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Background Information and Technical Support Document

2012 Regulatory Reform of the Solid Waste Facility Management Program

(310 CMR 19.000)

- **Streamlining and Clarification of Permit Procedures for Solid Waste Management Facilities**
- **Establishment of Third-Party Inspection Program for Solid Waste Management Facilities**
- **Standardizing and Clarifying Supporting Regulations**

Regulatory Authority:

M.G.L. c. 21A, Sections 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, and
M.G.L. c. 111, Sections 150A and 150A1/2

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Proposed Amendments to the Massachusetts Solid Waste Management Facility Regulations (310 CMR 19.000): 2012 MassDEP Regulation Reform Initiatives

I. Background

To cope with the Massachusetts Department of Environmental Protection (MassDEP)'s budget cuts over the last decade and to align its existing resources with its responsibilities, the Department has undertaken a set of "regulatory reform" initiatives, which are intended to streamline specific agency operations while expanding on the significant streamlining efforts of recent years, without compromising MassDEP mission to protect public health, safety and the environment.

In March 2012, MassDEP published a list of 21 specific streamlining initiatives that will comprise this effort. The following two initiatives have been undertaken to improve the Massachusetts Solid Waste Management Facility Regulations (310 CMR 19.000):

- Streamlining aspects of MassDEP solid waste facility permitting, and
- Standardizing and expanding the solid waste program's use of third party inspections and reviews at solid waste management facilities.

A. What Solid Waste Management Facilities Require MassDEP Permits?

Currently, the Solid Waste Management Facility Regulations establish permit and other approval requirements for several types of facilities, which are described in Table 1.

Table 1
Solid Waste Management Facilities Permitted in Massachusetts¹

Type of Facility	Types of Waste Handled	Number of Facilities	Total Annual Waste Tonnage
Ash Landfills	Ash from municipal waste combustors, power plants	6	587,700
Sludge Landfill	Sludge from a publicly-owned wastewater treatment plant	1	39,000
Municipal Solid Waste Landfills	Municipal Solid Waste	17	1,745,500
Municipal Waste Combustors	Municipal Solid Waste	7	3, 100, 000
Large Transfer Stations	Accepting > 50 tons of MSW/day	43	2,610,000
Small Transfer Stations ²	Accepting 50 tons of MSW/day or less	174	600,000
Construction and Demolition Processing Facilities	Construction and demolition wastes	16	910,000

¹ Data for all types of facilities except small transfer stations are drawn from 2011 Annual Reports that the facilities filed with MassDEP.

² Small Transfer Station data are drawn from 2004 Annual Reports. Calendar year 2004 is the last year for which MassDEP has prepared a summary, and these Annual Reports are no longer required to be filed with MassDEP.

Site-Assigned Compost Facilities	Organic material	4	174,000
Handling Facilities	Wood reclamation, tire recycling	6	126,000

B. What is the Existing Process for Issuing Permits to Solid Waste Management Facilities?

Prior to the issuance of a MassDEP permit, any new or expanding solid waste management facility must obtain a “Site Assignment” from the Board of Health for the municipality in which the facility is located. A Site Assignment is a local determination that establishes the geographic boundaries for the solid waste facility operation as well as conditions to protect public health, safety and the environment.

Once site assigned, state law (M.G.L. c. 111, §§150A and 150A 1/2) requires that MassDEP issue a permit to each solid waste management facility, and it establishes the process by which permit applications are reviewed and issued. MassDEP has enacted regulations to establish the required permitting procedures in 310 CMR 19.000:

- Before construction of a new facility can begin, 310 CMR 19.000 requires that MassDEP issue a permit and an “Authorization to Construct” (ATC). These approvals are intended to ensure that the facility’s design and proposed construction meet the Department’s standards (established in 310 CMR 19.000) and minimize any impacts on public health and the environment. A final ATC is based on an engineering review of the facility design plans and addresses comments submitted during a public comment period on a draft version of the ATC. State law (M.G.L. c. 111, §150A) requires that the agency issue a written decision to approve the permit or to deny it within 120 days after a complete application is submitted.
- Once the facility (or a new component) has been built, MassDEP must issue an “Authorization to Operate” (ATO), which ensures that the facility has been properly constructed as designed and that its operation will meet MassDEP’s standards (established in 310 CMR 19.000). These standards have been developed to ensure that the facility’s impacts on public health and the environment will be minimal as it accepts and manages solid waste.

MassDEP regulations (310 CMR 19.000) also require that the agency issue site-specific approvals for other types of proposed activities. These include:

- Facility modifications, which can range from very minor changes (e.g., operating hours) to significant modifications (e.g., expansions of the amount of material that the facility will handle).
- Management of a “Special Waste” (i.e., asbestos waste, infectious waste, sludges from wastewater and drinking water treatment facilities, or other materials that could require special handling), and for closing a facility.
- Post-closure uses of the facility property, ensuring that the new uses can be undertaken without interfering with long term operation and maintenance of the closed facility and that risks to public health and the environment will be prevented.

A facility may also hold separate MassDEP approvals to generate or use materials diverted from solid waste under the terms of a Beneficial Use Determination or “BUD”. For example, a Construction and Demolition Waste Transfer Station may have a BUD to generate “fines” (material that falls through screens as construction and demolition waste is sorted to recover recyclable material), and a landfill may have a BUD to use these fines in place of clean soil for alternative daily cover.

Moreover, the current Solid Waste Management Facility Regulations require all but the smallest facilities to submit annual reports to MassDEP describing the amounts of waste they managed during the previous calendar year. All active and closed landfills are also required to report on the results of their periodic monitoring of landfill gas emissions (methane) and surface and groundwater quality.

