



The Commonwealth of Massachusetts
SECRETARY OF STATE

REGULATION FILING AND PUBLICATION

1. REGULATION CHAPTER NUMBER AND HEADING:

310 CMR 40.00 MASSACHUSETTS CONTINGENCY PLAN

Outdated
- 1988 version -

2. NAME OF AGENCY:

DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

3. THIS DOCUMENT IS REPRINTED FROM THE CODE OF MASSACHUSETTS REGULATIONS AND CONTAINS THE FOLLOWING:

310 CMR 40.00 MASSACHUSETTS CONTINGENCY PLAN

SUBPART A GENERAL PROVISIONS
SUBPART B ORGANIZATION AND RESPONSIBILITIES
SUBPART C NOTIFICATION REGULATIONS FOR RELEASES OF OIL AND
HAZARDOUS MATERIALS; IDENTIFICATION AND LISTING
OF OIL AND HAZARDOUS MATERIALS
SUBPART D EMERGENCY RESPONSE ACTIONS: RESERVED
SUBPART E REMEDIAL RESPONSE ACTIONS
SUBPART F ENFORCEMENT AND COST RECOVERY
SUBPART G TECHNICAL ASSISTANCE GRANTS

UNDER THE PROVISIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 30A, SECTION 6
AND CHAPTER 233, SECTION 75 THIS DOCUMENT MAY BE USED AS EVIDENCE OF THE
ORIGINAL DOCUMENTS ON FILE WITH THE STATE SECRETARY.

COMPILED AS IN FULL FORCE AND EFFECT 10/30/88

PLU 71

\$3.10

92080

A TRUE COPY, ATTEST:

Michael Joseph Connolly
MICHAEL JOSEPH CONNOLLY,

SECRETARY OF STATE

310 CMR 40.000: MASSACHUSETTS CONTINGENCY PLAN

SUBPART A GENERAL PROVISIONS

Outdated
- 1988 version -

Section

- 40.001: Authority
- 40.002: Purpose
- 40.003: Applicability
- 40.004: Provisions
- 40.005: Terminology
- 40.006: Effective Date
- 40.007: Computation of Time
- 40.008: Accurate and Timely Submittals to the Department
- 40.009: Accurate and Complete Record-Keeping
- 40.010: Falsification, Destruction or Alteration of Field Response Action Systems
- 40.011: Certifications
- 40.012: Effect of Orders
- 40.013: Presumption of Irreparable Harm
- 40.014: Severability
- (40.015 through 40.019: Reserved)
- 40.020: Definitions
- (40.021 through 40.099: Reserved)

SUBPART B ORGANIZATION AND RESPONSIBILITIES

- 40.100: Overview of Roles and Responsibilities in Response Actions
- 40.101: Role of the Department in Response Actions
- (40.102-40.104: Roles of Other State Agencies and Organizations - Reserved)
- (40.105-40.109: Role of Local Government - Reserved)
- 40.110: Federal Superfund Program
- (40.111-40.114: Reserved)
- 40.115: Role of Other Persons
- (40.116-40.159: Reserved)
- 40.160: Departmental Notice To Potentially Responsible Parties
- (40.161-40.169: Reserved)
- 40.170: The Role of PRPs and Other Persons in Response Actions
- 40.171: Failure to Perform a Response Action
- (40.172-40.199: Reserved)
- 40.200: Public Involvement - General Approach For Emergency and Remedial Actions
- 40.202: Minimum Public Involvement Activities in Remedial Response Actions
- 40.203: Minimum Public Involvement Activities Required For Public Involvement Remedial Response Actions.
- 40.208-40.209: Community Site Inspection-Reserved
- (40.210-40.219: General Principals for Public Involvement in Emergency Response Actions - Reserved)
- 40.220: Public Records Requests
- (40.221-40.299: Reserved)

SUBPART C

- 40.300: NOTIFICATION REGULATIONS FOR RELEASES OF OIL AND HAZARDOUS MATERIALS; IDENTIFICATION AND LISTING OF OIL AND HAZARDOUS MATERIAL
- 40.301: Purpose and Scope
- 40.302: Applicability
- (40.303 through 40.309: Reserved)
- 40.310: Releases of Oil and Hazardous Materials Not Subject to The Reporting Requirements of 310 CMR 40.370 through 40.379
- (40.311 through 40.319 Reserved)
- 40.320: Identification of Oil and Hazardous Material
- 40.321: Purpose and Scope
- 40.322: Methods of Identification of Oil and Hazardous Material
- 40.323: Criteria for Listing Oil and Hazardous Material
- 40.324: Adding and Deleting Substances to or from the Massachusetts Oil and Hazardous Materials List

Outdated
- 1988 version -

SUBPART C

40.300: NOTIFICATION REGULATIONS FOR RELEASES OF OIL AND HAZARDOUS MATERIALS; IDENTIFICATION AND LISTING OF OIL AND HAZARDOUS MATERIAL (continued)

- 40.325: The Massachusetts Oil and Hazardous Materials List
- 40.326: Criteria for Determining the Characteristics of Hazardous Material
- 40.327: Characteristics of Hazardous Material
- (40.328 through 40.349 Reserved)
- 40.350: Reportable Quantities for Oil and Hazardous Materials
- 40.351: Reportable Quantities for Oil
- 40.352: Reportable Quantities for Hazardous Material
- (40.353 through 40.369: Reserved)
- 40.370: Notification Requirements
- 40.371: Purpose and Scope
- 40.372: Who Shall Report
- 40.373: Timing of Notification
- 40.374: Releases Which Require Notification
- 40.375: Threats of Release Which Require Notification
- 40.376: Notification of Results of Tests of Underground Storage Tanks
- 40.377: How to Notify
- 40.378: Content of Notification
- 40.379: Written Notification
- (40.380 through 40.399: Reserved)

(40.400-40.499 SUBPART D: EMERGENCY RESPONSE ACTIONS: RESERVED)

SUBPART E REMEDIAL RESPONSE ACTIONS.

