
**Response to 1 March 2013 Public Hearing Draft
Proposed Amendments to the Massachusetts Contingency Plan,
310 CMR 40.0000**

- **Question 1 - Tier Classification, 310 CMR 40.0520(4)** - Tier 1A, 1B, and 1C sites will be reclassified as simply Tier I. In regards to the level of involvement of the MassDEP after the simplification of the classification process, will MassDEP distinguish between former Tier 1A sites and Tier 1C sites, or will former Tier 1C sites now have the same level of involvement as former Tier 1A sites?
- **Question 2 - Tier Classification, 310 CMR 40.0414(2) and (3)** - Will existing Tier II sites that require remedial actions as part of an Immediate Response Action be re-classified as Tier I?
- **Question 3 - Activity and Use Limitations, 310 CMR 40.1074(1) (d)** - An AUL cannot be used to restrict access to groundwater has been deleted. Does this mean that the proposed revisions would allow an AUL to restrict access to groundwater? If so, what does that imply? Does MassDEP intend that an AUL may be used to restrict the use of drinking water wells on a property and thereby allow closure in GW-1 areas where COC's are greater than Method 1 GW-1 standards?
- **Question 4 - Activity and Use Limitations**, The Note to Reviewers on Page 25 of the Redline/Strikeout version states that *"The inclusion of "emergency excavation and repair of existing subsurface utilities" in (2)(h) reflects the requirement that emergency repair work be evaluated as a current site use and utility corridors be clean enough to support such repair without separate health and safety plans."* Does this mean that conduct of future potential emergency utility repair work must be shown to pose No Significant Risk in the risk assessment on which the AUL is based?
- **Question 5 - Non-Aqueous Phase Liquid and Source Control, 310 CMR 40.0006** - Will minimum data requirements/types be set beyond vertical and horizontal delineation for the completion of a final LNAPL CSM?
- **Question 6 - Non-Aqueous Phase Liquid and Source Control, 310 CMR 40.1003(5)** - Will the Phase 2 CSA requirements to demonstrate LNAPL as stable vs. non-stable be clarified in regulation revisions?
- **Question 7 - Non-Aqueous Phase Liquid and Source Control** - Will a determination of the presence of LNAPL be based only by direct measurement (e.g. well gauging) or observation (e.g. visual observation of LNAPL in an excavation) and will there be soil (saturated and/or unsaturated zone) hydrocarbon concentration or groundwater hydrocarbon concentration thresholds (% saturation) above which LNAPL is presumed to be present?

- **Question 8 - Non-Aqueous Phase Liquid and Source Control, 310 CMR 40.0860(1)(e)** - Will criteria/guidance be established for determining the feasibility of additional LNAPL recovery from a Stable LNAPL plume, similar to the Feasibility Evaluations Under the MCP - Policy #WSC-04-160?
- **Question 9 - Non-Aqueous Phase Liquid and Source Control** - Can remedial actions being undertaken as an IRA due to the presence of LNAPL be transitioned to a Phase IV, after the Phase IV RIP is submitted and the IRA closed or must response actions continue under the IRA?
- **Question 10 - Closure Related Amendments, 310 CMR 40.0006(12)** Does it need to be spelled out specifically that historic fill was deposited to raise the topographic elevation?
- **Question 11 - Closure Related Amendments, 310 CMR 40.0006(12)** In regards to the statement "*was not a result of illegal disposal of waste material at the time of placement*", how is that proven?
- **Question 12 - Miscellaneous, 310 CMR 40.004(6)(a)** - Is the 1,7, 14 and 28 required upon just the initial start up of a treatment system? Will treatment systems that have previously operated and were shut down for rebound evaluation for a period of time (1-6 months) need to follow this protocol? Or will MassDEP consider a timeframe for restarting of a system that does not require samples on day 1, 7, 14, and 28?
- **Comment 1 - Vapor Intrusion, CMR 40.04313 (5)(f)(1)** - This amendment implies that any concentration of any VOC in soil, no matter how low, would constitute a Condition of Substantial Release Migration and a 72-hour reporting condition if documented within 6 feet horizontally and 10 feet vertically of a school, child care center, or residence. Low concentration (even those near the laboratory MDL) would therefore result in investigation to evaluate the potential of a vapor issue. In addition to being burdensome to RPs, this regulation without any science-based threshold trigger, will result in undue stress and/or panic in the residence, school, or child care center potentially being evaluated for extremely low soil impacts (below S-1 standards). Considering the quantity of petroleum releases at gasoline service stations which abut residential areas, significant investigation will be triggered at a large sub-set of existing regulated sites which already contain very low levels of VOC contaminant (below S-1 standards but above laboratory MDLs). A threshold standard (such as S-1) should be established for VOC in soils within 6-feet of the specified locations.
- **Comment 2 - Activity and Use Limitation, 310 CMR 40.1074(2)(c)** - There appears to be a typo in proposed CMR 40.1074(2)(c) - we suggest deleting the word "as" in third line ("signatory authority ~~as~~").

