



Via electronic mail

May 17, 2013

Ms. Elizabeth Callahan
Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street
Boston, MA 02108

RE: Comments on: Proposed Revisions to Massachusetts Contingency Plan

Dear Ms. Callahan:

We greatly appreciate the MassDEP efforts to continue to improve the Massachusetts Contingency Plan (MCP) in order to benefit all stake holders. We are also appreciative of the opportunity to provide feedback throughout the revision process.

Kleinfelder provides assessment and remediation of contaminated sites on behalf of retail petroleum companies as well as municipalities, universities, and state agencies. Our LSPs currently advise clients on MCP issues on over 75 sites throughout the Commonwealth.

The following are a few select comments and questions raised regarding portions of the revised draft document that are of particular concern to Kleinfelder and our clients. These are not intended to reflect a comprehensive review of all revisions within the draft document. Other topics have been and will be addressed by comments via others (i.e. the LSPA) and further comment here would only serve to be redundant.

Proposed Revisions to SRM Reporting Criteria with Respect to Soil Vapor Intrusion (40.0313), specifically section 40.0313 (5)(F) regarding the conditions that indicate a "likely discharge of vapors"

40.0313 (5) (F) 1 states that soil impacted "with one or more volatile organic compounds" within six feet of school, residence, etc. would be considered SRM condition. As written this would imply that any concentration of VOCs in soil proximal to school or residence, etc. may be considered a SRM. Suggest that term "impact" be clarified to refer to detections of VOCs exceeding S-1 GW-2 standards, or some other quantitative threshold that would be reasonably protective. The detection of trace amounts of VOCs in soils (common place in many urban areas) would not typically indicate a "likely discharge of vapors" and would not necessarily warrant a 72 hour notification as SRM.

40.0313 (5) (F) 3 states that one or more VOCs in groundwater that exceed 10 times the GW-2 standard within 100 feet of a school, occupied residence, etc. would be considered an SRM condition. Suggest clarifying language, as in other references "and average annual depth to groundwater is less than 15 feet".

Within 100 feet is too conservative. There may be many scenarios where there is adequate information to determine that this condition, in and of itself, would not indicate a “likely discharge of vapors” to receptors of concern (i.e. existing well control between elevated groundwater concentrations and receptor(s), known source and groundwater flow information, etc.) Suggest adding language to allow for use of existing site knowledge to make reasonable determination of risk of exposure.

This proposed revision is also seemingly inconsistent with the SRM condition already existing with regards to NAPL within 30 feet of building.

40.0313 (5) (F) 4 states that “one or more volatile organic compounds exist in groundwater” beneath or near structure with an earthen floor, fieldstone or concrete foundation with significant cracks and /or a groundwater sump.

This provision is poorly worded and needs to be clarified. Again the reference to “one or more volatile organic compounds” implies that any detection at any level would constitute a “likely discharge of vapors” into the structure of concern. Suggest that this be clarified to refer to detections of VOCs exceeding some quantitative threshold that would be reasonably protective (i.e. GW-2 levels). Furthermore the phrase “beneath or near the structure” is too vague and should be clarified (i.e. in groundwater beneath or within 30 feet of structure where average depth to groundwater is less than 15 feet).

Proposed Revisions to Subpart J (40.1000)

- 1) Subpart J (40.1000) has been revised to allow Permanent Solutions with Conditions, without the implementation of an AUL. As stated by the MassDEP, under this proposal, future residential gardening would be addressed qualitatively in the risk characterization (which would quantitatively address all direct contact exposures) and the Permanent Solution with Conditions Statement would describe the potential for exposure and recommend the use of gardening Best Management Practices (BMPs) to limit to minimize future risk. An alternative approach could be to require an AUL that would prohibit gardening or require BMPs.
 - a. Does this require that all properties, regardless of current or future use as residential, commercial, or industrial will require Permanent Solutions with Conditions if the surficial soil (approximately 0-3 ft) has not been quantified during closure?
 - b. If soil data shows that S-1 standards are met, what more would have to be proven to eliminate the need to evaluate the gardening pathway and thus require Conditions and BMPs? Is this determined by the Risk Assessor/LSP or a Guidance Document/Standards set by MassDEP?
 - c. This begs the question (and sets a precedent) on how many other future activities (like gardening) should be considered during future site use, even though the S-1 Standards have been met. This consideration of always including

gardening as a potential risk factor is very conservative, as many of the petroleum-release related sites are currently, and will be in the future, used as commercial properties, or releases to the environment occurred at depths greater than 3 feet based on the depth of the underground storage tank system.

- 2) MassDEP is considering proposing that current Class C-2 RAOs (applicable to disposal sites where a Permanent Solution is feasible, but not achieved within 5 years of Tier Classification) would not be transitioned into Temporary Solutions; rather the status of these sites would be indicated by the current phase of work (e.g., Phase IV, Phase V or Phase V/ROS). Transition provisions are identified in 40.1055.
 - a. If the site has already been classified as a Class C RAO prior to the 5 year RAO deadline, and now is being transitioned back into the phase work, how long does the site now have to either achieve a Permanent or Temporary Solution or ROS? Are there new deadlines established to achieve this closure goal?
 - b. During the first submittal transitioning from the Class C-2 RAO back to the Phase reports, are there any additional supportive documents required other than the normal Phase IV/Phase V/ROS requirements?
- 3) According to proposed revision 40.1012 (2)(d) "Except as provided in 310 CMR 40.1012(3), Activity and Use Limitations shall be required at any disposal site for which a Permanent Solution is achieved and Stable NAPL is present"
 - a. The change in definition of NAPL now allows site closure based on Stable NAPL. If NAPL is shown to be Stable and at depths greater than 15 feet below grade (thereby being inaccessible), can the site be closed without an AUL? We recommend that it is left to the LSP to determine if site-specific conditions warrant an AUL if NAPL is present, rather than requiring the implementation of an AUL for all sites with NAPL.
 - b. Specifically, NAPL has been proven to be stable at a commercial property at depths of greater than 15 feet below grade at a GW-3 disposal site. The NAPL is inaccessible based on its depth and the site and surrounding area is provided by municipal water. If an AUL is required based on 40.1012(2)(d), then what actions are the AUL limiting? Why is the AUL required?

Again, we appreciate and the hard work MassDEP has done to progress these revisions, and the opportunity to provide input in this process.

Sincerely,
KLEINFELDER



Bruce C. Ross, CPG, LSP
Senior Project Manager

cc: Richard Quateman, LSP, Kleinfelder
Eric Henry, LSP, Kleinfelder
Martha Zirbel, LSP, Kleinfelder
Beck Straley, Kleinfelder
Moir Johnson, Kleinfelder
Jeremy Blumberg, Kleinfelder
Emily Straley, Kleinfelder
Kleinfelder (file)

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