- 40.500: Remedial Response Actions
- (40.501-40.519: Discovery of Locations To Be Investigated - Reserved)
- 40.520: List of Locations and Disposal Sites
- 40.521: Screening Criteria For Locations To Be Investigated
- 40.522: Placement of A Location On The LTBI List
- (40.523-40.529: Reserved)
- 40.530: General Provisions for Remedial Response Actions
- 40.531: Minimum Requirements
- 40.532: Phases of Remedial Response Action
- 40.533: Assessment of Hazard
- 40.534: Statutory Deadlines For Remedial Response Actions
- 40.535: Submittals Necessary For Remedial Response Actions
- 40.536: Approvals Necessary For Remedial Response Actions
- 40.537: Waiver of Approvals For Non-Priority Disposal Sites
- (40.538-40.539: Reserved)
- 40.540: Phases Of Remedial Response Action
- 40.541: Preliminary Assessment
- 40.542: Short Term Measures
- 40.543: Phase I - Limited Site Investigation
- 40.544: Interim Disposal Site Classification System
- 40.545: Phase II - Comprehensive Site Assessment
- 40.546: Phase III - Development of Remedial Response Alternatives and the Alternative
- (40.548-40.599: Phase V - Reserved)

SUBPART F: ENFORCEMENT AND COST RECOVERY

- 40.600: Enforcement and Cost Recovery
- 40.601: Purpose and Scope
- 40.602: General Provisions
- 40.603: Cost Recovery Or Damage Actions By Other Persons
- (40.604-40.619: Reserved)
- 40.620: Recovery Of Response Action Costs By The Department
- (40.621-40.629: Reserved)
- 40.630: Procedures For Cost Recovery And Enforcement
- 40.631: Documentation
- 40.632: Demand For Payment

SUBPART F: ENFORCEMENT AND COST RECOVERY (continued)

- 40.633: Interest Calculation
- 40.634: Lien Placement
- (40.635-40.640: Reserved)
- 40.641: Form and Extent of Limited Release From Liability
- (40.642-40.699: Reserved)

SUBPART G: TECHNICAL ASSISTANCE GRANTS

- 40.700: Technical Assistance Grants
- 40.701: Purpose and Scope
- (40.702: Reserved)
- 40.703: Grant Availability
- 40.704: Eligible Grantee Groups
- 40.705: Eligible Activities
- 40.706: Notice Provisions
- 40.707: Grant Application Process
- 40.708: Grant Selection Process
- 40.709: Payment Method
- 40.710: Fiscal Management of Grants
- 40.711: Records to be Maintained by Grantees
- 40.712: Inspection of Projects
- 40.713: Honest Practices
- (40.714 through 40.899: Reserved)
- 40.900: Appendix I

Outdated
- 1988 version -

SUBPART A: GENERAL PROVISIONS

40.001: Authority

These regulations are promulgated by the Commissioner of the Department pursuant to M.G.L. c. 21E, s. 3 and s. 6.

40.002: Purpose

(1) The purpose of the Massachusetts Contingency Plan (MCP or Contingency Plan) is to ensure the protection of health, safety, public welfare and the environment by establishing requirements and procedures for the discovery, notification, assessment of, and response to, releases and threats of release of oil or hazardous materials, and by identifying those oils and hazardous materials which are subject to these requirements and procedures. The Contingency Plan sets forth the roles and responsibilities of the Department, potentially responsible parties, other persons, other governmental agencies, and the public in response actions.

(2) This Contingency Plan is also intended to complement the National Contingency Plan (40 CFR part 300 et seq.)

40.003: Applicability

This Contingency Plan applies to notification to the Department of, and response actions for, releases or threats of release of oil or hazardous materials to the environment. Releases or threats of releases of oils or hazardous materials at or from sites or vessels may require notification to the Department pursuant to 310 CMR 40.300, and may require either an emergency response action or a remedial response action or both.

40.004: Provisions

This Contingency Plan provides:

- (1) A list of oils and hazardous materials and a description of the characteristics of hazardous materials which are subject to the MCP;
- (2) Procedures and requirements for notifying the Department of a release or threat of release of oil or hazardous material;
- (3) Procedures and requirements whereby the extent and nature of a release or threat of release of oil or hazardous material can be consistently and appropriately addressed;

Outdated
- 1988 version -

40.004: continued

- (4) Procedures and requirements for the involvement of potentially responsible parties and other persons in response actions;
- (5) Procedures for the involvement of the public in response actions; and
- (6) Procedures for the recovery of costs incurred by the Department in responding to releases or threats of release of oil or hazardous material and of damages associated with injury, loss, or destruction of natural resources.

40.005: Terminology

The definitions and concepts of "priority disposal site", "disposal site", "site", "vessel", "release" and "threat of release" contained in M.G.L. c. 21E display subtle differences. This Contingency Plan has been worded to minimize the confusion which may result from these differences while retaining the Department's flexibility to respond or require a response to all releases and threats of release of oil or hazardous material to the environment. These terms are used in this Contingency Plan as follows:

- (1) The terms "site" and "vessel" are used to refer to places or areas from or at which a release of oil or hazardous material has occurred or where a threat of release exists.
- (2) The term "disposal site" is used to refer to a place or area where an uncontrolled release of oil or hazardous material from or at a site or vessel has come to be located.
- (3) The term "disposal site" is used to include both priority disposal sites and non-priority disposal sites.

**Outdated
- 1988 version -**40.006: Effective Date

(1) 310 CMR 40.000 shall take effect on October 3, 1988, with the exception of 310 CMR 40.300 through 310 CMR 40.379 which shall take effect on August 31, 1988.

(2) Response action activities which were approved by the Department prior to June 30, 1988 shall be completed in a manner consistent with such approval and M.G.L. c. 21E. All other response action activities shall be subject to the provisions of this Contingency Plan.