The regulations also require that facilities' operations and maintenance be inspected periodically by third-party solid waste professionals and that periodic reports be submitted to MassDEP describing the facility's compliance status based on these inspections. These inspections are intended to ensure that the facilities operate in compliance with their permits and other approvals and that any problems are identified as early as possible so they can be corrected. In addition, the Department requires most facilities to inspect a percentage of incoming loads of waste for compliance with the facility's waste ban plan and requirements at 310 CMR 19.017. However, only municipal waste combustors that are participating in the Class II Renewable Energy Credit Program³ are required to have third-party inspectors conduct these load inspections since enactment in 2009 of regulations establishing the Class II Renewable Energy Credit Program

Finally, the Solid Waste Management Facility Regulations establishing these approvals, inspection and reporting requirements were promulgated in 1990 (with the exception of the waste ban inspection requirements for municipal waste combustors in 2009). These regulations have provided a permit pathway, as well as facility self-policing and reporting, that ensure Massachusetts solid waste management facilities minimize their impacts on public health, safety and the environment. However, opportunities remain to streamline aspects of the facility management process and to enhance and standardize third-party inspection requirements across all solid waste facilities to improve facility compliance rates. Streamlining would make required interactions with MassDEP less burdensome for facility owners and operators and would allow MassDEP staff to spend more time promoting compliance by inspecting facilities and auditing facility and third-party inspection reports (by spending less time reviewing requests for ATCs, ATOs, post-closure use permits, and permit modifications). This shift would allow MassDEP to focus staff resources on the types of activities that have the most potential for public health and environmental harm as well as provide a level of attention that deters non-compliance.

II. Permit Streamlining Proposals

Table 2 (below) shows the total number of solid waste management facility permit applications that MassDEP has received between January 1, 2009 to May 30, 2012, and the number of applications in the categories that have been considered as candidates for streamlining.

MassDEP believes that the largest opportunity to streamline permitting of solid waste management facilities lies with transfer stations.⁴ We believe that the current level of oversight (i.e., via site-specific reviews of construction and operating plans) for the waste disposal facilities (i.e., landfills and municipal waste combustors), and for the facilities that process construction and demolition waste, needs to be maintained. However, unlike disposal facilities, transfer stations function as intermediate consolidation facilities at which small loads of solid waste are combined and then transferred to larger vehicles for

³ required by the Green Communities Act of 2008 (Chapter 169 of the Acts of 2008).

⁴ "Transfer Station" is defined in 310 CMR 19.006 as "a handling facility where solid waste is brought, stored, and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility".

efficiency in transportation. The Department’s primary concerns associated with transfer stations are to keep rainwater/storm water from coming into contact with the waste, and to adequately control vectors (rodents and other vermin, birds, etc.), noise, windblown litter, dust, and odor. To ensure that transfer stations are properly designed, constructed and operated (and to satisfy the statutory requirements of M.G.L. c. 111, § 150A), MassDEP would still issue a written permit approval for a new or expanded transfer station. However, once transfer stations are built, their operations (and compliance issues) tend to be less complex and more amenable to a different approach to MassDEP oversight.

Table 2
Number of Solid Waste Management Facility Applications Submitted to MassDEP
January 1, 2009 – May 30, 2012

Permit Category	Permit Description	Number of Applications Received
All	Total number of applications received for all solid waste facility permits (including disposal facilities as well as the applications listed below)	383
Applications for permits considered for streamlining:		
SW 05	Authorization to Construct Large Transfer Stations	0
SW 19	Authorization to Construct Small Transfer Stations (initial and renewals)	3
SW 06	Authorization to Operate Large Transfer Stations (initial permits and renewals)	5
SW 20	Authorization to Operate Small Transfer Stations (initial permits and renewals)	18
SW 07	Modification at Large Transfer Stations	10
SW 21	Modification at Small Transfer Stations	40
SW 36	Post closure use at closed landfills (includes those located on and off landfill caps)	26
SW 14, SW 31	Special Waste approvals	16

Notes:

- “Large Transfer Stations” (including Construction & Demolition Facilities) handle 50 tons or more/day.
- “Small Transfer Stations (including Construction & Demolition Facilities) handle less than 50 tons/day.
- Most post-closure use permits issued during this period were for renewable energy projects on landfill caps. A few were for projects located off the cap.

MassDEP is proposing to amend the Solid Waste Management Facility Regulations to streamline and clarify solid waste facility permitting in three ways:

- Shifting approvals for continuing operations and certain modifications of transfer stations from up-front approval of permit applications to facility certifications ;
- Streamlining permitting to allow presumptive approvals for some post-closure uses at closed landfills and for “Special Waste” approvals; and
- Clarifying supporting provisions of the regulation

Each of these proposals is described briefly below.

A. Permit Streamlining for Transfer Stations

M.G.L. c. 111, §150A requires MassDEP to review permit applications and issue written decisions for each solid waste management facility. Therefore, any new or expanded transfer station must apply to MassDEP for a permit and an “Authorization to Construct” once it has obtained a Site Assignment from the Board of Health in the municipality in which it will be located. MassDEP is not proposing to change these phases of the transfer station permitting process but is proposing to change subsequent steps in the permit process in several ways:

