COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

ARLEEN O'DONNELL
Commissioner

REVISIONS TO THE HAZARDOUS WASTE REGULATIONS

PUBLIC HEARING DRAFT

- Revisions to 310 CMR 30.000

JANUARY 2007

Prepared by: ***The Commonwealth of Massachusetts***
Executive Office of Environmental Affairs
Department of Environmental Protection
Bureau of Waste Prevention
Business Compliance Division

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

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January 23, 2007

Dear Citizen:

I am pleased to send you this copy of the public hearing draft covering proposed regulations that would revise existing hazardous waste regulations.

The Department is interested in receiving your comments and suggestions on how it can most effectively implement these new regulations. I hope that you will review this proposal and submit comments. We are holding six public hearings during the week of **March 5th 2007**. Written comments may be submitted until **5 p.m. on March 23, 2007**.

Please contact Jeff Chormann at (617) 292-5888 if you have any questions. We hope you can attend and look forward to receiving your input.

Very truly yours,

James C. Colman
Assistant Commissioner
Bureau of Waste Prevention

Massachusetts Department of Environmental Protection Program Notice

Notice is hereby given that the Massachusetts Department of Environmental Protection, acting in accordance with the provisions of M.G.L. c. 21C §§ 4 and 6 (the Hazardous Waste Management Act) and M.G.L. c. 21E (the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act), will hold six public hearings at the times and places set forth below. These proposed regulations would revise existing hazardous waste regulations. Public hearings will be conducted under the provisions of M.G.L. Chapter 30A on:

Monday, March 5, 2007 - Boston - 2:00 p.m.
Department of Environmental Protection
One Winter Street, 2nd Floor, Atlantic Room

Tuesday, March 6, 2007- Lakeville - 10:00 a.m.
Department of Environmental Protection, Southeast Regional Office
20 Riverside Dr., 1st Floor Conference Room

Tuesday, March 6, 2007 - Springfield - 10:00 a.m.
Department of Environmental Protection, Western Regional Office
436 Dwight St., Room 303

Wednesday, March 7, 2007 - Boston - 2:00 p.m.
Department of Environmental Protection
One Winter Street, 2nd Floor, Atlantic Room

Thursday, March 8, 2007 - Boston - 2:00 p.m.
Department of Environmental Protection
One Winter Street, 2nd Floor, Atlantic Room

Friday, March 9, 2007 - Worcester - 10:00 a.m.
Department of Environmental Protection, Central Regional Office
627 Main St., Concord Room

Testimony may be presented orally and/or in writing at the public hearings. The period for accepting written comments will remain open until **5 p.m. on March 23, 2007**. Submit comments to: MassDEP, Business Compliance Division, c/o Jeff Chormann, One Winter St., 8th Floor, Boston, MA 02108. Copies of the proposed regulations can be obtained at one of the Service Centers at each of Department's four regional offices; by contacting Jeff Chormann at (617) 292-5888; or by accessing MassDEP's web site at www.state.ma.us/DEP under "Public Hearings."

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EXECUTIVE SUMMARY

RCRA Corrective Action: Integrated Cleanups Focused On Results

Purpose
This "program description" document describes Massachusetts' environmental remediation programs and demonstrates that these programs are equivalent to the federal requirements for corrective action under the Resource Conservation and Recovery Act ("RCRA").[1] The purpose of these remediation requirements is to ensure that contaminated properties are cleaned up. This demonstration is the basis for the Massachusetts Department of Environmental Protection ("MassDEP")'s application to the United States Environmental Protection Agency ("EPA") for authorization to administer the corrective action program in Massachusetts. A state seeking authorization must submit a document to EPA that describes, among other things, the scope, structure, coverage, and processes of the state program. A state that receives authorization to administer a program receives federal funding for the program.[2]

Massachusetts is seeking to operate the Corrective Action Program for all facilities subject to 40 CFR 264.101 regardless of current license status [licensed facilities, facilities awaiting license issuance, and facilities that will be remediated under the state's waste Site Cleanup Program such that they will no longer need a license], except for sites where EPA will be the lead agency, as will be specified in the Coordination Plan. The state's goal is to simplify and coordinate the remedial requirements of all facilities subject to corrective action in Massachusetts, so as to avoid having facilities subject to separate cleanup requirements from both the state and EPA.

One cleanup program: a common scope, a common goal
Several federal and state statutes and regulations, including the RCRA corrective action program, require owners or operators of hazardous waste management facilities to clean up environmental contamination resulting from releases of hazardous wastes or hazardous constituents. The common goal of EPA and MassDEP is to make contaminated properties safe for people and the environment, and to restore natural resources, including surface water and groundwater.

One cleanup program: efficient and effective coverage
Massachusetts' corrective action program will build on existing regulations, statutes, and media (soil, water) quality standards, and the broad statutory enforcement authority available to the state to require the investigation and remediation of potential sources of pollution. The advantage of integrating multiple regulatory authorities and mechanisms is that facilities only need to work with one overseeing program. This coordinated cleanup approach allows facilities to efficiently meet multiple regulatory requirements while effectively protecting human health and the environment.

Universe of Corrective Action in Massachusetts
MassDEP seeks corrective action authority for twenty-seven (27) known Massachusetts facilities subject to RCRA Corrective Action under 40 CFR 264.101. In Massachusetts the RCRA universe consists of fourteen (14) active hazardous waste Treatment and Storage Facilities (TSFs) and thirteen

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1 "Corrective action" is a term that means environmental investigation and remediation.
2 40 CFR 271.6

(13) inactive Storage/Land Disposal Facilities (LDFs) that received Interim Status in 1980, but ceased hazardous waste operations before being issued a final license.

Structure of the corrective action program in Massachusetts: a flexible framework
The structure of the corrective action program that has been and will be used to clean up hazardous waste facilities in Massachusetts consists of the federal and state remedial programs described in federal and state statutes, regulations, and guidance. The tools to accomplish this cleanup include enforcement actions, permits, and regulations. The Massachusetts Contingency Plan (MCP) 310 CMR 40.0000 currently provides facilities being cleaned up under the authority of the RCRA hazardous waste program (310 CMR 30.000) to be considered **Adequately Regulated** for the purposes of the Waste Site Cleanup Program provided they comply with certain spill notification requirements and the standards for cleanup. RCRA Corrective Action Authorization will allow the cleanup at active TSF facilities in Massachusetts to remain adequately regulated by the 21C program through the issuance of a Hazardous Waste License.

The regulations being proposed allow the Interim Status LDF sites being cleaned up under 310 CMR 40.0000, the MCP, to be considered **Adequately Regulated** for the purposes of the RCRA hazardous waste program provided they meet certain RCRA requirements. If cleaned up under the MCP they will not need a RCRA hazardous waste license or order under 310 CMR 30.000 and the MassDEP can terminate their Interim Status. Allowing RCRA Corrective Action sites to be cleaned up under the MCP process will be both more efficient and familiar to consultants, the public and facility owners.

1.0 INTRODUCTION

This regulatory package is part of the Massachusetts Department of Environmental Protection's (MassDEP) ongoing hazardous waste regulation authorization initiative. The Federal Solid Waste Disposal Act as revised by the Resource Conservation and Recovery Act (RCRA) of 1976, P.L. 94-580, 42 U.S.C. §6901 *et seq*, as amended, enables the U.S. Environmental Protection Agency (EPA) to authorize state hazardous waste programs under RCRA, Subtitle C. Massachusetts administers its program pursuant to the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C and implementing regulations at 310 CMR 30.000.

RCRA authorizes EPA, or an authorized state, to require owners and operators of hazardous waste facilities to investigate and remediate potential sources of pollution (RCRA Corrective Action). The requirements are administered through corrective action permits or other enforceable mechanisms including enforcement orders.

Currently, in Massachusetts, both EPA, under RCRA, and MassDEP, under the 21E Program, have the authority to require the cleanup of contamination at these facilities. This dual agency authority has complicated and thus slowed the cleanup at some facilities.

By submitting this regulatory package, MassDEP seeks EPA authorization to implement RCRA Corrective Action utilizing three different approaches: (1) Issue RCRA permits (referred to as 'licenses' in the Massachusetts program) to active Treatment, Storage and Disposal Facilities (TSDFs); (2) Issue Orders to some interim status Land Disposal Facilities (LDFs) undergoing

closure or that are in post-closure; and (3) Conduct cleanups under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act (M.G.L. c. 21E or the 21E Program) and 310 CMR 40.0000 (the Massachusetts Contingency Plan or MCP), for certain interim status LDFs undergoing closure or that are in post-closure.