40.007: Computation of Time

Unless otherwise specifically provided by law, 310 CMR 40.000, or any order or determination issued pursuant to M.G.L. c. 21E or 310 CMR 40.000, any time period prescribed or referred to in 310 CMR 40.000 or in any order or determination issued pursuant to M.G.L. c. 21E or 310 CMR 40.000, shall begin with the first day following the act which initiated the running of the time period, and shall include every calendar day, including the last day of the time period. If the last day is a Saturday, Sunday, legal holiday, or any other day on which the offices of the Department are closed, the time period shall run to the end of the next business day.

40.008: Accurate and Timely Submittals to the Department

(1) Any application, record, report, plan, design, or statement which any person is required to submit to the Department shall be submitted within the time period prescribed in M.G.L. c. 21E, 310 CMR 40.000 or any order issued by the Department.

(2) No person shall make any false, inaccurate, incomplete, or misleading statements in any application, record, report, plan, design, or statement which that person submits to the Department pursuant to M.G.L. c. 21E, 310 CMR 40.000 or any order issued or determination made by the Department.

40.009: Accurate and Complete Record-Keeping

No person shall make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person keeps or is required to keep pursuant to M.G.L. c. 21E or 310 CMR 40.000 or any order issued or determination made by the Department. Any record, report, plan, file, log, or register which any person keeps or is required to keep shall be filled out completely and otherwise kept in compliance with M.G.L. c. 21E, 310 CMR 40.000, or any order issued or determination made by the Department. Such records shall be made available to the Department for inspection upon request.

40.010: Falsification, Destruction or Alteration of Field Response Action Systems

No person shall falsify, tamper with, alter, destroy, disturb or otherwise interfere with any mechanism, recovery or control system, or any monitoring device or method which any person maintains, or which is required to be maintained, pursuant to M.G.L. c. 21E, 310 CMR 40.000 or any order issued or determination made by the Department.

40.011: Certification

Any person providing information required to be submitted to the Department pursuant to M.G.L. c. 21E, 310 CMR 40.000, or any order issued or determination made by the Department shall make the following certification: "I certify that I have personally examined the following and am familiar with the information contained in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

Outdated
- 1988 version -

40.012: Effect of Orders

The issuance of an order under M.G.L. c. 21E, s. 9 or any appeal of such order shall not prevent the Department from undertaking necessary response actions. If the Department finds that an imminent hazard exists or could result prior to the conclusion of any adjudicatory hearing requested on an order issued under M.G.L. c. 21E, s. 9, the Department may, pursuant to M.G.L. c. 21E, s. 10, provide that the order shall become provisionally effective and enforceable immediately upon issuance, and shall remain so until the conclusion of any adjudicatory hearing procedures.

40.013: Presumption of Irreparable Harm

Any violation of M.G.L. c. 21E, 310 CMR 40.000, or any order issued thereunder, shall be presumed to constitute irreparable harm to health, safety, public welfare, and the environment. Such presumption may be rebutted by a preponderance of evidence.

40.014: Severability

It is hereby declared that the provisions of 310 CMR 40.000 are severable and if any provision or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or their applications which can be given effect without the invalid provision or application.

(40.015-40.019: Reserved)

40.020: Definitions

Affected individual means any individual who experiences or may experience significant environmental, health, or economic impacts from a disposal site.

Applicant group means any group of affected individuals that applies for a technical assistance grant pursuant to this Contingency Plan.

Assess or Assessment means such investigations, monitoring, surveys, testing, and other information-gathering activities to identify: (1) the existence, source, nature and extent of a release or threat of release of oil or hazardous materials; (2) the extent of danger to the public health, safety, welfare and the environment; and (3) those persons liable under M.G.L. c. 21E, s. 5. The term shall also include, without limitation, studies, services and investigations to plan, manage and direct assessment, containment and removal actions, to determine and recover the costs thereof, and to otherwise accomplish the purposes of M.G.L. c. 21E and this Contingency Plan.

Act of God means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character; the effects of which could not have been prevented or avoided by the exercise of due care or foresight. A natural disaster is unanticipated when it is of a type unexpected given the area, the season, and the past history of conditions.

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. ss. 9601 et seq., as amended.

Chief municipal officer means the city manager in any city having a city manager, or the mayor in any other city; the town manager in any town having a town manager, or the board of selectmen in any other town.

Commissioner means the Commissioner of the Department of Environmental Quality Engineering.

Compressed gas means any material or mixture that is in a container and that, while in the container, has an absolute pressure exceeding 40 pounds per square inch at 70°F. or, regardless of the pressure at 70°F., has an absolute pressure exceeding 104 pounds per square inch at 130°F.

Community means a city or town of the Commonwealth.

40.020: continued

**Outdated
- 1988 version -**

Contain or Containment means actions taken in response to a release or threat of release of oil or hazardous material into the environment to prevent or minimize such release so that it does not migrate or otherwise cause or threaten substantial danger to present or future public health, safety, welfare or the environment. The term shall also include security measures, including, without limitation, the building of fences for the purpose of limiting and restricting access to a site or vessel where there has been a release or there is a threat of a release of oil or hazardous materials.

Department means the Department of Environmental Quality Engineering.

Determination means any decision, oral or written, that is made by the Department in accordance with M.G.L. c. 21E or 310 CMR 40.000 with regard to response actions and that is not an order issued pursuant to M.G.L. c. 21E, s. 9.

Disposal site means any structure, well, pit, pond, lagoon, impoundment, ditch, landfill or other place or area, excluding ambient air or surface water, where uncontrolled oil or hazardous material has come to be located as a result of any spilling, leaking, pouring, abandoning, emitting, emptying, discharging, injecting, escaping, leaching, dumping, discarding or otherwise disposing of such oil or hazardous material. The term shall not include any site containing only oil or hazardous materials which: are lead-based paint residues emanating from a point of original application of such paint; resulted from emissions from the exhaust of an engine; are building materials still serving their original intended use or emanating from such use; or resulted from release of source, byproduct or special nuclear material from a nuclear incident, as those terms are defined in 42 U.S.C. s. 2014, if such release was subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. s. 2210.