- The Authorization to Construct for a transfer station would continue to be issued jointly with a Permit that establishes operating conditions. This joint approval would be issued before construction of a new facility can start. These permits would include the terms and conditions for operation of the transfer station that would have been included in an Authorization to Operate under existing permit procedure in 310 CMR 19.000.
- A transfer station that is not a Construction and Demolition Waste Transfer Station⁵ would not be required to obtain an Authorization to Operate from MassDEP. Instead, the facility owner or operator would be required to file a certification with MassDEP at least 30 days before a new transfer station starts operation. The certification would need to include information about the facility’s compliance with its Authorization to Construct/Permit, which would include the terms and conditions for operation, and any changes in the facility’s design or construction or in its operation plan since the Authorization to Construct/Permit was issued. Construction and Demolition Waste Transfer Stations are not included in this proposal because they usually process the material they take in to remove asphalt, brick, concrete, wood, metal, clean gypsum wallboard and other recyclable materials before transferring residuals to a landfill for disposal or use as alternative daily cover or grading/shaping material. MassDEP wants to continue to oversee C&D processing and recycling operations through traditional permit procedures in order to have greater opportunities to promote recycling, conversion and reuse of waste materials.
- If the transfer station continues operating with no changes in the tonnage of waste it accepts, modifications of its processes, etc., its owner or operator would need to file a certification with MassDEP every five years. This certification would:
 - Identify all MassDEP permits and approvals that the facility holds that are applicable to the solid waste management activities that it conducts;
 - State whether the facility is in compliance with its Authorization to Construct/ Permit and any other solid waste approvals;
 - Identify any violations that occurred since the last certification was filed (e.g., during the previous five-year period), including any notifications required for reportable releases of oil or hazardous materials under the Massachusetts Contingency Plan (310 CMR 40.0000), failures of air pollution control equipment, emergency by-passes to public sewers, and implementation of hazardous waste contingency plans;
 - If the transfer station is not in compliance at the time of the certification, include a plan for returning to compliance (including the date when compliance is expected to be achieved); and

⁵ MassDEP is proposing to add the following definition to 310 CMR 19.006 for “Construction and Demolition (C&D) Waste Transfer Station”: “a transfer station permitted to accept 50 tons/day or more of construction and demolition waste.”

- Be signed by a “Responsible Official” for the facility owner or operator. The certification language is similar to language used in certifications required by MassDEP’s Environmental Results Program, which has been using compliance certifications very effectively over the last fifteen years.
- Transfer stations that are operating when these revised regulations take effect would need to file a compliance certification within 120 days of the effective date of the revised regulation and to re-certify every five years. These filings would replace any requirements in a transfer station’s existing permit that the permit be renewed periodically, but all other permit conditions would remain in effect.
- All modifications for a transfer station would be allowed to be implemented after the facility notifies MassDEP and certifies that the modification meets agency requirements, which will eliminate the need for MassDEP to issue site-specific approvals for these modifications.
- If a transfer station wants to implement a minor increase in the tonnage that it has MassDEP approval to receive, the facility would be allowed to do so once its owner or operator has filed a compliance certification that describes the increase (and any related facility changes that would be needed to implement it) and contains all the information listed above.
- If a transfer station wants to “significantly” increase the tonnage that MassDEP has approved it to receive, it would need to submit an application to modify its permit, which would be accompanied by the appropriate permit fee and would go through the traditional MassDEP permit modification review process. A “significant” increase at a small transfer station (one that handles less than 50 tons/day) would be defined as any change in tonnage that increases the facility’s total tonnage to 50 tons/day or more. A “significant” increase at a transfer station that is already handling 50 tons/day or more would be defined as an increase of 25% or more in the facility’s allowed waste handling capacity established in its MassDEP permit.

B. Streamlining Other Types of Approvals

MassDEP is proposing to expand the types of proposals which could obtain approval through the “presumptive approval” process currently established in 310 CMR 19.000. MassDEP is proposing to expand the use of presumptive approvals for some types of post-closure uses, Special Waste approvals, and other minor modifications at solid waste management facilities that are not transfer stations. To obtain a presumptive approval, a facility owner or operator would submit an application to MassDEP that describes the facility’s post-closure use, new management of a listed Special Waste, or other planned minor modification. MassDEP would have 45 days to review the application. If the Department does not act on the application by the end of this time period, the application would be considered to be approved. However, if the Department raises any concerns during the review period, the applicant would need to respond and the Department would subsequently issue a formal determination (an approval or denial of the application).

1. Post-closure uses at closed landfills: Presumptive approvals would only be available for post-closure uses at closed landfills that would not be sited on top of the landfilled waste, and for projects that would not affect any structure or equipment needed for management of the closed landfill (including but not limited to management of leachate, landfill gas and stormwater). Post-closure use projects that could take advantage of this streamlined permitting process could range from active or passive recreational facilities, renewable energy operations, or recycling facilities that are exempt from Site Assignment under 310 CMR 16.00. However, any post-closure use proposed to be located on top of

a landfill cap or that would affect any landfill management structure or equipment would still need to obtain the appropriate post-closure use permit (a BWPSW 36 permit for “major” post-closure use projects or a BWPSW 37 permit for “minor” post-closure use projects) so that MassDEP could make sure that the proposed use will not compromise the integrity of the cap or the operation of important landfill management systems such as leachate and landfill gas collection systems.

2. Special Wastes: Presumptive approvals would also be available for proposals to manage Special Wastes. The “Special Waste” designation process was established many years ago in the Commonwealth’s solid waste regulations, before the advent of federal and state rules for identifying and managing hazardous and infectious wastes which now contain management standards for a broad array of materials that could in some circumstances be disposed of at a solid waste landfill. In addition, all of the Massachusetts landfills that accept solid waste generated off-site now have double liners with leachate detection and collection, so the risks of environmental contamination from the material they receive have been vastly reduced since the days of single liners and no leachate detection. MassDEP believes that the environmental protection provided by landfill liners and leachate collection systems is sufficient to deal with the risks that are presented by material that has been regulated as a “Special Waste”.