MassDEP proposes to adopt new regulations under M.G.L. c. 21C and regulations 310 CMR 30.000 which will allow it to oversee the cleanup, consistent with 21E Program requirements, of any hazardous materials released to the environment at facilities, both active and closed, that are, or were, subject to a hazardous waste license pursuant to 310 CMR 30.000. With EPA's authorization of MassDEP to implement RCRA Corrective Action authority the current dual agency oversight can be eliminated and facilities can proceed through the corrective action process with more certainty.

MassDEP seeks corrective action authority for twenty-seven (27) known Massachusetts facilities subject to RCRA Corrective Action under 40 CFR 264.101. In Massachusetts the RCRA universe consists of fourteen (14) active hazardous waste Treatment and Storage Facilities (TSFs) and thirteen (13) inactive Storage/Land Disposal Facilities (LDFs) that received Interim Status in 1980, but ceased hazardous waste operations before being issued a final license. A list of the facilities subject to corrective action is contained in **Appendix A.** (Note: Other facilities may be subject to these regulations, but are currently unknown because they never properly notified EPA about their hazardous waste activities as required by RCRA.)

Massachusetts intends to utilize its authority under M.G.L. c. 21C and 310 CMR 30.602 to incorporate by reference (IBR) the RCRA requirements for corrective action at both active and closed hazardous waste facilities. Under this authority, MassDEP will accomplish cleanup through either the issuance of a hazardous waste license for active facilities, or an administrative order for facilities that are undergoing closure or that are in post-closure. MassDEP is also amending its hazardous waste regulations to add a new section, 310 CMR 30.099(13), to allow for the use of M.G.L. c. 21E and MCP requirements as a third cleanup option at Massachusetts Interim Status Land Disposal Facilities (LDFs) that are undergoing closure or that are in post closure. Facilities complying with the MCP 310 CMR 40.0000 will be considered **Adequately Regulated** for the purpose of the hazardous waste regulations 310 CMR 30.000 provided they comply with the additional RCRA requirements of 310 30.099 (13). The proposed **MCP Plus** requirements contained in 310 CMR 30.099(13) relate to public involvement, MassDEP oversight/auditing, and financial assurance. MassDEP will retain the authority to issue an administrative order should a facility fail to meet the "Adequately Regulated" and/or "MCP Plus" requirements.

Massachusetts also proposes to adopt several RCRA regulations that will provide additional flexibility to conducting cleanup at RCRA facilities. Specifically, MassDEP proposes to adopt rules regarding the management of mixed radioactive and hazardous waste, the construction of corrective action management units (CAMU), temporary units and staging piles. These rules are designed to relieve operators from obtaining a hazardous waste license/permit from the MassDEP for certain activities provided that they are conducted at the disposal site as part of a cleanup. In addition MassDEP is revising 310 CMR 801(11) that provides a hazardous waste license exemption for certain MCP cleanup activities. This revision is intended to clarify that the incineration of hazardous waste is **not** exempted from hazardous waste or air quality regulations.

2.0 REGULATORY BACKGROUND

RCRA provides for EPA authorization of state hazardous waste programs under Subtitle C. In fact, Congress designed RCRA so that Subtitle C would eventually be administered by states in lieu of the Federal government. As the Federal hazardous waste program changes, states must revise their programs accordingly. Most commonly, states revise their programs as a result of changes to EPA's regulations in 40 CFR parts 124, 260-266, 268, 270, 273 and 279. In determining whether to grant a State "authorization," EPA must be assured that the **s**tate program is no less stringent than, or inconsistent with the Federal program. A state may, however, promulgate rules that are more stringent. Receiving authorization helps clarify agency enforcement roles, puts the regulated community on notice of the differences between state and Federal programs, and removed the current dual agency oversight of cleanups.

Massachusetts is now seeking authorization from EPA for revisions to the hazardous waste program that have taken place since Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344), to implement its base hazardous waste management and corrective action program. The authorized base program state regulations currently remain in effect and generally track Federal hazardous waste requirements through at least July 1, 1984.

3.0 SCOPE AND SUMMARY OF PROPOSED CORRECTIVE ACTION RULES

A. Universe of Facilities Affected by This Revision

1. Land Disposal Facilities (LDFs)

While Massachusetts has identified thirteen (13) inactive RCRA facilities, twelve (12) of these include metal plating and finishing operations. These often discharged untreated metal plating waste directly to an adjacent surface water. With the advent of the National Pollutant Discharge Elimination System (NPDES) and Massachusetts Clean Water Act requirements, many facilities are required to treat their waste prior to discharge. This treatment resulted in the creation of a wastewater treatment sludge that was typically discharged to a surface lagoon for dewatering. If the sludge met the definition of a hazardous waste under RCRA [i.e. metal hydroxide sludge], the lagoons became subject to the requirement to obtain a RCRA hazardous waste permit/license. The RCRA regulations required any LDF to apply for "Interim Status" under 310 CMR 30.000 which allowed them to continue their hazardous waste activities until they received a Massachusetts Hazardous Waste License. All of the LDFs in Massachusetts opted to cease using the waste lagoons and closed them under the Interim Status regulations at 310 CMR 30.099. Unfortunately, the majority of Massachusetts LDFs could not meet the stringent soil and ground water criteria to be "clean" closed. This resulted in the current thirteen (13) Interim Status LDFs in Massachusetts being subject to both post closure regulations at 310 CMR 30.500 and RCRA Corrective Action.

2. Treatment and Storage Facilities (TSF)
There are sixteen (16) active treatment and storage facilities in Massachusetts that treat or store hazardous waste in containers and tanks. These facilities are subject to corrective action for releases from their treatment or storage operations. These facilities must cleanup any contamination in a manner that protects human health and the environment. If there is a release to soil or groundwater that cannot be cleaned up to comply with the MCP, that facility must close the unit as a land disposal unit under RCRA Corrective Action.

B. RCRA Rules Covered by this Revision

MassDEP is proposing to adopt the regulations contained in Table 1. MassDEP plans to incorporate by reference (IBR) a large portion of the Federal regulations pertaining to corrective action. For each regulation, MassDEP regulations will be at least as stringent as the Federal rules. The following is a brief summary of the proposed regulations.

TABLE 1: State Provisions for Which the State is Seeking Authorization

State Citation	Subject
310 CMR 30.003(8)	Rules of Construction
310 CMR 30.010	Mixed Waste Regulation Definition
310 CMR 30.010	Facility Definition; Solid Waste Management Unit (SWMU) Definition
310 CMR 30.099 (1)-(12)	Interim Status Facilities
310 CMR 30.099 (13)	Corrective Action at Interim Status Disposal Facilities Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
310 CMR 30.602 (9) – (15)	General Requirements for All Facilities (RCRA Base Program)
310 CMR 30.661(1)	Groundwater Protection – Applicability
310 CMR 30.801 (11)	Exemption from License Requirement at 21E Disposal Sites
310 CMR 30.804(29)	Additional Requirements for Facilities' License Application
310 CMR 30.104(3)	Mixed Waste Reform Rule Requirements for low-level mixed waste and technologically-enhanced, naturally occurring and/or accelerator-produced radioactive material wastes jointly regulated by MassDEP and the Massachusetts Department of Public Health

1. 310 CMR 30.099(13) – Interim Status Facilities

MassDEP is adopting 310 CMR 30.099(13) to allow for RCRA sites that have, or should have had, Interim Status but that never received a final license for hazardous waste treatment, storage or disposal, to perform cleanup under the MCP. To be considered Adequately Regulated, the facility must comply with the MCP Plus requirements of 310 CMR 30.099(13). These MCP Plus requirements generally pertain to the following three areas where the RCRA Federal regulations are more stringent than the MCP.

a. Public Involvement

For facilities proceeding under the Adequately Regulated provision of 310 CMR 30.099(13), MassDEP will ensure that, in addition to the overall public participation requirements of the MCP, public notice occurs prior to a Release Abatement Measure (RAM), Phase III Remedial Action Plan (i.e., at the time of remedy selection), and prior to the Termination of Interim Status (which will occur only when the Corrective Action Permanent Solution is in place). MassDEP will be responsible for preparing and providing notice of its decision on the termination of Interim Status. Notice at the time of remedy selection may be handled by the Licensed Site Professional or regulated entity, but MassDEP will be sent copies of all comments and responses and will have the authority to intervene if it is determined that a remediation was not proceeding properly.

b. Oversight of Corrective Action

The MassDEP provides direct oversight of corrective action at facilities with a Hazardous Waste License or a Post Closure Order. For facilities that undertake corrective action pursuant to 310 CMR 30.099(13), which allows the use of the MCP, the MassDEP level of oversight will depend on a number of factors, including, but not limited to, the nature and complexity of the site, comments received during public involvement activities, the potential for exposure prior to and during the response actions, review or audit results of submittals to the Department and the compliance history of the regulated entity. MassDEP retains at all times the authority to provide direct oversight of the entire corrective action process or only at key corrective action milestones such as the remedy selection stage (i.e., Phase III, Remedial Action Plan submittal). MassDEP also commits to a formal audit at the end of all corrective action activity. For additional information on the MCP process, see Section E below.

c. Financial Assurance

Facilities must maintain required RCRA financial assurance for closure/post closure activities while proceeding under the MCP.