Emergency response action means a response action that is taken in response to a sudden release or a threat of release of oil or hazardous material.

Environment means waters, land, surface or subsurface strata, or ambient air of the Commonwealth.

Environmental Monitor means a publication of the Executive Office of Environmental Affairs pursuant to 301 CMR 11.19.

EPA means the U.S. Environmental Protection Agency.

Excess Lifetime Cancer Risk means the estimated probability that an individual's exposure, during a lifetime, to an oil or hazardous material would result in cancer.

Expert means one who has special knowledge or training in a particular field.

Exposure means any contact with or ingestion, inhalation or assimilation of oil or hazardous materials, including irradiation.

Exposure point means the place at which a human or environmental receptor is exposed to an oil or hazardous material.

Exposure point concentration means the concentration of an oil or hazardous material in a specific medium at an exposure point.

Facility means an entire contiguous plant or installation, including the contiguous grounds of such plant or installation, which is under common ownership.

Final Remedial Response Plan (FRRP) means the document that is prepared in compliance with 310 CMR 40.546(5).

Flammable range means the difference between the minimum and maximum

40.020: continued

volume percentages of the material in air that forms a flammable ignitable compressed gas.

Grantee means an applicant group which has been awarded a grant pursuant to 310 CMR 40.700.

Hazard Index means a calculation of the possibility of non-cancer health effects as the result of exposure to one or more oil or hazardous materials with similar modes of toxic action. The Hazard Index (HI) is defined as: $HI = D_1/AD_1 + D_2/AD_2 + \dots + D_i/AD_i$ where D is the daily dose for a particular oil or hazardous material, and AD is the allowable daily dose for a particular oil or hazardous material. The allowable daily dose is the Reference Dose or other allowable dose daily specified by the Department.

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 which are included under 42 U.S.C. s. 9601(14), but it is not limited to those substances. The term shall include but should not be limited to, all materials regulated as hazardous waste or regulated recyclable materials pursuant to 310 CMR 30.000.

Imminent hazard means a hazard which would pose a significant or otherwise unacceptable risk of harm to health, safety, public welfare or the environment if it were present for even a short period of time.

Interim Zone II means the area within a one half mile radius of a public water supply wellhead. The term is used when a hydrogeologically defined Zone II has not been established.

Location To Be Investigated (LTBI) means a location in the Commonwealth that the Department determines is reasonably likely to be a disposal site.

Massachusetts Contingency Plan (MCP or Contingency Plan) means 310 CMR 40.000.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. c. 30, ss. 61 through 62H.

Migration Pathway means a pathway by which an oil or hazardous material is transported at or from a disposal site.

National Contingency Plan (NCP) means 40 CFR Part 300.

National Priorities List (NPL) means the National Priorities List published by the U.S. Environmental Protection Agency pursuant to CERCLA.

Non-priority disposal site means any disposal site that is not a priority disposal site.

Notice of responsibility (NOR) means a notice from the Department to a PRP of his potential liability pursuant to M.G.L. c. 21E.

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. The term shall not include waste oil, and shall not include those substances which are included in 42 U.S.C. s. 9601(14).

Other Person means any person other than a PRP who undertakes a response action.

40.020: continued

Oxidizer means any material that yields oxygen readily to stimulate the combustion of organic matter; e.g., chlorate, permanganate, peroxide, nitrocarbonate, or inorganic nitrate.

Owner or Operator means (1) in the case of a vessel, any person owning, operating or chartering by demise such vessel, (2) in the case of a site, any person owning or operating such site; and (3) in the case of an abandoned site, any person who owned, operated, or otherwise controlled activities at such site immediately prior to such abandonment. The term shall not include a person, who, without participating in the management of a vessel or site, holds indicia of ownership primarily to protect his security interest in said vessel or site.

PCBs means polychlorinated biphenyls.

Passenger vehicle means any four wheeled conveyance used solely for non-commercial purposes.

Permanent solution means a measure or combination of measures which will, when implemented, ensure attainment of a level of control of each identified substance of concern at a disposal site or in the surrounding environment such that no substance of concern will present a significant or otherwise unacceptable risk of damage to health, safety, public welfare, or the environment during any foreseeable period of time.

Person means any agency or political subdivision of the federal government or the Commonwealth; any state, public or private corporation or authority; any individual, trust, firm, joint stock company, partnership, association or other entity; any officer, employee, or agent of such person; and any group of persons.

Potentially responsible party (PRP) means any person who is potentially liable pursuant to M.G.L. c. 21E.

Priority disposal site means a disposal site which poses a substantial hazard to health, safety, public welfare, or the environment.

Public Involvement Plan Site or PIP Site means any disposal site for which additional public involvement activities are required beyond those required for every disposal site and which has been designated as a PIP site pursuant to 310 CMR 40.203.

Reference Dose means the daily dose of an oil or hazardous material which would not be expected to result in any adverse non-cancer health effects as published by EPA.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, but excludes: (1) emissions from the exhaust of an engine; (2) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in 42 U.S.C. s. 2014, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. s. 2210; (3) the normal application of fertilizer; and (4) the application of pesticides in a manner consistent with their labelling.

Remedial response action means a response action at an LTBI or a disposal site that is taken pursuant to this Contingency Plan.

Remedial response alternative means measures or combinations of measures proposed to eliminate hazards posed by a disposal site.

Remedial Response Implementation Plan (RRIP) means the document that is prepared in compliance with 310 CMR 40.547(2).

Remove or Removal means the cleanup or removal of released oil or

Outdated
- 1988 version -

40.020: continued

hazardous materials from the environment, such actions as may be necessarily taken in the event of the threat of release of oil or hazardous materials into the environment, the disposal of removed oil or hazardous material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health, safety, welfare or the environment, which may result from a release or threat of release.