Only three types of waste are specifically listed in the Solid Waste Management Facility Regulations as Special Waste: asbestos-containing waste material, medical or biological waste, and sludges from wastewater and drinking water treatment plants. MassDEP believes that the approval process for unlisted Special Wastes that is currently contained in 310 CMR 19.061 is no longer needed to protect public health or the environment from the risks posed by Special Wastes. Under the proposed regulation, a facility would need to file for a presumptive approval from MassDEP at least 45 days before it begins accepting any of these materials.

Under the proposed regulations, a facility owner or operator that wants to handle a waste that is not listed as a “Special Waste” but may need specific management practices to ensure that it is handled safely and will not harm the environment could do so without seeking MassDEP’s approval, provided that the acceptance of that waste is in compliance with the facility’s Site Assignment, its MassDEP permits and approvals, and any other relevant local, state or federal requirements. For example, a light powdery material (e.g., waste cellulose material, spent abrasive grit) that could be prone to creating a dust nuisance would have required a Special Waste approval in the past. MassDEP is proposing to establish a general performance standard that would require anyone who manages a special waste to do so in such a manner that will avoid adverse impacts to public health, safety or the environment, and to avoid nuisance conditions. A facility would need to implement the necessary management practices and controls to ensure that this performance standard is met without upfront MassDEP approval.

Facilities with existing Special Waste Approvals may choose to continue to follow the handling/management requirements in their approval(s) or request (through the presumptive approval process) to be subject to the revised regulatory requirements.

As with all of MassDEP’s programs that use compliance certifications and presumptive approvals, the Department plans to periodically assess the accuracy of the certifications that would be submitted by transfer stations and other solid waste management facilities, and to follow up with enforcement for non-compliance where it is identified. The other MassDEP programs that use this approach to oversight do not establish audit standards in their regulations, which is why none are proposed for these permit streamlining initiatives. However, once the initiatives have been implemented and the regulated

community has had some time to understand the new requirements, MassDEP would conduct a baseline assessment of compliance and follow up with additional audits on a periodic basis.

The combined effect of converting many transfer station permits to certifications and establishing presumptive approvals for the post-closure uses and special wastes described above would be to eliminate about 20% of the permit applications that MassDEP receives for all solid waste management facilities (described in Table 2 above). This would allow MassDEP to focus its staff resources on reviewing applications for landfill modifications and closures and new/expanding transfer stations, and to promote compliance through audits of certifications and inspections.

C. Supporting Revisions and Clarifications

MassDEP is proposing three additional changes to support the permit streamlining described above:

1. Restructuring, clarifying, and updating the procedures for permit applications and approvals: Several changes are proposed to incorporate the permit streamlining proposals described above, to clarify which permits apply to specific types of facilities, and to align these requirements with other MassDEP regulations that have been adopted since these regulations were last revised (e.g., the Fee and Timely Action Regulation, 310 CMR 4.00). MassDEP is specifically proposing to:

- Add a new section (310 CMR 19.029) to outline the applicability of permit procedures to different types of proposals for solid waste management facilities;
- Delete 310 CMR 19.031: Review of Applications for Completeness), since it has been superseded by MassDEP’s Fees and Timely Action Regulation (310 CMR 4.00); and
- Restructure the procedures for applying for permits for new and expanded facilities and for modifications of these facilities. The provisions currently in 19.032 through 19.037 and 19.039 would be reordered, with specific sections for presumptive approvals and transfer station certifications. Section 19.038: Applicability and Review Criteria for Permit or Permit Modification would remain unchanged because other sections throughout the regulation reference this section. Sections 19.020 and 19.039 would be deleted, and their content would be moved to sections 19.032-036.

The revised organization that would result if these proposals are adopted is summarized in Table 3 below.

Table 3
Outline of Reordered Permit and Certification Procedure Regulations

310 CMR 19.032	Permit Procedures for New or Expanded Facilities
310 CMR 19.033	Permit Procedures for Modifications or other Approvals
310 CMR 19.034	Presumptive Approvals
310 CMR 19.035	Certifications for Transfer Stations
310 CMR 19.036	Department’s Modifications of Permits

2. Revised Definitions:

- Definitions of “Asbestos Waste” and “Medical or Biological Waste” would be revised to align the Solid Waste Management Facility Regulations with changes in federal and other state rules since they were last amended.

- New definitions are proposed as they are needed to implement the permit streamlining provisions. These include “Construction and Demolition (C&D) Waste Transfer Station”, “Expansion”, “Responsible Official”, and “Special Waste.”
- Minor changes in the definition of “Handling Facility” are also proposed.
- The reference to “Inactive Landfill Facilities” (310 CMR 19.020(2)) would be eliminated, as it is no longer needed. Inactive landfills are now required to comply with the requirements for closed landfills under the current regulation.
- The definition of “Existing Facility” would be deleted to avoid confusion with the common meaning of that term. The current definition was established for those facilities that existed as of 1990 for the purpose re-permitting them under the regulations promulgated in 1990. This definition is no longer needed.

D. Issues for Comment:

MassDEP seeks public comment on all aspects of these permit streamlining proposals, but it is particularly interested in the following issues regarding the proposed streamlining of transfer station approvals:

- **Size.** The certification process is proposed for **any size transfer station that is not a C&D waste transfer station** -- even though the original Regulatory Reform proposal offered in Fall 2011 only proposed this change for small transfer stations (< 100 TPD). Should certifications only be made available to transfer stations of certain sizes? Should certifications be made available to C&D waste transfer stations?
- **Transfer Station Changes or Modifications.** An application for MassDEP review and approval would only be submitted to the agency for a significant expansion of an existing transfer station. Any other changes/modifications would be handled through the transfer station certification process. Are there other circumstances where agency review and written approval should be required? Are there types of significant changes/modifications that could be appropriately handled through the certification process?