2. 310 CMR 602(9) thru (11) and (15) – Hazardous Waste License and Post Closure Order Issuance (RCRA regulations at 40 CFR 264.101 as Incorporated By Reference)

EPA regulations require facility-wide corrective action at all facilities subject to permits for the treatment, storage or disposal of hazardous waste (40 C.F.R. 264.101(a)). MassDEP proposes the following two approaches to meet this need for different components of its universe of facilities: (1) for some post closure corrective action at LDFs, MassDEP proposes the use of an administrative order as allowed by the EPA post closure rule promulgated in 1998; and (2) for

active TSFs, MassDEP proposes using a Hazardous Waste Operating License issuance under M.G.L. c. 21C.

3. 310 CMR 30.602 (12) – RCRA Corrective Action Management Unit (CAMU) Provisions of 40 CFR Part 264, Subpart S, §264.552 (as in effect July 1, 2005) As Incorporated By Reference

Corrective action management unit (CAMU) is an engineered land disposal unit within the site boundaries of a hazardous waste facility where hazardous wastes, generated from remediation activities at the facility, are placed without triggering the need to obtain a hazardous waste license. A CAMU is so designated within a facility for the purpose of implementing corrective action requirements under RCRA §3008(h) and 40 CFR 264.101. The Federal requirement will be incorporated by reference.

4. 310 CMR 30.602(13) -Temporary Unit (TU) provisions of 40 CFR Part 264, Subpart S, §264.553 (as in effect July 1, 2005) As Incorporated By Reference

For temporary tanks and container storage areas used for treatment or storage of hazardous remediation wastes during remedial activities required under RCRA §3008(h) and 40 CFR 264.101, EPA or an authorized state may determine that a design, operating, or closure standard applicable to such units may be replaced by alternative requirements which are protective of human health and the environment. The Federal requirement will be incorporated by reference.

5. 310 CMR 30.602(14) - Staging Pile provisions of 40 CFR Part 264, Subpart S, §264.554 (as in effect July 1, 2005) As Incorporated By Reference)

A staging pile is the accumulation of solid, non-flowing hazardous remediation waste, which is used for temporary storage during remedial activities at the disposal site. The Federal requirement will be incorporated by reference.

6. 310 CMR 30.661: Applicability of Ground Water Protection Requirements

The applicable date for those facilities subject to the LDF requirements is amended from January 26, 1983 to read July 26, 1982. This date change does not increase the known universe of RCRA corrective action facilities in Massachusetts.

7. 310 CMR 30.801(11) – Hazardous Waste License Exemption

The Department is revising 310 CMR 30.801(11) to clarify that the exemption does not apply to actions being conducted outside the boundaries of the disposal site and to specifically preclude the combustion of hazardous waste from this exemption. The combustion of hazardous waste shall be subject to the requirements of a RCRA permit as well as an Air Quality permit pursuant to 310 CMR 7.08(4). This proposed rule will provide flexibility to MassDEP at sites where the treatment/disposal of remediation generated hazardous waste occurs within the disposal site

boundaries without requiring a RCRA permit or CAMU approval. The remediation waste requirements of the MCP provide functionally equivalent management standards for hazardous waste management that takes place within the disposal site boundaries. Any hazardous waste leaving, or disposed of outside the disposal site, as part of a MCP cleanup action, must comply with all applicable RCRA requirements.

8. 310 CMR 30.804: Additional Requirements for Facility License Applications

Requires facilities subject to corrective action requirements under 310 CMR 30.602(9) or (10) must submit the information required by 40 CFR 270.14(d) (July 1, 2005) as part of their hazardous waste license application. Facilities being issued post closure licenses/permits or orders must submit the information required by 40 CFR 270.28 (July 1, 2005).

4.0 310 CMR 30.104(3) - SUMMARY OF PROPOSED MIXED WASTE RULE, AND 310 CMR 30.414 and 310 CMR 30.805 - REVISIONS TO THE HAZARDOUS WASTE TRANSPORTER REGULATIONS

MassDEP proposes to incorporate by reference the provisions of 40 CFR Part 266 pertaining to the Storage, Treatment, Transportation, and Disposal of Mixed Waste. This proposal would provide increased flexibility to generators and facilities that manage low-level mixed waste (LLMW) and technologically enhanced naturally occurring and/or accelerator-produced radioactive material (NARM) that contains hazardous waste.

The rule would exempt LLMW from some hazardous waste storage and treatment regulations, and LLMW or eligible NARM from hazardous waste transportation and disposal regulations, provided specific conditions are met. The exempt wastes must be managed as radioactive waste in accordance with a U.S. Nuclear Regulatory Commission background license (issued by the Massachusetts Department of Public Health) until radioactivity reaches background levels, at which time the waste reverts to being managed as a hazardous waste in accordance with 310 CMR 30.000.

MassDEP proposes to amend its hazardous waste transporter regulations to delete the term “sticker” to reflect current changes in the Vehicle Identification Device (VID) program. As of September 1, 2006, MassDEP ceased issuing “stickers” being used to affix the expiration date onto the VID. VIDs now contain an expiration date that is printed onto the card by means of MassDEP’s new automated VID card printer system.

The name of the Department of Public Utilities, cited at 310 CMR 30.805(1), would be changed to the Department of Telecommunications and Energy to reflect that agency’s current name.

Informational requirements in the hazardous waste transporter form that provides descriptive information for vehicles, cited at 310 CMR 30.805(5), would be reduced from ten (10) to four (4) categories.

5.0 PROPOSED REVISIONS TO 310 CMR 30.000

<u>310 CMR 30.003</u> RULES OF CONSTRUCTION IS AMENDED BY INSERTING THE FOLLOWING:

(8) No provision of 310 CMR 30.000 (or of 310 CMR 40.0000) shall be construed to limit the Department's authority to require additional response actions on a case-by-case basis in accordance with 310 CMR 30.829, when necessary to protect health, safety, public welfare or the environment.

<u>310 CMR 30.010</u> IS AMENDED AS FOLLOWS:

DELETE THE DEFINITION OF "FACILITY" IN ITS ENTIRETY, AND INSERT THE FOLLOWING NEW DEFINITION:

<u>Facility</u> means: (a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them); (b) For the purpose of implementing corrective action under 310 CMR 30.602(9) and (10) or 40 CFR 264.101, all contiguous property under the control of the owner or operator required to seek a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h) and M.G.L. c. 21E; (c) Notwithstanding paragraph (b) of this definition, a remediation waste management site as defined in 40 CFR 260.10 is not a facility that is subject to corrective action requirements, but nevertheless will be subject to such requirements if the site is located within a facility as defined in paragraph (b).

DELETE THE DEFINITION OF "HAZARDOUS WASTE" IN ITS ENTIRETY, AND INSERT THE FOLLOWING NEW DEFINITION:

<u>Hazardous Waste</u> means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase n serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety, or welfare or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed. *See* 310 CMR 30.104 for possible exemptions. Hazardous waste includes the hazardous waste component(s) of mixed waste. *See* 310 CMR 30.010, "Mixed Waste."

INSERT THE FOLLOWING NEW DEFINITIONS:

Low-Level Mixed Waste (LLMW) means a waste that contains both low-level radioactive waste and hazardous waste.

Low-Level Radioactive Waste (LLW) means a radioactive waste which contains source, special nuclear, or byproduct material, and which is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in §11e.(2) of the Atomic Energy Act of 1954, as amended. (See also 10 CFR 61.2 for the definition of "waste" promulgated by the Nuclear Regulatory Commission.)

Naturally Occurring and/or Accelerator-produced Radioactive Material (NARM) means radioactive materials that:

(a) Are naturally occurring and are not source, special nuclear, or byproduct materials defined by the Atomic Energy Act of 1954, as amended; or

(b) Are produced by an accelerator.