Reportable quantity means the quantity of oil or hazardous material the release of which, or threat of release of which, requires notification to the Department pursuant to M.G.L. c. 21E, s. 7 and 310 CMR 40.370 through 40.379.

Respond or Response or Response action means assess, assessment, contain, containment, remove and removal.

Response Action Cost or Cost means any cost that is one or more of the following: (1) incurred by the Department in performing a response action, (2) incurred by the Department in overseeing a response action performed by the Department's agents and contractors, PRPs, or other persons, and (3) expended by the Commonwealth in support of the activities described in (1) and (2) above. Response action costs shall not include the Department's cost of reviewing Preliminary Assessments pursuant to 310 CMR 40.541 or Phase I Reports - Limited Site Investigations pursuant to 310 CMR 40.543 which are completed by PRPs or other persons and submitted to the Department.

Route of exposure means a mechanism, including, but not limited to ingestion, inhalation, dermal absorption, and transpiration by which an oil or hazardous material comes into contact with a human or environmental receptor.

Short Term Measure means a measure or combination of measures that is taken pursuant to 310 CMR 40.542.

Sheen means an iridescent appearance of any oil or waste oil on the surface of any river, stream, lake, pond, spring, impoundment, estuary or coastal water which is caused by the release of such oil or waste oil.

Site means any building, structure, installation, equipment, pipe or pipeline, including any pipe discharging into a sewer or publicly-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any other place or area where oil or hazardous material has been deposited, stored, disposed of or placed, or otherwise come to be located. The term shall not include any consumer product in consumer use or any vessel.

Statement of claim or Statement means an instrument signed by the Commissioner, describing a particular site or sites and naming the person or persons then deemed by the Commissioner to be liable under M.G.L. c. 21E with respect to each such site and their residential addresses, to the extent known to the Commissioner, and declaring a lien upon the property of such person or persons for the payment of amounts due or to become due from such person or persons to the Commonwealth under M.G.L. c. 21E; provided, however, that neither failure to state any such address nor the designation of an incorrect address shall invalidate such statement; and provided, further, that successive statements, naming other persons so deemed to be liable, may be issued.

Substantial hazard means a hazard which would pose a significant or otherwise unacceptable risk of harm to health, safety, public welfare, or the environment if it continued to be present for several years.

Technical Assistance Grant or Grant means a grant authorized by M.G.L. c. 21E.

Temporary solution means a measure or combination of measures which will, when implemented, eliminate any substantial hazards posed by a priority disposal site until a permanent solution can be implemented.

40.020: continued

Threat of release means a substantial likelihood of a release which requires action to prevent or mitigate damage to the environment which may result from such release. Circumstances which represent a threat of release include, but are not limited to, sites or vessels containing or conducting an amount of oil or hazardous material in excess of the reportable quantity for that oil or hazardous material where no release has occurred but where (1) corrosion, damage, malfunction or other conditions are visible, known to exist or should be known to exist; and (2) where these conditions are likely to result in a release.

Total site cancer risk means the sum of the estimated excess lifetime cancer risks associated with exposure to all oil and hazardous materials at or from a disposal site at all exposure points for a given receptor.

Total Site Non-Cancer Risk means a calculation of the possibility of non-cancer health effects associated with exposure to all oil and hazardous materials at or from a disposal site at all exposure points for a given receptor. The Hazard Index is a measure of the Total Site Non-Cancer Risk.

Trade secret means anything tangible which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production, or management information, design, process, procedure, formula, invention or improvement.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Waste Oil means used and/or reprocessed, but not subsequently re-refined, oil that has served its original intended purpose. Such oil includes, but is not limited to, used and/or reprocessed fuel oil, engine oil, gear oil, cutting oil, and transmission fluid.

Waters of the Commonwealth means all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, coastal waters and groundwaters. The term shall not include impoundments of chemical wastes.

Zone II means the hydrogeologically defined area of contribution to a public water supply wellhead.

(40.021-40.099: Reserved)

NON-TEXT PAGE

Outdated
- 1988 version -

SUBPART B: ORGANIZATION AND RESPONSIBILITIES

Outdated
- 1988 version -

40.100: Overview of Roles and Responsibilities in Response Actions

- (1) The Department is authorized to take or arrange for such response actions as it reasonably deems necessary to respond to releases or threats of releases of oil or hazardous material. The Department has sole authority and discretion to determine:
 - (a) Whether a release of oil or hazardous material has occurred and/or whether a threat of release exists;
 - (b) Whether a release or threat of release of oil or hazardous material requires a response action; and
 - (c) The appropriate extent and nature of a response action consistent with this Contingency Plan.
- (2) Response actions may be conducted by the Department, PRPs or other persons. Requirements for the performance of response actions by PRPs or other persons are set forth in 310 CMR 40.170 and 40.171.
- (3) Response actions may involve the participation of local, state, and federal agencies and organizations.
- (4) Response actions shall involve the public to the extent set forth in M.G.L. c. 21E and this Contingency Plan.

40.101: Role of the Department in Response Actions

The Department may, without limitation:

- (1) Review and evaluate reports or notifications of releases or threats of release of oil or hazardous material and, when reasonably necessary, initiate or arrange for the initiation of response actions;
- (2) Collect or oversee the collection of pertinent facts regarding releases or threats of release of oil or hazardous material;
- (3) Perform or arrange for performance by PRPs or other persons of response actions including, without limitation, establishing interim deadlines for the completion of response actions.
- (4) Coordinate and oversee response actions conducted by PRPs or other persons to assure the consistency of such actions with M.G.L. c. 21E and this Contingency Plan.
- (5) Conduct or oversee public involvement activities related to response actions;
- (6) Conduct enforcement and seek reimbursement and compensation to which the Commonwealth is entitled pursuant to M.G.L. c. 21E;
- (7) Provide technical assistance grants to groups of affected individuals; and
- (8) Seek the resources of federal or other state agencies or local governments to respond to releases or threats of release of oil or hazardous material.