MassDEP is seeking input on the following specific issues concerning the other permit streamlining proposals:

- The Department seeks comment on the issue of whether existing regulatory requirements are sufficient to ensure that materials that would have been classified as Special Waste in the past would be properly managed under the proposed new approach.
- Are there materials or circumstances for which the proposed approach raises concerns?
- Are there other materials that should be included in the regulations as listed Special Wastes?
- Are there types of post-closure uses not located on a landfill cap that should continue to require facility-specific MassDEP approval?
- Are there other post-closure uses that could be appropriately handled through presumptive approvals?

Please note that the Department plans to amend its fee regulation (310 CMR 4.00) to align existing solid waste permit fees and annual compliance fees with the new certifications once the amendments to 310 CMR 19.000 are final (similar changes have been made in the fees when the Department adopted the Environmental Results Program regulations). Fees for post-closure use permits would also need to be revised to reflect presumptive approval timelines and procedures.

III.Improving Compliance of Solid Waste Management Facilities

MassDEP needs to make the most effective and efficient use of its staff resources by focusing on facilities and situations that pose the highest risk to public health and the environment. With the loss of staff due to budget reductions and retirements, MassDEP can no longer inspect all of the Commonwealth's solid waste management facilities as often as in the past to ensure that they are operating and being maintained in compliance with their permits and other requirements.

Therefore, in this package of amendments, MassDEP is proposing to augment its traditional compliance program for solid waste management facilities by standardizing and expanding the use of third party inspections of solid waste management facilities. This would:

- Maintain and improve the facilities' compliance with their permits, other approvals (including activities related to Beneficial Use Determinations that occur at the facility), and the Department's regulations for operation and maintenance; and
- Improve compliance with "waste bans" at all Massachusetts solid waste management facilities.

MassDEP is also proposing four additional amendments that would save staff time and help to ensure that situations requiring investigation, action or remediation are identified and addressed in a timely way. These proposals would:

- Standardize requirements for reporting on environmental monitoring (landfill gas and groundwater) at active and closed landfills that currently have monitoring requirements in place, to ensure that conditions that require action/remediation are identified and addressed in a timely way,
- Clarify the Department's authority to access and require the submittal of information about solid waste management facilities and other sites where solid waste has come to be located,
- Clarify the responsibility of facility owners to record notices of landfill operations on the facility property deed, and
- Clarify the Department's enforcement authorities, including noncompliance that is discovered through or is related to third-party inspections.

These proposals are described below.

A. Third Party Inspections of Solid Waste Management Facilities

1. Facility Operations and Maintenance Inspections: Currently, MassDEP has established requirements in 310 CMR 19.000 and in most solid waste management facility permits that the facility employ a third-party inspector to conduct operations and maintenance inspections on a schedule established in the permit. Active landfills have been required to be inspected by a Massachusetts registered professional engineer (or another qualified environmental professional who has been approved by the Department) every other month (six times/year) since the 1980's, to ensure that their operations at the time of the inspection comply with the facility permit and MassDEP's regulations. This requirement was extended to transfer and handling facilities in 2006: facilities accepting 50 tons or more/day of waste have been required to be inspected twice each

year, and facilities accepting less than 50 tons/day of waste have to be inspected once per year. These requirements have also been extended to facilities that process construction and demolition waste and to most of the Commonwealth’s Municipal Waste Combustors as their permits have been modified or renewed. A facility’s permit (or an enforcement order) may require more frequent inspections due to facility-specific concerns.

These “facility operation and maintenance” inspections have resulted in improved compliance with permits and other requirements. With the agency’s increasing responsibilities and reduced resources, these inspections are a critical element in the Commonwealth’s approach to oversight of solid waste management facilities. MassDEP believes that these inspections would be more effective if minimum and consistent requirements were established in regulation, rather than on a case-by-case basis. These proposed amendments would establish minimum scope and performance standards for these inspections. These amendments would allow MassDEP to focus its limited staff resources on the highest priority situations, to rely on third party inspections for early identification of compliance issues, to more clearly require the facility operator to take prompt action to remedy problems that are identified, and would “level the playing field” by treating all the facilities of a similar type in a similar way.

The proposed regulation would establish specific performance standards for operation and maintenance of each type of solid waste facility, as well as a schedule of third party inspections (described in Table 4 below). These frequencies have been drawn from the most recent facility permits that MassDEP has issued in each category of facilities, so the inspection frequency for many facilities will not change. However, some facilities with older permits may need to be inspected more frequently than in the past.

Table 4
Proposed Frequency of Third Party Facility Operations and Maintenance Inspections

Facility Type	Proposed Inspection Frequency
Active Landfills	Once every two months (six times/year)
Closed Landfills	Once every two years
Construction and Demolition Waste Transfer Stations accepting > 50 tons/year of C&D material	Once every two months (six times/year)
Transfer/Handling Stations accepting < 50 tons/year (including facilities that accept C&D waste)	Once every year (annual)
Non-C&D Transfer/Handling Stations accepting \geq 50 tons/year	Once every six months (two times/year)
Municipal Waste Combustors	Once every two months (six times/year)