Solid Waste Management Unit (SWMU) means any discernible unit at which solid wastes have been placed at any time, regardless of whether the unit was intended for the management of solid or hazardous waste. Such unit includes any area at a facility at which solid wastes have been routinely and systematically released.

310 CMR 30.099 IS AMENDED BY ADDING A NEW SUBSECTION (13) AS FOLLOWS:

(13) Corrective Action at Interim Status Disposal Facilities

(a) For purposes of this subsection (13) only, all terms shall be defined as defined in 310 CMR 30.010, except that the following terms shall be defined as follows:

1. Hazardous material means material, including, but not limited to, any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil, but shall include waste oil and all those substances that are included under 42 U.S.C. § 9601(14), but it is not limited to those substances. The term shall also include, but is not limited to, material regulated as hazardous waste or recyclable material under 310 CMR 30.000 and 310 CMR 40.0000.

2. Interim Status Disposal Facility Implementing Corrective Action means a facility that has not been issued a hazardous waste permit/license pursuant to 310 CMR 30.602(9) or a post closure order pursuant to 310 CMR 30.602(10), at which

a. Hazardous waste was disposed of in a surface impoundment, waste pile, land treatment unit, or landfill, after July 26, 1982; or
b. An owner or operator either certified closure of or applied for a closure by removal determination regarding the closure of a surface impoundment, waste pile, land treatment unit, or landfill, after January 26, 1983.

3. Licensed Site Professional and LSP each means a hazardous waste site professional, as defined in M.G. L. c. 21A, § 19, holding a valid license issued by the Board of Registration of Hazardous waste Site Professionals pursuant to M.G.L. c. 21A, §§ 19 through 19J.

4. OHM means oil and/or hazardous material.

5. Oil means insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble derivatives of mineral, animal or vegetable oils and white oil. The term shall not include waste oil, and shall not include those substances that are included in 42 U.S.C. § 9601(14).

(b) The requirements of this subsection (13) shall apply to the owner and/or operator of an Interim Status Disposal Facility Implementing Corrective Action. The owner and/or operator of an Interim Status Disposal Facility Implementing Corrective Action shall investigate and remediate all releases and potential releases of OHM at or from the facility in accordance with the requirements of this subsection.

(c) The owner and/or operator of an Interim Status Disposal Facility Implementing Corrective Action shall be regulated under M.G.L. c. 21E and 310 CMR 40.0000 (the "Massachusetts Contingency Plan" or "MCP") and shall carry out all response actions in accordance with the requirements of those provisions. In order to be considered as adequately regulated pursuant to M.G.L c. 21 C, the owner and/or operator of an Interim Status Disposal Facility also shall comply with the additional requirements specified in this subsection (13).

1. An owner or operator of an Interim Status Disposal Facility Implementing Corrective Action who at the time of the effective date of this subsection (13) already is performing response actions addressing all releases and potential releases of OHM at or from the facility in accordance with M.G.L. c. 21 E and 310 CMR 40.0000 shall continue to comply with those provisions, and shall also comply with the additional requirements specified in this subsection (13). This provision applies only to owners or operators who already have submitted to the Department an LSP Tier Classification Opinion and Release Notification Form(s), covering all solid waste management units at a facility, in full conformance with all applicable provisions of the MCP.

2. On or before ninety (90) days from the effective date of this subsection (13), an owner or operator of an Interim Status Disposal Facility Implementing

Corrective Action who is not covered by 310 CMR 30.099(13)(c)(1), or anyone else notified by the Department to comply with this provision, shall submit to the Department an LSP Tier Classification Opinion and Release Notification Form(s), addressing all releases and potential releases of OHM at or from the facility, from all solid waste management units, in full conformance with all applicable provisions of the MCP. The owner or operator shall perform response actions at the facility in accordance with M.G.L. c. 21 E and 310 CMR 40.0000, and also shall comply with the additional requirements specified in this subsection (13).

(d) The response actions required under this subsection (13) shall, at a minimum, be equivalent to that specified for corrective action in 40 CFR 264.101 (July 1, 2005). Utilizing the oversight and public participation procedures specified below, the Department will ensure that any such response actions:

1. Protect health, safety, public welfare and the environment for all releases and potential releases of OHM at or from a facility, and

2. Meet all applicable requirements of the MCP, including the Response Action Performance Standards set forth at 310 CMR 40.0191 and the Performance Standards for Response Action Outcomes at 310 CMR 40.1004 and/or the Performance Standards for Remedy Operation Status at 310 CMR 40.0893(2), whichever are applicable.

(e) Department Oversight and Public Participation

1. While a response action is being carried out, the Department and the owner or operator of an Interim Status Disposal Facility Implementing Corrective Action shall comply with all required Public Involvement activities in full conformance with the applicable provisions of 310 CMR 40.1400. In addition, at a minimum, prior to submitting a final Phase III report regarding remedy selection under the MCP to the Department in conformance with 310 CMR 40.0850, the owner or operator of an Interim Status Disposal Facility Implementing Corrective Action shall:

a. Provide an opportunity for public comment on the Phase III by holding a minimum thirty (30) day comment period, which may include the holding of a public meeting. The owner or operator shall give notice of the opportunity to submit comments, and of the public meeting if any, by causing the notice to be published (at its expense) in a newspaper having a substantial circulation in the affected area and by providing the notice to the Department and to all persons on the facility mailing list maintained pursuant to 310 CMR 40.1400.

b. Provide the Department with a copy of all public comments received.

c. Summarize and respond to the comments, and provide the Department and all persons who submit comments with a copy of the summary and response, noting which comments were incorporated, and explaining why other comments were not incorporated.

2. If at any time during the carrying out of a response action, for any reason including in response to public comments received pursuant to 40 CMR 40.1400 or this subsection (13), the Department determines that the response action is not being carried out in accordance with the MCP or this subsection (13), the Department may take any appropriate action, including issuing an order pursuant to M.G.L. c. 21E, §§9 and 10, and 310 CMR 40.0010. In particular, notwithstanding 310 CMR 40.0550(4)(a) and 310 CMR 40.0560(4)(a), the Department may at any time require the owner or operator of an Interim Status Facility Implementing Corrective Action to obtain prior Departmental approval of one or more of the submittals specified by 310 CMR 40.0550(2) or 310 CMR 40.0560(2), whichever is applicable, or the response actions or submittals required pursuant to 310 CMR 40.0800. The Department may require such prior approval for submittals or response actions as they relate to the entire facility or some portion thereof.

3. The Department shall audit in accordance with the MCP the response actions at all facilities at which corrective actions are undertaken pursuant to this subsection (13). If the Department determines that response action(s) at an Interim Status Disposal Facility Implementing Corrective Action has not been completed so as to meet all of the requirements of the MCP and this subsection (13), then the owner and/or operator of the facility shall perform any additional response actions required by the Department in accordance with the MCP and this subsection (13). The Department will notify the owner or operator in writing if it determines that further response action at a facility is required and shall include the basis for any such determination in any such notification.

4. Upon a tentative determination by the Department that response action(s) undertaken by the owner or operator of an Interim Status Disposal Facility Implementing Corrective Action were performed in compliance with M.G.L. c. 21E, the MCP, this subsection (13) and any other requirements applicable to such response actions, and that all other requirements for the termination of interim status have been met, the Department shall publish, or cause to be published, a public notice reflecting the Department's tentative determination to terminate the facility's interim status. Any such notice shall:

a. Be published, at the Department's expense, in a newspaper having a substantial circulation in the affected area;

b. Be provided to the owner or operator of the facility and to all persons on the facility mailing list maintained pursuant to 310 CMR 40.1400; and

c. Indicate the basis for the Department's tentative determination and that the Department will accept public comments on the tentative determination for at least thirty (30) days from the date of publication.

5. After the public comment period, which may include holding a public meeting, the Department shall make a final determination. The Department will make a final determination to terminate a facility's interim status only if it finds that the facility has completed corrective action in full compliance with M.G.L. c. 21E, the MCP, this subsection (13) and any other requirements applicable to such response action(s), and that all other requirements for the termination of interim status have been met. Notice of the Department's final determination shall be provided to the owner or operator of the Interim Status Disposal Facility Implementing Corrective Action and to all persons who commented on the Department's tentative determination.

