

Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 6th Floor
Boston, MA 02108

Attn: Elizabeth Callahan

May 17, 2013

Re: Comments on Public Hearing Draft – Proposed Amendments to the
Massachusetts Contingency Plan, 310 CMR 40.0000 – March 2013

Dear Ms. Callahan,

We had hoped to provide meaningful comments on multiple sections of the Public Hearing Draft – Proposed Amendments to the Massachusetts Contingency Plan, 310 CMR 40.0000. Unfortunately other commitments have prevented me from doing so and instead we provide comments on two issues. One is regarding useful and accessible communication to Boards of Health and the public and the other is on the revised approach to assessment of the “garden pathway.”

The first pertains to communication with the public in our cities and towns. While the MCP requires notification of disposal sites (and the progression of the steps from identification through clean-up and monitoring) to the public through the Board(s) of Health or Chief Municipal Officer(s), the “notice” as required is not accessible in a format that allows most Boards of Health nor the public to understand either the situation nor the process. For example, the following regulation (and multiple others following) does not provide the public with information that allows them to determine whether the disposal site should be important to them.

40.0510: Tier Classification Process

(b) The public notice required by 310 CMR 40.0510(3)(a) shall be in a form established by the Department for such purposes and shall include, but not be limited to, the following information.....

By requiring a one-page description of the case and its status in language accessible to Boards of Health this would allow the public and the BOH to make informed decisions about the case (and to allocate resources if necessary). In addition, contact information for the LSP and a specific name of the person working on the project prevents the BOH from wasting time searching for the contact. This could be useful with each step of the process.

Additionally, the following text refers to the number of property owners who might need to receive written notification. Same comments apply – what homeowner is able to discern the relative impact of the notice that is sent to them when the

language is inaccessible? What is the basis for >50? Does it matter whether these are multi-family dwellings where the impact to the public is great, recognizing communities of renters, often in lower socio economic brackets, but the actual number of homeowners is relatively small?

(4) If the number of property owners that would receive written notices pursuant to 310 CMR 40.1406 exceeds 50, alternative means of providing notice to property owners (*e.g.*, use of a public notice published in the local newspaper) may, upon approval by the Department, be used to fulfill the requirements of 310 CMR 40.1406.

The second comment refers to the qualitative evaluation of the garden pathway. In 40.1012: Application of Activity and Use Limitations,

(3) Activity and Use Limitations shall not be required but may be used to provide notice of the existence of residual contamination to future holders of an interest(s) in property that is located within:

... (c) any disposal site or portion of a disposal site for which all applicable requirements of a Permanent Solution have been met pursuant to 310 CMR 40.1040 based upon one or more of the following limitations, assumptions or conditions:

1. *the recommendation of Best Management Practices for non-commercial gardening in a residential setting to minimize and control potential risk qualitatively evaluated pursuant to 310 CMR 40.0923(3)(c);*

As written, the qualitative evaluation is vague at best, since the Best Management Practices (BMPs) range from assumption of contaminated soil to assumption that available loam/soil is tested and meets health-protective guidelines. This latter assumption is not supported by data. Perhaps the BMPs can be available in guidance and a more prescriptive set of elements can be required in the absence of an AUL

Respectfully,



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