2. Waste Ban Inspections: In addition to these “operation and maintenance” third-party inspections, MassDEP is proposing to require all facilities to conduct third-party waste ban compliance inspections. As previously mentioned, all facilities have been required for many years to inspect a portion of incoming loads for banned materials to assure compliance with the requirements of the waste ban regulations at 310 CMR 19.017. Since 2009, the municipal waste combustors that participate in the Class II Renewable Energy Credit Program have also been required to have a certain number of these inspections conducted by qualified third parties, for an

independent identification of loads with significant quantities of material that has been banned from disposal. These inspection requirements were part of a broader set of requirements (310 CMR 19.300) that established eligibility criteria for the municipal waste combustors to participate in the Class II Renewable Energy Credit Program. Independent inspections of incoming loads have provided very helpful information for the facilities to use in working with their generators on waste ban compliance issues, and for the Department’s waste ban compliance efforts. To improve compliance with waste bans throughout the Commonwealth’s solid waste management system, MassDEP is proposing to extend the requirement for periodic third-party inspections of incoming loads to landfills, transfer stations and all other types of solid waste facilities. While the regulations at 310 CMR 19.300 have served as a useful model in developing the proposed regulations, please note that, since landfills and transfer stations cannot receive the benefits of participation in the Class II Renewable Energy Credit program, MassDEP is not proposing to extend all of the requirements in 310 CMR 19.300 to these facilities.

The proposed regulation would apply to all facilities that are required to implement waste ban plans (see 310 CMR 19.017); however, Municipal Waste Combustors that are participating in the Class II Renewable Energy Credit Program would be exempt.⁶ Waste ban inspections would need to be conducted on the same frequency as the facility operation and maintenance inspections (described in Table 4 above). Waste ban inspections could be coordinated with the operation and maintenance inspections (or not, at the discretion of the facility owner/operator).

During a waste ban inspection, the inspector would observe a minimum number of waste loads delivered to the facility while the inspector is present; incoming loads would be selected randomly for examination. The regulation would establish the minimum number of incoming loads that must be inspected during each waste ban inspection, based on the size of the facility (see Table 5 below).

Table 5
Minimum Number of Incoming Loads That Would Be
Examined for Significant Quantities of Banned Materials
During a Waste Ban Inspection

Tons that the facility is permitted to accept	Minimum number of loads that must be observed during a waste ban inspection
Less than 99 tons per day	4
99-299 tons per day	8
299-499 tons per day	12
499-999 tons per day	16
999 + tons per day	20

Inspected loads would be those containing at least five cubic yards of waste material. Requirements for the waste ban inspector to report the results of the inspection to the facility owner or operator (and for the facility owner or operator to submit these reports to MassDEP) would also be established.

⁶ Because they are already employing third party inspectors to conducting periodic inspections of incoming loads, as well as meeting additional requirements for participating in the Class II Renewable Energy Credit Program.

3. Standardizing Qualifications of Third-Party Inspectors: In addition to the performance standards described above for third party inspections of facility operation and maintenance and waste ban material in incoming loads, MassDEP is also proposing to expand the standards for qualifying third-party inspectors and standardizing the content of third-party inspection reports. Minimum qualifications would be established for the third parties who conduct facility operation and maintenance inspections and waste ban inspections. These standards would ensure that inspectors have the appropriate education/training and experience to evaluate facility operations and maintenance or compliance with waste bans.

To qualify to conduct a facility operations and maintenance inspection, an inspector would need to meet the following minimum requirements:

- Professional or academic requirements: be a registered Massachusetts professional engineer, registered Massachusetts sanitarian, or licensed site professional, or have a Bachelor's degree in engineering or in a physical or biological science; AND
- Full time professional experience (or part-time equivalent) of three or more years: managing a solid waste facility, designing and engineering solid waste facilities, or in the solid waste management field (including consulting/inspecting facilities).

To qualify to conduct a waste ban inspection, MassDEP is proposing to require that all waste ban inspectors complete a short MassDEP training course. The regulation would not require that waste ban inspectors meet additional academic/professional or experience requirements. However, waste ban inspectors must demonstrate in-depth knowledge and understanding of solid waste management laws, regulations and requirements.

Requirements are also proposed to ensure that inspectors are independent from the entities that own and operate the facilities. However, facilities owned (and operated) by a municipality would be able to be inspected by an employee of a municipal department that is not the department managing the facility – e.g., a transfer station operated by a local Department of Public Works could be inspected by staff from the town's Board of Health, as long as the inspector meets the minimum professional and experience qualifications, and certifies that the inspection was not influenced by the facility operator or his or her municipal employer.

In this proposal, the registered third-party inspector who signs off on the inspection report would need to be the person who actually conducted the inspection. No provision is being made for a registered third-party inspector to sign off on inspections done by a person who is not registered with MassDEP as a third party inspector.

Inspectors would have specific duties to report to the facility owner or operator about observed deviations from requirements and provide recommendations for addressing them. Facility owners/operators would be required to submit the third-party inspector's report to MassDEP, and to document that observed deviations have been addressed or are on a specific schedule to be addressed when the report is submitted. The proposed regulation does not require that the third-party inspector's recommendations be implemented – owners and operators would be free to develop alternative ways to address observed deviations as long as they are successfully implemented.

To support these goals, MassDEP is proposing to establish a process for qualified third-party inspectors to register with MassDEP, and is committing to publish a list of people who have certified that they meet the qualifications to be a third-party inspector.

4. Standardizing Third-Party Inspection Reports: Facilities have been required to follow up third-party facility operations and maintenance inspections by submitting reports describing the inspections' findings to MassDEP. Similarly, third-party waste ban inspectors at municipal waste combustors and facility personnel conducting waste ban inspections have been required to submit reports on compliance by haulers and generators and on the effectiveness of the facility's waste ban compliance plans. MassDEP is proposing to standardize third-party inspection report requirements for both types of third-party inspections and to clarify the scope and responsibility for completion of each phase of these reports.