6. The Department may, when the Department deems it appropriate, make an earlier determination that all or a designated portion of the response actions undertaken by an owner or operator of an Interim Status Disposal Facility Implementing Corrective Action were performed in compliance with M.G.L. c. 21E, the MCP, this subsection (13) and any other requirements applicable to such response actions, even if the Interim Status Disposal Facility Implementing Corrective Action does not yet meet all requirements for the termination of interim status. The process for making any such determinations shall be the same as that set forth in 310 CMR 30.099(13)(e)(4) above. Any such determination, however, shall not terminate interim status for the Interim Status Disposal Facility Implementing Corrective Action.

(f) Nothing in this subsection (13) shall relieve an owner or operator of an Interim Status Disposal Facility Implementing Corrective Action from any other obligation imposed by law, including but not limited to any closure or post closure obligation of 310 CMR 30.580 and 310 CMR 30.590, respectively, or any financial responsibility requirement imposed under 310 CMR 30.900, inclusive. With respect to closure and post closure requirements for regulated units, Interim Status Disposal Facilities Implementing Corrective Action will remain regulated under M.G.L. c. 21C, notwithstanding that they will carry out response actions for facility-wide corrective action under M.G.L. c. 21E.

(g) Nothing in this subsection (13) shall limit the authority of the Department under any statute or other regulation, including but not limited to the authority to issue any order to prevent or abate the release of OHM or potential sources of OHM.

(h) The owner or operator of an Interim Status Disposal Facility Implementing Corrective Action subject to this subsection (13) is responsible for payment of all Annual Compliance Fees for which it can be assessed pursuant to the provisions of 310 CMR 5.00, M.G.L. c. 21E and the MCP, and is responsible for payment of all applicable fee(s) required to accompany any submissions(s) pursuant to the provisions of 310 CMR 5.00, M.G.L. c. 21E and the MCP.

<u>310 CMR 30.099</u> IS FURTHER AMENDED WITH THE FOLLOWING MINOR REVISONS (SEE REDLINE STRIKEOUT):

<u>30.099: Interim Status Facilities</u>

(1) Qualifying for interim status.

(a) Any person who owns or operates an "existing hazardous waste management facility" or a facility in existence on the effective date of statutory or regulatory amendments under M.G.L. c. 21C that render the facility subject to the requirement to have a license pursuant to 310 CMR 30.800 shall have interim status to the extent the owner or operator has:

1. complied with the requirements of 310 CMR 30.060 pertaining to notification of hazardous waste activity; and

2. complied with the requirements of 310 CMR 30.099(2) governing submission of Part A applications.

(b) If the EPA has granted interim status prior to September 15, 1989, then such status shall continue until terminated pursuant to 310 CMR 30.099(12) or a determination or order of the Department.

(c) Failure to qualify for interim status. If the Department has reason to believe upon examination of a part A application that it fails to meet the requirements of 40 CFR § 270.13 as adopted and amended at 310 CMR 30.099(3), it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for the Department's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in the part A application. If, after such notification and opportunity for response, the Department determines that the application is deficient it may take appropriate enforcement action.

(d) 310 CMR 30.099 shall not apply to any facility which has been previously denied a RCRA permit or license or if authority to operate the facility under RCRA or M.G.L. c 21C has been previously terminated.

(2) <u>Submittal of Part A Applications</u>.

(a) Owners and operators of an existing hazardous waste management facility or of a facility in existence on the effective date of statutory or regulatory amendments under M.G.L. c. 21C that render the facility subject to the requirement to have a license pursuant to 310 CMR 30.800 shall submit Part A of their license application no later than:

1. six months after the date of publication of regulations which first require them to comply with the standards set forth in 310 CMR 30.500 through 30.900, or

2. 30 days after the date they first become subject to the standards set forth in 310 CMR 30.500 through 900, whichever first occurs.

(b) Any person submitting a Part A application shall:

1. provide the Department with the information set forth in 40 CFR 270.13, as adopted and amended at 310 CMR 30.099(3);

2. use the form prescribed by the Department; and

3. complete, sign and submit the application to the Department in compliance with 310 CMR 30.807.

(3) Content of a Part A Application. 40 CFR 270.13, as in effect on July 1, ~~1999~~2005, is hereby adopted and incorporated by reference subject to the following additions, modifications, and exceptions:

(a) In 40 CFR 270.13(a),"permit," is substituted with "license";

(b) In 40 CFR 270.13(j), the phrase "under 40 CFR part 261" is hereby replaced with "in 310 CMR 30.100"; and 2/27/04 310 CMR - 935

(c) In 40 CFR 270.13(k)(9), the references to "permits" are hereby modified to reference "permits or licenses".

(4) Operation During Interim Status.

(a) Unless allowed under 310 CMR 30.099(5), during the interim status period the facility shall not:

1. treat, store, or dispose of hazardous waste not specified in the Part A license application;

2. employ processes not specified in Part A of the license application; or

3. exceed the design capacities specified in the Part A license application.

(b) During interim status, owners or operators shall comply with the interim status standards at 40 CFR part 265 as adopted and amended at 310 CMR 30.099(6).

(5) Changes During Interim Status.

(a) Except as provided in 310 CMR 30.099(5)(b), the owner or operator of an interim status facility may make the following changes at the facility:

1. Treatment, storage, or disposal of newly listed or identified hazardous wastes not previously identified in Part A of these license application (and addition of the units being used to treat, store, or dispose of these hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised part A license application prior to such treatment, storage, or disposal;

2. Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A license application prior to such a change (along with a justification explaining the need for the change) and the Department approves the changes because:

a. There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

b. The change is necessary to comply with a Federal, State, or local requirement.

3. Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A license application prior to such change (along with a justification explaining the need for the change) and the Department approves the change because:

a. The change is necessary to prevent a threat to public health, safety, welfare or the environment because of an emergency situation, or

b. The change is necessary to comply with a Federal, State, or local requirement.

4. Changes in the ownership or operational control of a facility if the new owner or operator submits a revised part A license application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of 310 CMR 30.099(6)(c) (Financial Requirements for interim status facilities), until the new owner or operator has demonstrated to the Department that he is complying with the requirements of that subpart. The new owner or operator must demonstrate compliance with 310 CMR 30.099(6)(c) within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with subpart H, the Department shall notify the old owner or operator in writing that he no longer needs to comply with subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

5. Changes made in accordance with an interim status corrective action order issued by EPA under section 3008(h) or other Federal authority, by an authorized State under comparable State authority, or by a court in a judicial action brought by EPA or by an authorized State. Changes pursuant to 310 CMR 30.099(5) are limited to the treatment, storage, or disposal of hazardous waste or constituents of hazardous waste from releases that originate within the boundary of the facility.

6. Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A license application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed pursuant to 310 CMR 30.099(5)(b), changes listed pursuant to 310 CMR 30.099(5)(a) may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

1. Changes made solely for the purposes of complying with the requirements of 310 CMR 30.694 for tanks and ancillary equipment.

2. If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of RCRA section 3004(o).

3. Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated,

stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

4. Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

5. Changes necessary to comply with an interim status corrective action order issued by EPA under section 3008(h) or other Federal authority, by corrective action undertaken pursuant to M.G.L. c. 21C or M.G.L. c. 21E, or by a court in a judicial proceeding brought by EPA or an authorized State, provided that such changes are limited to the treatment, storage, or disposal of hazardous waste or constituents of hazardous waste from releases that originate within the boundary of the facility.

6. Changes to treat or store, in tanks, or containers, hazardous wastes subject to land disposal restrictions imposed by 40 CFR part 268 or RCRA section 3004, provided that such changes are made solely for the purpose of complying with 40 CFR part 268 or RCRA section 3004.

7. Addition of newly regulated units described in 310 CMR 30.099(5)(a)6.

8. Changes necessary to comply with standards under 40 CFR part 63, Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

(6) Until a final license decision takes effect pursuant to 310 CMR 30.838, an interim status facility shall at all times comply with each of the following:

(a) 310 CMR 30.502 through 30.579.

(b) 40 CFR Part 265 Subpart G [Closure and Post-closure], as in effect on July 1, ~~1999~~2005, subject to the following provisions:

1. The Department shall approve, modify, or disapprove a proposed closure plan within a reasonable time after its receipt by the Department. If the Department does not approve the plan, the Department shall provide the owner or operator with a detailed written statement of reasons for the Department's not approving the plan. Not later than 30 days after receiving said statement, the owner or operator shall submit a new or modified closure plan to the Department. Within a reasonable time after receiving said new or modified closure plan, the Department shall approve, modify, or disapprove it. If the Department modifies the plan, this modified plan (i.e. as modified by the Department) shall be the approved closure plan.