(40.102-40.104: Roles of Other State Agencies and Organizations: Reserved)

(40.105-40.109: Role of Local Government: Reserved)

40.110: Federal Superfund Program

- (1) The Department shall take appropriate actions to obtain any federal monies available to fund response actions.
- (2) When a Massachusetts disposal site is also listed on the National Priority List, it is subject to CERCLA and joint federal and state jurisdiction exists. Cooperative agreements and contracts with the federal government

Outdated
- 1988 version -

40.110: continued

under CERCLA shall incorporate, to the extent possible, the deadlines and specifications of M.G.L. c. 21E, and other applicable statutes and regulations.

(40.111-40.114: Reserved)

40.115: Role of Other Persons

(1) Any person threatened or damaged by a release or threat of release of oil or hazardous material or any other person may undertake response actions provided such actions are consistent with M.G.L. c. 21E and this Contingency Plan.

(2) As provided in M.G.L. c. 21E, s. 4, any person who without charge renders assistance in a response action at the request of a duly authorized representative of the Department shall not be held liable, notwithstanding any other provision of law, for civil damages as a result of any act or omission by such person in removing oil or hazardous material, except for acts or omissions of gross negligence or willful misconduct.

(40.116-40.159: Reserved)

40.160: Departmental Notice to Potentially Responsible Parties

(1) Notices of Responsibility

(a) The Department shall attempt to identify and notify PRPs of their potential liability pursuant to M.G.L. c. 21E through a Notice of Responsibility (NOR). The determination of whom to notify of potential liability pursuant to M.G.L. c. 21E rests in the sole discretion of the Department. The Department's failure to notify any particular PRP shall not preclude recovery by the Commonwealth against that PRP for any reimbursement or compensation to which the Commonwealth is entitled; nor shall it preclude the Department from taking any other action pursuant to M.G.L. c. 21E, this Contingency Plan, or any other law.

(b) The NOR may be made orally or in writing. If oral notice is given, such notice shall be followed by a written NOR. The written NOR shall describe:

1. actions undertaken to date by the Department, PRPs or other persons;
2. future actions which the Department currently determines are necessary to respond to the release or threat of release of oil or hazardous material in accordance with M.G.L. c. 21E and this Contingency Plan;
3. the procedure by which, and extent to which, the PRP can become involved in the response action; and
4. the liability which the PRP has incurred or may incur as a result of the release or threat of release of oil or hazardous material.

(2) Notice of Intent To Take a Response Action. The Department shall notify the owner or operator of the site or vessel from or at which there is or has been a release or threat of release of oil or hazardous material of its intent to perform a response action at the site or vessel. Such notice may be oral in the case of emergency response actions or Short Term Measures, but shall be written whenever time permits. Such notice shall not be required if the Department has been unable to identify or locate the owner or operator, or when providing such notice would be impractical because of an emergency or other circumstances. Failure by the Department to give notice to an owner or operator of the Department's intention to perform a response action shall not limit or preclude any PRP's liability pursuant to M.G.L. c. 21E, this Contingency Plan, or any other law.

(40.161-40.169: Reserved)

40.170: The Role of PRPs and Other Persons in Response Actions

(1) PRPs and other persons may perform response actions in accordance with the following conditions:

(a) the response actions shall be properly and promptly performed by the PRP or other person within deadlines prescribed by statute and any

Outdated
- 1988 version -

40.170: continued

interim deadlines established pursuant to 310 CMR 40.534(5) and in accordance with M.G.L. c. 21E, this Contingency Plan and all other applicable laws and regulations;

(b) the PRP or other person shall participate in public involvement activities set forth in this Contingency Plan to the extent determined by the Department; and

(c) PRPs or other persons performing a response action shall identify all permits, licenses, or other approvals which may be required by any local, state or federal agency, and any agreements necessary to conduct such response action and shall proceed to obtain the necessary permits, licenses, approvals, and agreements sufficiently far in advance of deadlines imposed pursuant to M.G.L. c. 21E, 310 CMR 40.000, or any order issued by the Department, in order to allow completion of such response actions.

(2) The Department may require that a PRP or other person provide financial assurances to the Department that the PRP or other person has sufficient financial resources to complete a response action or a specific phase thereof. This requirement may be imposed by the Department at any time during the performance of a response action. Financial assurance mechanisms which may be required by the Department include, but are not limited to: trust funds, stand-by trust funds, letters of credit, escrow deposits and surety bonds.

(3) In the event that a PRP requests an opportunity to perform a response action at any time after the Department has already commenced such response action, the Department may require that the PRP either pay, or provide a financial assurance mechanism for the payment of, all past costs the Department has incurred prior to allowing the PRP to conduct the remainder of the response action.

(4) The Department may refuse to permit a PRP or other person to perform a response action, or to assume responsibility for a response action being performed by the Department, unless the Department is persuaded that:

(a) the deadlines set forth in 310 CMR 40.534 will be met;

(b) a delay in the conduct of the response action will not result which would cause or exacerbate an existing hazard to health, safety, public welfare or the environment;

(c) the response action will be conducted in accordance with M.G.L. c. 21E and this Contingency Plan; and

(d) the PRP or other person has a satisfactory record of compliance with statutes and requirements enforced by the Department.

(5) The Department may enter into a consent order with a PRP or other person which sets forth necessary response actions, time periods for the performance thereof, and required submittals to the Department. The consent order may include provisions regarding site access, cost recovery, processes for resolving disputes arising under the consent order, or any other matter.