In facility operations and maintenance reports, a third-party inspector will be required to compare the facility's operations with its permit and MassDEP's regulations, and identify whether there are any deviations from compliance with the permit, each of the operation and maintenance requirements in 310 CMR 19.207 and other applicable requirements. Where deviations are identified by the third-party inspector, the owner or operator would need to list actions in the report that the owner or operator has taken or intends to take to bring the facility back into compliance, and to provide a schedule for these actions.

In waste ban inspection reports, a third-party inspector would be required to report on the haulers' and generators' compliance rate as observed by inspecting incoming loads at the solid waste facility and to compare the compliance rate observed by the third-party inspector against the rate observed by the facility through implementation of its waste ban compliance plan.

Finally, MassDEP is proposing to set a deadline for submitting third-party inspection reports thirty (30) days from the date of each third-party inspection. In order to meet this deadline, the third-party inspector must complete its report, and the owner or operator must complete its addition of proposed compliance actions and schedules to the report and submit the report to MassDEP.

B. Standardizing and Clarifying Other Requirements

1. Standardizing landfill environmental monitoring reports: Many landfill permits require the facility to monitor landfill gas, surface water, and groundwater conditions, and to report periodically to MassDEP on these conditions. When MassDEP started to work on this regulation package, these assessments were considered as candidates for another type of third party inspection, because the reports are not standardized and MassDEP reviewers can spend a lot of time pulling out the most important information (e.g., does a facility's landfill gas system meet applicable requirements, is leachate contaminating groundwater?). After reviewing the reports that the agency receives, MassDEP determined that third party inspections would not be needed. Instead, MassDEP concluded that agency reviews would be greatly expedited if: (1) a performance standard for the quality of monitoring data were established; and (2) the reports followed a standardized format. For example, a more standardized format would require that conditions or trends needing action (or closer monitoring) are clearly identified, and the facility owner explains what is (or will be) done to address any issues.

Therefore, MassDEP is proposing to amend the requirements for environmental monitoring (310 CMR 19.032) to establish a new general performance standard for sampling and analysis and to clarify that owners and operators have the responsibility to ensure data meets this performance standard. MassDEP is also proposing to require the use of a standardized format for reporting results. In addition, MassDEP is proposing to add language to an existing requirement in 310 CMR 19.032(2) and (3) that certain data for leachate and secondary leachate collection systems be submitted with inspection reports to clarify that this data must be submitted with third-party inspection reports.

2. Department access to and information about solid waste management facilities, properties where solid waste has come to be located and information: MassDEP is proposing to amend the existing provisions at 310 CMR 19.007 to: (a) clarify the Department's authority to obtain access to solid waste facilities and to other properties where solid waste has come to be located; and (b) clarify the Department's authority to obtain information about facilities and activities that it regulates under its solid waste statutory and regulatory authorities. While these authorities have been established in solid waste facility permits, the Department has not promulgated a regulation that establishes the full extent of its access and information gathering authorities for those facilities or for unpermitted facilities and illegal dumping activities. One goal of the regulations establishing third party inspections is to free up Department resources to increase its inspection efforts. Inspections require access to facilities and to properties where solid waste has come to be located (e.g., dumping grounds), as well as to records and other information about these wastes. Establishing these authorities in regulation will clarify their extent for the regulated community and should result in more timely inspections and investigations by MassDEP staff. In addition, the Department is proposing to establish some additional procedural protections for the owners and operators of property in the event that they may become subject to a Department demand for entry. These include criteria for reasonable notice, entry at reasonable times and consent of the owner or operator of a facility or property, as well as procedures for the Department to seek a court warrant for entry. Similar protections are proposed for people who are holding information that the Department may request.

3. Recording deed notices of landfill operation: Owners of landfills are required to record a notice of the landfill's operation on the deed to the landfill property with the Registry of Deeds or Land Court (depending on whether the property is registered land or not), when a landfill is constructed or modified. These notices are usually required by the facility's Authorization to Construct, and MassDEP needs to ensure that they are properly recorded before the agency issues an Authorization to Operate for the landfill. In many cases, the agency finds that these notices have not been properly recorded, and/or that their content and titles have been inaccurate. Therefore, MassDEP is proposing to amend 310 CMR 19.041 to specify the title and content of these deed notices. In addition, MassDEP is proposing to amend 310 CMR 19.0142 to clarify that this deed notice and proof of its filing must be submitted to MassDEP before the Department will issue an Authorization to Operate. In addition, MassDEP is proposing to amend 19.140 and 19.141 to clarify that a "Notice of Solid Waste Facility Operation" must be recorded at the Registry of Deeds or Land Court when a facility is closed or when a post-closure use permit is required.

4. Clarifying what constitutes a violation of 310 CMR 19.000: In November 2011, MassDEP proposed changes to 310 CMR 16.00 for public comment, relating to exempting operations that recycle, and that compost or convert to energy organic material that has been diverted from solid waste. In those proposed amendments, MassDEP proposed to update the enforcement provisions

of 16.00 to reflect the enforcement provisions of MassDEP regulations for facilities that submit certifications. Similarly, since the proposed changes to 310 CMR 19.000 add a certification for transfer stations, MassDEP is proposing to revise 310 CMR 19.081 to update the enforcement provisions to include violation for facilities submitting certifications. In addition, MassDEP is proposing to update 310 CMR 19.081 to reflect new violations associated with the modifications to the third-party inspection requirements at 310 CMR 19.018. These changes would clarify that the following actions constitute a violation:

- failure to submit required documents, including transfer station certifications and third-party inspection reports, in a timely fashion;
- operating a transfer station or expanding or modifying a transfer station without a compliant certification;
- making false, inaccurate, incomplete or misleading statements in any submittal to MassDEP, including third-party inspection reports or third-party qualifications statements;
- holding oneself out to be a responsible official when the requirements for this authority are not met (a similar requirement is in the Department's Environmental Results Program regulation at 310 CMR 70.00);
- providing false, inaccurate, incomplete or misleading information to a third-party inspector or influencing a third-party inspector to do so in a third-party inspection report;
- denying MassDEP access to property or to information when such access is requested pursuant to the terms of MassDEP permits or to the terms of the proposed access provision;
- acting without a permit where one is required or failing to submit a certification or third-party inspection report where one is required; and
- violating any other provision of 310 CMR 19.000.