2. Such facility's closure plan shall describe how and when each hazardous waste management unit at the facility shall be closed during the facility's intended operating life, and how the facility as a whole shall be closed at the end of its intended operating life. The plan shall identify how the requirements of 40 CFR Subpart G, as adopted and amended at 310 CMR 30.099(6)(b), shall be complied with. The facility's closure plan need not describe when the facility as a whole shall be closed, except that the facility's closure plan shall describe when the facility as a whole shall be closed if:

a. the facility's closure plan has not been approved by the Department, or

b. the facility's remaining operating life is less than 20 years, and the facility is using a trust fund to demonstrate financial assurance for

closure pursuant to 310 CMR 30.904.

3. An owner or operator who does not have an approved closure plan shall submit a closure plan to the Department and an owner or operator who is subject to post-closure requirements and who does not have an approved post-closure plan shall submit a post-closure plan to the Department, as follows:

a. at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment unit, or landfill, or final closure of the facility if it involves such a unit, whichever is earlier; or

b. at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

4. The date on which the owner or operator "expects to begin . . . closure" shall be no later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous waste.

5. An owner or operator with an approved closure plan shall notify the Department in writing:

a. at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

b. at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

6. The Department shall approve, modify, or disapprove a proposed post-closure plan within a reasonable time after its receipt by the Department. If the Department does not approve the plan, the Department shall provide the owner operator with a detailed written statement of reasons for the Department's not approving the plan. Not later than 30 days after receiving said statement, the owner or operator shall submit a new or modified post-closure plan to the Department. Within a reasonable time after receiving said new or modified post-closure plan, the Department shall approve, modify, or disapprove it. If the Department modifies the plan, this modified plan (i.e. as modified by the Department) shall be the approved post-closure plan.

7. For the purposes of groundwater monitoring during closure and post closure, the owner or operator of an interim status facility shall comply with all applicable provisions of 310 CMR 30.099(6)(d).

8. In lieu of 40 CFR 265.111, 265.114, 265.115, and 265.120, the requirements of 310 CMR 30.582 [Closure Performance Standards], 310 CMR 30.585 [Disposal or Decontamination of Equipment], 310 CMR 30.587(2) and (3) [Completion and Certification of Closure], and 310 CMR 30.596(2) and (3) (Completion and Certification of Post-Closure Care shall apply.

(c) 310 CMR 30.900, provided that:

1. a surety bond guaranteeing performance of closure shall not be acceptable for the purpose of complying with 310 CMR 30.904, and

2. a surety bond guaranteeing performance of post-closure care shall not be

acceptable for the purpose of complying with 310 CMR 30.906.

(d) 40 CFR Part 265, Subpart F (Groundwater Monitoring), as in effect on July 1, ~~1999~~2005, excluding 40 CFR Sections 265.90(c) and 265.90(e) unless written approval for a waiver pursuant to said provisions is granted by the Department. The owner or operator or a stand-by surface impoundment which is designed and operated solely for the containment of hazardous waste in the event of an emergency at the facility (e.g., equipment failure or overflows) may apply to the Department, in writing, for a waiver from all or part of the groundwater monitoring requirements of 40 CFR Part 265, Subpart F. Notwithstanding any provision of 310 CMR 30.099(6) or 310 CMR 30.660: Groundwater Protection, the Department may require the owner or operator of any facility subject to the requirements of 310 CMR 30.099(6) to comply with, and such owner or operator shall comply with, all or part of 310 CMR 30.660: Groundwater Protection if the Department determines that such action is appropriate to protect public health, safety or welfare or the environment;

(e) 40 CFR Part 265, Subpart I (Use and Management of Containers), as in effect on July 1, ~~1999~~2005, provided that the owner or operator shall also comply with 310 CMR 30.682 (Labeling and Marking of Containers).

(f) 310 CMR 30.690, provided that the owner or operator shall do the following, in addition to complying with 310 CMR 30.513, whenever a tank system is used to treat chemically or to store a hazardous waste that is substantially different from waste previously stored or treated in that tank system, or whenever a tank system is used to treat chemically a hazardous waste with a substantially different process than any previously used in that tank system:

1. Conduct waste analyses and trial treatment or storage tests (e.g. bench-scale or pilot-plant scale tests); or
2. Obtain written, documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will the meet the requirements of 310 CMR 30.695 [General Operating Requirements].

(g) 40 CFR Part 265, Subpart K (Surface impoundments), as in effect on July 1, ~~1999~~2005, provided that the owner or operator shall remove all hazardous waste from each impoundment in compliance with 40 CFR § 265.228 unless the Department, in writing, directs otherwise;

(h) 40 CFR Part 265, Subpart L (Waste Piles), as in effect on July 1, ~~1999~~2005;

(I) 40 CFR Part 265, Subpart M (Land Treatment), as in effect on July 1, ~~1999~~2005;

(j) 40 CFR Part 265, Subpart N (Landfills), as in effect on July 1, ~~1999~~2005;

(k) 40 CFR Part 265, Subpart O (Incinerators), as in effect on July 1, ~~1999~~2005;

(l) 40 CFR Part 265, Subpart P (Thermal Treatment), as in effect on July 1, ~~1999~~2005; ~~and~~

(m) 40 CFR Part 265, Subpart Q (Chemical, Physical and Biological Treatment)~~.~~, as in effect on July 1, ~~1999~~2005;

(n) 40 CFR Part 265, Subpart W (Drip Pads), as in effect July 1, 2005.

(o) 40 CFR Part 265, Subpart AA (Air Emission Standards for Process Vents), as

in effect on July 1, ~~1999~~2005;

(~~o~~p) 40 CFR Part 265, Subpart BB (Air Emission Standards for Equipment Leaks), as in effect on July 1, ~~1999; and~~

(~~p~~2005; and

(q) 40 CFR Part 265, Subpart DD (Containment Buildings), as in effect on July 1, 2005.

(r) All provisions of 310 CMR 30.000 regulating mixed waste as hazardous waste.

(7) A facility having interim status pursuant to RCRA at which there is stored waste oil (MA01) generated at that facility shall be considered by the Department to have interim status for such storage of waste oil, and the owner or operator shall at all times comply with 310 CMR 30.510 through 30.579 and 310 CMR 30.900 and all applicable requirements set forth in 40 CFR Part 265 (July 1, 2005).

(8) Ownership or operational control of a facility having interim status pursuant to RCRA shall not be transferred from one person to another until at least 90 days after a revised Part A permit application is submitted to the EPA and the Department. If the facility is licensed pursuant to 310 CMR 30.800, the provisions of 310 CMR 30.828 shall apply.

(9) The owner or operator of a facility having interim status pursuant to RCRA shall notify the Department's hazardous waste program by certified mail of the commencement of a voluntary or involuntary proceeding pursuant to Title 11 (Bankruptcy) of the United States Code in which the owner or operator is named as a debtor within ten days after commencement of the proceeding.

(10) An owner or operator of a facility having interim status pursuant to RCRA is prohibited from placing any hazardous waste, or any container or tank holding hazardous waste, in any salt dome, salt bed formation, underground mine, or cave. In addition, an owner or operator of a facility having interim status pursuant to RCRA is prohibited from injecting hazardous waste into or through any well, as provided in 310 CMR 30.604(1).

(11) The owner or operator of a facility having interim status pursuant to RCRA is prohibited from storing, treating, disposing of, or otherwise managing any hazardous waste containing any polyhalogenated aromatic hydrocarbons.

(12) Notwithstanding any provision of 310 CMR 30.099(6) or any other provision of 310 CMR 30.000, a facility having interim status pursuant to RCRA shall cease to be a facility having interim status pursuant to RCRA in accordance with the following provisions:

(a) A land disposal facility which, on or any time before September 15, 1989, was a facility having interim status pursuant to RCRA shall not be a facility having interim status pursuant to RCRA on and after September 15, 1989 unless, by no later than November 8, 1985, the owner or operator of such facility had

submitted to the Department:

1. a Part B hazardous waste facility license application for the facility, and
2. certification that, as of the date of the certification, the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements in effect on the date of the certification.

(b) A land disposal facility which is in existence on the effective date of statutory or regulatory amendments under M.G.L. c. 21C that render the facility subject to the requirement to have a license pursuant to 310 CMR 30.800, and which is granted interim status, shall not be a facility having interim status pursuant to RCRA on and after the date twelve months after the facility first becomes subject to such license requirement, unless by that date the owner or operator of such facility has submitted to the Department:

1. a Part B hazardous waste facility license application for the facility, and
2. certification that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(c) A land disposal unit that is granted authority to operate in interim status pursuant to 310 CMR 30.099(5)(a)(1), (2) or (3) shall not be a unit having interim status pursuant to RCRA on and after the date twelve months after the unit is granted authority to operate, unless by that date the owner or operator of the unit certifies that the unit is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(~~b~~d) A hazardous waste incinerator which, on or any time before November 8, 1989, was a facility having interim status pursuant to RCRA shall not be a facility having interim status pursuant to RCRA on and after November 8, 1989 unless, by no later than November 8, 1986, the owner or operator of such facility had submitted to the Department a Part B hazardous waste facility license application for the facility.