40.171: Failure to Perform a Response Action

In the event that a PRP or other person commences to perform a response action and that response action is thereafter determined by the Department not to be in conformance with M.G.L. c. 21E and this Contingency Plan, or in the event that no person performs a response action, the Department may:

(1) proceed to perform the response action;

(2) negotiate a consent order with the PRP or other person, if one does not already exist, to complete the necessary response action pursuant to M.G.L. c. 21E and this Contingency Plan;

(3) pursuant to M.G.L. c. 21E, s. 9, issue an order to the PRP to perform any necessary response action; and

(4) take any other action and seek any other relief authorized by M.G.L. c. 21E, 310 CMR 40.000, or any applicable law or regulation.

(40.172-40.199: Reserved)

40.200: Public Involvement - General Approach for Emergency and Remedial Response Actions

310 CMR 40.200 through 40.299, cited collectively as 310 CMR 40.200, contain requirements and procedures for the conduct of public involvement activities in connection with emergency and remedial response actions.

40.201: General Principles for Public Involvement in Remedial Response Actions

(1) Activities undertaken to foster public involvement during remedial response actions shall serve two objectives:

- (a) for all disposal sites, public involvement activities shall inform the public about the risks posed by the disposal site, remedial response actions, and opportunities for public involvement; and
- (b) for Public Involvement Plan Sites, public involvement activities shall solicit the concerns of the public relative to the disposal site and remedial response actions, and shall, to the extent possible, address and incorporate these concerns in planning remedial response actions.

(2) The Department shall consider concerns, information, and comments from the public in making decisions regarding remedial response actions.

(3) Public involvement activities undertaken pursuant to M.G.L. c. 21E and this Contingency Plan shall be performed in a manner such that current and future enforcement efforts are not jeopardized.

40.202: Minimum Public Involvement Activities in Remedial Response Actions

(1) All notices issued by the Department pursuant to this Contingency Plan which announce public meetings or the results of Phase I - Limited Site Investigations shall state how the public may become involved in response action planning and identify a Department representative for citizens to contact.

(2) At disposal sites that are also National Priority List sites, federal requirements for community relations are minimum requirements. The Department, in coordination with EPA, may supplement federal community relations efforts at these disposal sites.

(3) The Department shall make grants available for technical assistance to groups of affected individuals in accordance with 310 CMR 40.700.

(4) The public shall be made aware in advance of field work involving the use of heavy construction equipment or protective clothing (Level A or B as defined by "Standard Operating Safety Guides" published by the U.S. Environmental Protection Agency) at disposal sites. Provision of advance notification may be waived by the Department only when notice would delay timely implementation of an emergency response action or a Short Term Measure.

(5) Additional minimum public involvement activities are described for each phase of a remedial response action in 310 CMR 40.500.

40.203: Minimum Public Involvement Activities Required for Public Involvement Plan Sites

(1) Upon receipt of a petition from ten or more residents of a municipality in which a disposal site is located, or of a municipality potentially affected by a disposal site, or upon determination by the Department that additional public involvement activities beyond those required in 310 CMR 40.202 and 40.500 are warranted by conditions at a disposal site, the Department shall designate such disposal site as a PIP Site.

(2) Petitions to designate a disposal site as a PIP Site shall be accepted by the Department for any disposal site. The submission of such a petition shall not alter the classification of a disposal site made pursuant to 310 CMR 40.544.

40.203: continued

- (3) The submittal of a public involvement petition shall not by itself alter the order in which the Department initiates remedial response actions.
- (4) Upon designation of a disposal site as a PIP site:
- (a) PIP activities shall focus on the community in which the disposal site is located and may include other communities which are or could be affected by the disposal site;
 - (b) the Department shall prepare a draft site-specific Public Involvement Plan;
 - (c) the Department shall hold a public meeting in the affected community(ies) to present the draft PIP, obtain public comment, and provide information about disposal site conditions;
 - (d) the PIP shall be revised as appropriate after the public meeting, and shall be made available in the affected community(ies); and
 - (e) the PIP shall ensure, without limitation:
 - 1. that local concerns and sources of information are identified so that the PIP reflects the nature and level of public interest;
 - 2. that methods for informing the public about the remedial response action, including proposed remedial response alternatives, are provided;
 - 3. that sufficient notice is provided about specific milestones in the remedial response action;
 - 4. that access to public records concerning the remedial response action is provided;
 - 5. that opportunities to comment on the remedial response action are provided;
 - 6. that public involvement activities are undertaken throughout the remedial response action and that a schedule is developed for conducting these activities;
 - 7. that procedures for public involvement in a Short Term Measure are provided;
 - 8. that procedures are established for notifying the public in advance about field work at the disposal site which involves the use of heavy construction equipment or protective clothing (Level A & B, as defined by "Standard Operating Safety Guides" published by the U.S. E.P.A.);
 - 9. that a local information repository is established; and
 - 10. that a mailing list of individuals who ask to receive information about the disposal site is established.

40.204: Compliance With MEPA

- (1) To comply with the requirements of MEPA and 301 CMR 11:
- (a) opportunities shall be provided for public review and comment on remedial response actions for all priority disposal sites by publishing a notice in the Environmental Monitor when a disposal site has been classified as a priority disposal site pursuant to 310 CMR 40.544;
 - (b) Notices shall also be published in the Environmental Monitor for priority disposal sites which meet the thresholds set forth in 310 CMR 40.546(7)(c) at the following points in the remedial response action:
 - 1. After a remedial response alternative has been recommended in a FRRP pursuant to 310 CMR 40.546(5) but prior to approval of the FRRP by the Department; and
 - 2. After the Remedial Response Implementation Plan as described in 310 CMR 40.547 has been prepared but prior to approval of such plan by the Department. Each notice shall indicate how information may be reviewed and shall establish a specific time period of not less than twenty calendar days prior to Department approval within which public comments shall be submitted to the Department.
- (2) Further activities required to comply with MEPA are described in 310 CMR 40.500.

40.205: Responsibility for Performing Public Involvement Activities in Remedial Response Actions.

(1) Public involvement activities required by this Contingency Plan shall be performed regardless of whether the Department, a PRP, or other person is conducting the remedial response action.