C. Issues for Comment:

MassDEP seeks public comment on all aspects of these proposals to improve facility compliance with solid waste management facility requirements, but is particularly interested in the following issues:

Third party inspectors:

- Are the minimum qualifications set so that the people conducting facility operation and maintenance inspections will be adequately qualified to evaluate possible compliance issues and provide reasonable recommendations for follow up actions or remediation?
- Is the proposed registration process and publication of the list of those who have certificated that they are qualified to conduct inspections helpful to third party inspectors, facility owners and operators, local officials, and the public?
- Are the proposed requirements for avoiding conflicts of interest adequate to ensure that the third party inspections will be independent of the facility owner and/or operator?
- Is the proposed frequency of inspections for different facility and inspection types adequate and reasonable?
- Do the proposed requirements for filing facility inspection reports with MassDEP provide sufficient opportunity to correct deviations from compliance while ensuring that inspection reports are filed with MassDEP on a timely basis? Would it be helpful to add an interim deadline for submittal of the report to the owner or operator by the third-party inspector?
- Are there other areas in the solid waste management facility realm where third party inspections would improve facility compliance?

Standardizing and Clarifying Other Requirements:

- Are the proposed amendments of the environmental monitoring, access, and record notice of landfill operation sections clear?
- Are there other aspects of 310 CMR 19.000 that should be clarified to facilitate facility compliance and save MassDEP staff time for facility inspections and reviews?

Index of Proposed Amendments

Proposed Amendment	Citation
Permit Streamlining	
Eliminates requirement for Authorization to Operate for Transfer Stations if appropriate certification is filed	310 CMR 19.020
Transfer Stations Certifications at least 30 days before operations begin	310 CMR 19.035(1)(a)
5-year facility compliance certifications for Transfer Stations	310 CMR 19.035(1)(c)
Requirement for existing Transfer Stations to file a compliance certification within 120 days of the effective date of this regulation	310 CMR 19.035(1)
Modifications to the general certification provision to reflect changes needed due to permit streamlining and third-party inspector certifications	310 CMR 19.011
Approvals for expanding Transfer Stations (including “significant” increases in capacity)	310 CMR 19.032(1); 310 CMR 19.041(2)
Certification for increases in Transfer Station capacity that do not meet threshold to be considered “Expansions”	310 CMR 19.035, 310 CMR 19.041(2)
Modifications at Transfer Stations accomplished through certifications	310 CMR 19.029(d); 310 CMR 19.035
Presumptive approvals for post-closure uses at closed landfills	310 CMR 19.029(4)(c)
Presumptive approvals for managing listed special wastes	310 CMR 19.029(4)(c)
Elimination of requirement to obtain approval for management of unlisted special waste	310 CMR 19.061
Consolidation of requirements for review of permit applications	310 CMR 19.032 through 310 CMR 19.035
Third party inspections	
General Requirements for Facility Owners/Operators to conduct third party inspections	310 CMR 19.018(4)
General Qualifications for Third Party Inspectors	310 CMR 19.018(5)
Requirement for Third Party Inspectors to register with MassDEP	310 CMR 19.018(5)
Requirement for MassDEP to publish a list of registered Third Party Inspectors	310 CMR 19.018(5)
General duties of Third Party Inspectors	310 CMR 19.018(5)
Omission or Removal of Third Party Inspectors from the MassDEP List	310 CMR 19.018(5)

Proposed Amendment	Citation
Procedures for reconsidering or appealing MassDEP decisions to omit or remove a third party inspector from the MassDEP list	310 CMR 19.018(5)
Performance standards for third party inspections of facility operations and maintenance	310 CMR 19.018(6)
Additional performance standards for third party inspections of active landfills	310 CMR 19.018(6)
Additional performance standards for third party inspections of closed landfills	310 CMR 19.018(6)
Additional performance standards for third party inspections of transfer/handling facilities that accept less than 50 tons/day of construction and demolition waste	310 CMR 19.018(6)
Additional performance standards for third party inspections of Construction and Demolition Waste Processing and Transfer Stations	310 CMR 19.018(6)
Additional performance standards for third party inspections of municipal waste solid waste combustors	310 CMR 19.018(6)
Performance standards for waste ban compliance inspections	310 CMR 19.018(7)
Third party inspection reports, recordkeeping requirements and procedures	310 CMR 19.018(8)
Violations of third party inspection requirements	310 CMR 19.018(9)
Standardizing and Clarifying Other Requirements	
Modifications of environmental monitoring requirements	310 CMR 19.132
Modifications to centralize all third-party inspection requirements in 310 CMR 19.018	310 CMR 19.130(35); 310 CMR 19.142(5) and (6); and 310 CMR 19.207(25)
Standardizing/Codifying Access and Information Gathering Authorities	310 CMR 19.007
Standardizing/Codifying Enforcement Authorities	310 CMR 19.081
Tightening requirements for deed notices	310 CMR 19.041, 310 CMR 19.042; 310 CMR 19.044; 310 CMR 19.140(6); 310 CMR 19.141(1)
Revised definitions	310 CMR 19.006