(~~c~~e) A facility other than a landfill or a hazardous waste incinerator which on or any time before November 8, 1992, was a facility having interim status pursuant to RCRA shall not be a facility having interim status pursuant to RCRA on and after November 8, 1992 unless, by no later than November 8, 1988, the owner or operator of such facility had submitted to the Department a Part B hazardous waste facility license application for the facility.

(~~d~~f) The Department may require an owner or operator of an existing hazardous waste management facility or of a facility in existence on the effective date of statutory or regulatory amendments under M.G.L. c. 21C that render the facility subject to the requirement to have a license to submit Part B of their license application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility or of a facility in existence on the effective date of statutory or regulatory amendments under M.G.L. c. 21C that render the facility subject to the requirement to have a license may voluntarily submit Part B of the application at any time. Notwithstanding the above, any owner or operator of such a hazardous waste management facility shall submit

either a Part B license application in compliance with 310 CMR 30.800 or a closure plan in compliance with 40 CFR 265, Subpart G as adopted and amended at 310 CMR 30.099(6)(b), prior to the date on which interim status terminates pursuant to 310 CMR 30.099(12)(a) through (c).

(~~e~~g) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status pursuant to 310 CMR 30.850.

<u>310 CMR 30.104(3)</u> IS AMENDED BY ADDING A NEW SUBSECTION AS FOLLOWS:

(f) Low-level mixed waste and the transportation and disposal of Naturally Occurring and/or Accelerator-produced Radioactive Material (NARM) that contain hazardous waste managed in compliance with 40 CFR Part 266, Subpart N (as in effect July 1, 2005), hereby incorporated by reference, subject to the following exceptions, additions and modifications:

1. When the low-level mixed waste referenced in 310 CMR 30.104(3)(f) has met the requirements for reaching background radiation levels in its Nuclear Regulatory Commission background license for decay-in-storage and can be disposed of as a non-radioactive waste, then the conditional exemption for storage no longer applies and such waste is subject to hazardous waste regulation pursuant to the applicable provisions of 310 CMR 30.000.

2. Within three (3) days of becoming subject to hazardous waste regulation, pursuant to 310 CMR 30.104(3)(f)1., such waste shall be transferred to the generator's hazardous waste accumulation area, and labeled with the date on which the waste was transferred to the accumulation area as the container accumulation start date.

<u>310 CMR 30.414</u> IS AMENDED AS FOLLOWS:

(1) General <u>Provisions.</u> No transporter shall transport hazardous waste in any motor vehicle in the Commonwealth unless the Department has issued a Vehicle Identification Device (VID) to that transporter for that vehicle. Said VID issued by the Department shall have an expiration date for the current calendar year. The VID is only effective for one calendar year regardless of when issued. Said VID shall accompany each shipment of hazardous waste in the vehicle. Any VID shall be returned to the Department upon demand.

(2) Annual <u>Vehicle Identification Device (VID)</u>

(a) A transporter shall apply annually for a VID for each vehicle to be used to transport hazardous waste, by submitting a completed Department approved application form. Such application shall have attached four quarterly Massachusetts Hazardous Waste

Transporter Fee Reports (as required by 801 CMR 4.00) for hazardous waste transported during the 12 months ending the March 31 prior to the application, and shall convert total annual volume or weight to pounds using the following conversion factors: one gallon equals ten pounds, one ton equals 2000 pounds, one metric ton equals 2204.6 pounds, one liter equals 2.643 pounds, one cubic yard equals 2000 pounds, one cubic meter equals 2515.9 pounds, one kilogram equals 2.205 pounds.

(b) The transporter must receive a hazardous waste license prior to receiving any VIDs.

(c) An application for VID(s) may be filed any business day of the year; however, an application for the following calendar year's VID shall be received between October 1 and November 30 or as otherwise directed by the Department.

(d) After issuance of VID(s) for use during a calendar year, additional or replacement VID(s) for the same calendar year may be requested without an additional application fee.

<u>310 CMR 30.602</u> IS AMENDED BY ADDING SEVEN NEW SECTIONS AS FOLLOWS:

(9) For all facility owners and operators who are required to seek a new permit/license or a renewal permit/license (including a post-closure permit/license) for the treatment, storage, or disposal of hazardous waste pursuant to 40 CFR 270.1(c) (as in effect July 1, 2005), the corrective action provisions of 40 CFR 264.101 (as in effect July 1, 2005) are hereby adopted and incorporated by reference, and will be applied at the time of permit/license issuance, subject to the following additions, modifications, and exceptions:

(a) In 40 CFR 264.101(b), delete "Subpart S of this part" and substitute "310 CMR 40.0000."

(b) In 40 CFR 264.101(c), delete "Regional Administrator" and substitute "Department."

(c) At the end of 40 CFR 264.101(d), add, "The management of remediation waste is subject to the requirements of 310 CMR 40.0030."

(10) Any post closure permit/license that is issued will address all applicable 310 CMR 30.000 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements at 310 CMR 30.000. The Department may issue a post closure order under M.G.L. c. 21C, or M.G.L. c. 21E, or both, in lieu of a post closure permit/license. Any such order that is issued will address all applicable 310 CMR 30.000 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements at 310 CMR 30.000. The Department will assure a meaningful opportunity for public involvement regarding any such post closure order:

(a) At the time when the post closure order is being issued;

(b) At the time when the post closure remedy is being selected, and

(c) At the time when the remedy has been completed, by providing a public notice reflecting the Department's tentative determination. Any such notice shall:

1. Be published, at the Department's expense, in a newspaper having a substantial circulation in the affected area;

2. Be provided to the owner or operator of the facility and to all persons on the facility mailing list maintained pursuant to 310 CMR 30.833(4); and

3. Indicate the basis for the Department's tentative determination and that the Department will accept public comments on the tentative determination for at least thirty (30) days from the date of publication. Notice of the Department's final determination shall be provided to the owner or operator of the facility and to all persons who commented on the Department's tentative determination. The Department may combine the public comment periods regarding issuance of an order and remedy selection, if the Department has tentatively selected a remedy at the time when it is proposing to issue an order. The Department may modify the public comment procedures set forth above to the extent provided by 40 CFR 265.121(b)(2) and (3) (as in effect July 1, 2005).

(11) Facilities subject to 310 CMR 30.602(9) or (10) must also comply with the provisions of 310 CMR 40.0113 in order to be considered to be Adequately Regulated pursuant to M.G.L. c. 21E.

(12) The Corrective Action Management Unit (CAMU) provisions of 40 CFR Part 264, Subpart S, §264.552 (as in effect July 1, 2005), which is hereby incorporated by reference.

(13) Temporary Unit (TU) provisions of 40 CFR Part 264, Subpart S, §264.553 (as in effect July 1, 2005), which is hereby incorporated by reference.

(14) Staging pile provisions of 40 CFR Part 264, Subpart S, §264.554 (as in effect July 1, 2005), which is hereby incorporated by reference.

(15) References to the EPA Regional Administrator in 40 CFR 264.550-.555 shall mean the Department, except that the references to Regional Administrator in 40 CFR 264.555(e) regarding oversight of an out-of-state landfill shall mean the State Director or EPA Regional Administrator who has responsibility under 40 CFR 264.555(d) for permitting the landfill.

310 CMR 30.801 IS AMENDED BY DELETING SECTION (11) IN ITS ENTIRETY AND INSERTING NEW SECTION (11) AS FOLLOWS:

(11) The exemptions from the requirement to obtain a license provided in this 310 CMR 30.801(11), 310 CMR 40.0031(3) and 310 CMR 40.0041(4) shall apply, subject to the following

provisions. In the event of any inconsistency between this 310 CMR 30.801(11) and 310 CMR 40.0031(3) or 40.0041(4), the provisions of this 310 CMR 30.801(11) shall govern.

(a) No license shall be required for any emergency action initiated or ordered by the Department or by a court of competent jurisdiction and conducted by the Department or a contractor authorized by the Department to secure a site where hazardous waste has been deposited or abandoned. Emergency action shall mean the actions specified in 40 CFR 270.1(c)(3)(i) (as in effect July 1, 2005).

