

# BWSC Fee Regulation Changes

SAC Presentation – May 28, 2009

# Fee Package Summary

- Anticipated Promulgation Date - June 12 (or June 26)
- Package amends 310 CMR 4.00 - DEP Timely Action Schedule and Fee Provisions.
- Several technical or clarifying amendments to BWSC Annual Compliance Fee (ACF) provisions.
- Two Significant BWSC Amendments:
  - Creates new \$100 ACF category for PRPs with Financial, Legal or Technical Inability status.
  - **Expands ACF billable universe to include non-responder PRPs.**

# What is an ACF?

- ❖ Annual Compliance Assurance Fee.
- ❖ Payable each year for sites at which response actions required until and including year an RAO A/B is filed.
- ❖ Billed annually based on site status as of annual status date.
- ❖ Fees reflect DEP's cost of compliance, enforcement, inspections and audits.
- ❖ Authority at MGL c.21E, s.3B and 310 CMR 4.00

# ACF Amendment Background

## Pre-2004

Statutory requirement (MGL c.21E, s.3B) to pay annual compliance fees applies only to parties performing response actions.

## Loophole

DEP cannot collect annual compliance fees from responsible parties who fail to perform required response actions.

## 2004 Statutory Change

Legislature amends c.21E by expanding ACF universe to include persons who are required to perform response actions or who have been notified by DEP of their potential liability.

## Implementation

Implementation of the statutory change requires fee regulations that incorporate the new billable universe.

# Implementation Issues

Legal and technical implementation questions:

- What does it mean to be required to perform?
- What qualifies as notification by DEP?
- Do we invoice all the potentially billable parties for a given site?
- What opportunity is there for appeal by parties who haven't assumed responsibility for a site?

# Regulatory Implementation Plan

Annual Compliance Fees payable by:

- ✓ A party performing response actions at a site (status quo).
- ✓ A party required by a departmental final order to perform response actions.
- ✓ A party assessed a penalty for failure to perform response actions.
- Parties who demonstrate financial, technical or legal inability pay new \$100 FTLI ACF.

# FY2009 Revenue Update

- ❖ On target to invoice approximately 3,100 parties for a total of \$5.5M.
- ❖ Estimated receipts = \$5.3M.
- ❖ Billing Backlog eliminated: no more multi year bills; billing within 3-6 months of site status date.

# Reg Package Information

DEP Fees and Program Improvements Regulation  
Package 2009-1

<http://www.mass.gov/dep/service/online/fees.htm#regs>

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