes are unacceptable to us. We urge MassDEP to revise this language.

Clarification is needed regarding the mechanism by which future landowners will transmit acknowledgement of the existence of AULs on future deeds. The LSPA supports the elimination of the separate LSP opinion document, but has some recommendations to clarify the substitute language that will now appear in Form 1075. Finally, the LSPA does not feel there is a benefit, and may in fact be a disadvantage, to eliminating the metes and bounds requirement.

Vapor Intrusion and Closure

In this section, perhaps more than in any other section, the LSPA feels that the proposed amendment language is too prescriptive regarding the installation and operation of active, and to some extent passive, vapor mitigation systems. The revisions to Substantial Release Migration (SRM) language will cast too large a net, which will require additional resources to address without a commensurate benefit in protection of public health and safety.



In addition, the LSPA strongly disagrees with the elimination of modeling as a technically justified approach to assessment. Current guidance documents acknowledge that modeling can be used as part of a “lines of evidence” approach, as long as it is not used as the sole line of evidence. In prior workgroups and discussions with MassDEP, the LSPA has supported the concept of incorporating operating permits for long-term active systems installed at sites not as an addition to but rather as an alternative to an AUL. We feel the revised regulations should allow a permit without an AUL where appropriate.

With regard to closure provisions, we commend MassDEP for development of the concepts of Anthropogenic Background and Historic Fill, but believe the definitions of these terms and the criteria for their applicability need additional clarification.

Overall, within the topic of Vapor Intrusion and Closure, we see many opportunities for language which provides for a more universally applicable approach in the regulations themselves. And then, we recommend moving the prescriptive detail on implementation to corresponding guidance documents. This is grounded in the fundamental tenet of the MCP program that LSPs will make appropriate risk-based, site-specific decisions as part of the MCP site investigation and closure process.

Risk Assessment and MCP Standards

The LSPA strongly urges MassDEP to remove the toxicity value hierarchy from the updated regulations. The recommended references will become dated with time and newer references may be applicable, which would then not be included in the regulations. A guidance document, which can be updated periodically, should be generated.

The LSPA supports the revision of the Method 1, S-1 standard for lead to 200 mg/Kg, but we do not support the application of a dual standard as we feel this would lead to confusion rather than clarity. As has been noted in two prior letters from the LSPA, we support the adoption of the EPA IRIS value for PCE and strongly encourage MassDEP to update the PCE standard accordingly with this revision. Changes to the vanadium and 1,4 dioxane standards as well as the hardness-based criteria for GW-3 standards should also be reconsidered, and need to be supported before they are adopted as regulation. Moreover, the LSPA recommends that MassDEP re-visit TCE with the focus of developing more flexibility in chemical-specific and toxicity-specific evaluations.



Non-Aqueous Phase Liquid and Source Control

The LSPA fully supports the elimination of the 1/2 inch NAPL in a well measurement as a UCL condition, since there is no current defensible science behind this value. However, many of the remaining revisions regarding NAPL are problematic. MassDEP should consider separate NAPL approaches for oil vs. hazardous material, recognizing that NAPL conditions at a typical fuel oil or gasoline site are likely to be much different from, for example, a chlorinated solvent or mixture NAPL condition. The requirement for an AUL at all NAPL sites is overly conservative and should not be included in the regulations. The LSPA feels strongly that an AUL should only be required where the risk characterization demonstrates that one is necessary. The inclusion of removal of NAPL to the extent feasible as a condition of source control and a requirement for closure implies that active remediation of NAPL is required in all cases, which is not necessarily appropriate.

We strongly disagree with the language that makes it impossible to obtain any type of outcome, permanent or temporary solution, for sites with any DNAPL constituent concentration above 1% of its corresponding solubility limit. We understand the 1% solubility limit (assuming corresponding guidance that defines those solubility assumptions) as a criterion, but it should not be part of criteria for closure. The definitions of non-stable NAPL, transmissivity and source control should be either revised, or removed and included in guidance.

Miscellaneous and Cross Referencing

The LSPA does not support the inclusion of sustainability criteria in the definition of RAPs. These goals, while commendable, are not tied to achieving a condition of No Significant Risk in response to a release. Responsible parties and LSPs should not need to demonstrate the extent to which such measures are practicable in the context of protecting health, safety, welfare and the environment. The language regarding remedial additives needs explanation, as do the edits which insert the requirement for predicting timeframes into the Remedial Action Plan.

Conclusions

MassDEP's 2013 Proposed Amendments to the MCP provide numerous revisions that will undoubtedly help streamline the MCP program and the cleanup of sites. However, the prescriptive guidelines and procedures presented in many of the proposed amendments may ultimately expand the reach of the program and render the path to a permanent solution more cumbersome.



In an effort to avoid simply filing complaints and questions about the document, a good deal of time was spent by the LSPA to identify potential solutions or modifications and specific language changes to the 2013 Proposed Amendments to the MCP that would alleviate a majority of the cited concerns while maintaining the integrity and intentions of the regulatory reform package. Several of our comments urge MassDEP to address specific details in subsequent guidance documents and workgroup meetings so that they may be easily revised as science and the practice evolve.

The LSPA believes that addressing our suggestions will adequately protect public health and the environment while maintaining consistency with the overall goals of eliminating unnecessary steps, reducing the burden on MassDEP, streamlining the site cleanup process, returning more sites to functional and productive use, addressing brownfields, and supporting urban re-development with risk-based closure solutions.

Above all, the LSPA remains committed to working with MassDEP to finalize the MCP amendments in a timely manner. We will gladly participate in workgroups and working sessions to achieve this end. We strongly encourage the formation of workgroups with MassDEP, LSPA, and other stakeholder representation as soon as possible to address many of the concerns summarized above and detailed in the attachment to this letter. Thank you once again; we appreciate this opportunity to comment on the 2013 Proposed Amendments to the MCP.

Sincerely,

LSP Association

Handwritten signature of Cole E. Worthy III in blue ink.

Cole E. Worthy III, LSP
President

Handwritten signature of Wendy L. Rundle in black ink.

Wendy L. Rundle
Executive Director

cc: Benjamin Ericson, Assistant Commissioner, BWSC
Dorothy McGlincy, LSPA Regulations Committee Co-Chair
Marilyn Wade, LSPA Regulations Committee Co-Chair

Attachment