(b) No license shall be required for any remedial action ordered by a court of competent jurisdiction or ordered by the Department through issuance of an enforceable order, provided that the applicable substantive requirements from 310 CMR 30.000 governing any activities that would have required a license are instead included in the court or administrative order. The Department will provide an opportunity for public comment on any order being utilized in place of a license. Remedial action is defined in 310 CMR 40.0006.

(c) No license shall be required for any response action involving remediation waste from a disposal site which is conducted within the boundaries of that same disposal site in compliance with the provisions of 310 CMR 40.0000 with the following exceptions:

1. The combustion of Hazardous Waste shall be subject to a License under these regulations, as well as an Air Quality permit pursuant to 310 CMR 7.08 (4). Combustion means incineration as defined in 310 CMR 30.010 and any other thermal destruction of hazardous waste. However, the flaring of an uncompressed gaseous material which is not itself a hazardous waste (e.g., the flaring of methane gas from landfills or the flaring of off-gas emissions from thermal oxidation units) is not considered to involve the combustion of Hazardous Waste subject to a license under these regulations if the flaring results from a remedial activity, the gaseous materials are collected in an enclosed system at the site of generation, and the operations is conducted in compliance with all applicable Air Quality requirements including any permit required pursuant to 310 CMR 7.08(4).

2. A license for other response actions may be required by the Department pursuant to 310 CMR 40.0033(5).

3. Response action and remediation waste are defined in 310 CMR 40.0006. Disposal Site shall be as defined in 310 CMR 40.0006, except that the exemption from licensing with respect to uncontainerized waste, contaminated debris and contaminated soil shall apply only within the place or area where uncontainerized waste, contaminated media and contaminated soil has come to be located whereas the exemption from licensing with respect to contaminated ground or surface water shall apply within the place or area where contaminated ground or surface water has come to be located.

4. The exemption from licensing in 310 CMR 30.801(11)(c) does not apply to any response action conducted outside the boundaries of a disposal site or to any response action involving non-remediation wastes (e.g., containerized wastes). However, any

person undertaking such a response action may seek approval from the Department to employ one or more of the management units in 310 CMR 30.602 (12 –14), [Corrective Action Management Units (CAMUs), Temporary Units (TUs), Staging Piles] for increased flexibility in performing the response action.

5. The exemptions from licensing in 310 CMR 30.801(11)(a) through (c) do not exempt persons from any other applicable requirements in 310 CMR 30.000. Remediation wastes which are hazardous wastes (i.e., that meet the criteria defining a listed hazardous waste or which are themselves a characteristic hazardous waste) shall be accumulated, treated, and stored or otherwise managed at a disposal site in a manner that achieves a level of control and protection equivalent to that provided by the technical and management requirements in 310 CMR 30.000. Non-remediation wastes (e.g. containerized wastes) which are hazardous wastes shall be accumulated, treated, and stored or otherwise managed at a disposal site in accordance with 310 CMR 30.000. Both remediation wastes and non-remediation, wastes which are hazardous wastes, shall be managed in accordance with 310 CMR 30.000 when transported from a disposal site.

310 CMR 30.661(1) IS AMENDED BY STRIKING OUT THE DATE "January 26, 1983" AND INSERTING IN ITS PLACE THE FOLLOWING; "July 26, 1982"

310 CMR 30.804: ADDITIONAL REQUIREMENTS FOR FACILITY LICENSE APPLICATIONS IS AMENDED BY ADDING A NEW SUBSECTION AS FOLLOWS:

(29) For facilities subject to corrective action requirements under 310 CMR 30.602(9) or (10), the information required by 40 CFR 270.14(d) (July 1, 2005). For facilities being issued post closure licenses/permits or orders, the information required by 40 CFR 270.28 (July 1, 2005).

310 CMR 30.805 IS AMENDED AS FOLLOWS:

All hazardous waste transport license applications shall include at least the following additional information, and any other information that may be requested by the Department.

(1) A certification, issued by the Department of Telecommunications and Energy, that the applicant has conformed to all of the requirements of M.G.L. c. 159B.

(2) A plan for cleaning all vehicles used in transporting hazardous waste.

(3) Evidence that all employees handling hazardous waste in Massachusetts are bondable for the handling and transport of hazardous waste.

(4) Evidence of financial responsibility as required by 310 CMR 30.410 and 30.411.

(5) A list of trucks and other vehicles owned or operated by the applicant for the transport of hazardous waste, including the registration number, state of registration, vehicle identification number and model year of each vehicle.

(6) A description of the methods, and a list of equipment carried on the vehicles, to be used for handling transportation-related spills of hazardous wastes.

(7) Information indicating the types and physical states of hazardous waste to be transported and the approximate annual quantity of hazardous waste to be transported.

(8) Written documentation that the applicant has furnished a copy of the application to the local board of health (i.e., in the Massachusetts town/city of the applicant's office address where transportation related activities take place and license records are maintained) at the time the application was submitted to the Department. Such documentation includes, but is not limited to, a certified mail receipt. Applicants with no office in Massachusetts (as defined above) are exempt from 310 CMR 30.805(8).

6.0 WEB LINK TO PROPOSED REGULATIONS

http://www.mass.gov/dep/

7.0 List of Facilities Subject to RCRA

APPENDIX A

RCRA CORRECTIVE ACTION UNIVERSE *Report run on: October 20, 2006 2:51 PM*

Handler ID, Name & Address	City/Town & Zip
MAD001039767 BOSTIK FINDLEY INC 211 BOSTON ST	MIDDLETON MA 01949
MAD053452637 CLEAN HARBORS OF BRAINTREE INC 1 HILL AVE	BRAINTREE MA 02184
MAD001115609 COLUMBIA MFG INC 1 CYCLE ST	WESTFIELD MA 01085
MAD082303777 CYN OIL CORP D/B/A CYN ENVIRONMN 1771 WASHINGTON ST	STOUGHTON MA 02072
MAD001138726 ECC CORP 156 PRINCETON ST	HOLDEN LG MA 01520
MAD062179890 ENVIRONMENTAL COMPLIANCE CORP 441 R CANTON ST	STOUGHTON MA 02072
MAD019371079 GENERAL CHEMICAL CORP 133 LELAND ST	FRAMINGHAM MA 01702
MAD002084093 GENERAL ELECTRIC CO 100 WOODLAWN AVE	PITTSFIELD MA 01201
MAD001441054 GENRAD INC 41 MAIN ST	BOLTON MA 01740
MAD048974349 HANDY & HARMAN ELECTRONIC MATERIALS 72 ELM ST	NORTH ATTLEBORO MA 02760
MAD047075734 JONES ENVIRONMENTAL SERVICES (NE) INC 263 HOWARD ST	LOWELL MA 01852
MAD063913909 LEAVENS AWARDS CO INC 41 SUMMER ST	ATTLEBORO MA 02703
MAD066588005 MURPHYS WASTE OIL SERVICES INC 252 SALEM ST	WOBURN MA 01801
MAD065781197 NETOPTIX CORP 660 MAIN ST	STURBRIDGE MA 01566
MAD001209121 RELIABLE ELECTRO PLATING INC 304 WEST MAIN ST	NORTON MA 02712
MAD000846006 SAFETY-KLEEN SYSTEMS INC 128 ELM ST	BRIDGEWATER MA 02324
MAD088978143 SAFETY-KLEEN SYSTEMS INC 50 A BRIGHAM	MARLBOROUGH MA 01752
MAD060095569 SAFETY-KLEEN SYSTEMS INC 90 RABBIT RD	SALISBURY MA 01952
MAD096287354 SAFETY-KLEEN SYSTEMS INC 224 E MAIN ST	WEST BROOKFIELD MA 01585
MAD001202258 SEEKONK MFG CO INC PERRIN AVE	SEEKONK MA 02771
MAD001114818 SOLUTIA INC 730 WORCESTER ST	SPRINGFIELD MA 01151
MAD001116078 UTILITY MANUFACTURING CO 2443 BOSTON RD	WILBRAHAM MA 01095
MAD001197755 WALTON & LONSBURY INC 78 NORTH AVE	ATTLEBORO MA 02703
MAD001195700 WHITING & DAVIS CO 23 WEST BACON ST	PLAINVILLE MA 02762
MAD001128032 WYMAN GORDON CO 244 WORCESTER ST	GRAFTON MA 01536
MAD001128016 WYMAN GORDON CO 105 MADISON ST	WORCESTER MA 01613
MAD052924495 ZECCO INC 345 WEST MAIN ST	NORTHBORO MA 01532