(2) The Department may require a PRP or other person to conduct certain public involvement activities. Such activities may include, without limitation, those designed to provide the public with information regarding the status of remedial response actions (e.g., providing notices of availability of reports, mailing copies of reports to local officials and citizens, and drafting fact sheets).

(3) Activities designed to solicit public comment on proposed remedial response actions shall be conducted by the Department (e.g., public meetings and public comment periods). Public involvement activities shall be conducted by the Department when the Department is performing the remedial response action.

(40.206 - 40.209: Community Site Inspection: Reserved)

(40.210 - 40.219: General Principles for Public Involvement in Emergency Response Actions: Reserved)

40.220: Public Records Requests

Requests made pursuant to the Massachusetts Public Records Law (M.G.L. c. 66, s. 10) to review files relating to response actions shall be handled in accordance with applicable statutory requirements and with 950 CMR 32.00 (Public Records Access Regulations); 310 CMR 3.00 (Public Access to and Confidentiality of Department Records and Files); and M.G.L. c. 21E, s. 12.

(40.221-40.299: Reserved)

SUBPART C NOTIFICATION REGULATIONS FOR RELEASES OF OIL AND
HAZARDOUS MATERIAL, IDENTIFICATION AND LISTING OF OIL
AND HAZARDOUS MATERIAL

40.300: Notification Regulations For Releases of Oil and Hazardous Material.
Identification and Listing of Oil and Hazardous Material

Outdated
- 1988 version -

40.301: Purpose and Scope

- (1) 310 CMR 40.301 through 40.379, cited collectively as 310 CMR 40.300,
 - (a) lists and otherwise describes those hazardous materials and oils which are subject to the requirements of 310 CMR 40.000;
 - (b) establishes quantities of oil or hazardous material the release or threat of release of which requires notification of the Department;
 - (c) establishes requirements and procedures for submitting such notification to the Department; and
 - (d) identifies those releases of oil or hazardous material not subject to the reporting requirements of 310 CMR 40.300.
- (2) Nothing in 310 CMR 40.300 shall relieve any person described in M.G.L. c. 21E, s. 5(a)(1) through (5) from any liability arising out of or associated with a release or threat of release of any oil or hazardous material that is listed in 310 CMR 40.900, identified by characteristic in 310 CMR 40.327 or that otherwise meets the definitions of oil or hazardous material which appear in 310 CMR 40.020.
- (3) The Department may take response actions, seek any reimbursement or compensation to which the Commonwealth is entitled, or pursue enforcement actions with regard to any release or threat of release of oil or hazardous material; however, the Department will not seek penalties for non-notification of any such release or threat of release which:
 - (a) is known to be of an amount less than the reportable quantity specified at 310 CMR 40.350 through 40.352 unless such release or threat of release constitutes an imminent hazard as provided for at 310 CMR 40.374(3) or (6) or 40.375(3), or
 - (b) is described at 310 CMR 40.310.

40.302: Applicability

- (1) The provisions of 310 CMR 40.301 through 40.349 apply to all releases and threats of releases of oil and hazardous material to the environment.
- (2) The Notification Requirements set forth in 310 CMR 40.370 through 40.379 and the reportable quantities set forth in 310 CMR 40.350 through 40.352 apply to releases and threats of release of oil and hazardous material to the environment which commence on or after August 31, 1988.
- (3) The Notification Requirements of M.G.L. c. 21E, s. 7 apply to releases or threats of release which commence or have commenced at any time unless the release or threat of release:
 - (a) is subject to the reporting requirements of 310 CMR 40.370 through 40.379; or
 - (b) is known to be of an amount less than the reportable quantity specified at 310 CMR 40.350 through 40.352; or
 - (c) is specifically exempted at 310 CMR 40.310(1), (2), (3), (5), (6) and (7).

Outdated
- 1988 version -

(40.303 through 40.309: Reserved)

40.310: Releases and Threats of Releases of Oil and Hazardous Material Not Subject to the Reporting Requirements of 310 CMR 40.370 through 40.379

Releases and threats of release of the following oil and hazardous materials are not subject to the notification requirements set forth at 310 CMR 40.370 through 40.379:

- (1) A release of oil that occurs during normal handling and transfer operations at an oil facility, if such release is completely captured by a properly functioning oil/water separator. However, a release of oil which exceeds the capacity of the oil/water separator, or a release of oil from the oil/water separator itself in excess of its discharge permit limits, shall be subject to the notification requirements set forth in 310 CMR 40.370 through 40.379.
- (2) A release or threat of release of gasoline or diesel fuel that results from the rupture of the fuel tank of a passenger vehicle as a result of an accident involving such vehicle.
- (3) Releases of hazardous material or oil that are discharged or emitted from an outfall, stack or other point source, or as fugitive emissions, any of which are regulated and have received a valid permit, license, or approval, or which are operating under a valid registration, order or guideline issued under a federal or state statute or regulation, unless such release exceeds the amount allowed by such permit, license, approval, registration, order or guideline and represents an imminent hazard to public health, safety, welfare or the environment. This provision shall not relieve any person from any other duty to notify which may exist under any other statute or regulation nor shall it in any way limit the authority of any other agency, political subdivision or authority of the federal or state government or of any office or division of the Department to enforce or otherwise carry out the duties assigned to it by law.
- (4) Releases of radionuclides regulated by the U.S. Environmental Protection Agency pursuant to 42 USC s. 9602, 33 USC ss. 1321 and 1361 and 40 CFR Part 302 et seq.
- (5) Releases of forbidden, Class A or Class B explosives, as defined at 49 CFR ss. 173.50, 173.53 and 173.88 respectively, if such explosives are under military transport or supervision and the U.S. Army Explosive Ordnance responds to such release.
- (6) Releases of natural gas, natural gas liquids and liquified natural gas.
- (7) Sheens resulting from emissions or discharges from outboard motors in recreational use.

(40.311 through 40.319: Reserved)

40.320: Identification Of Oil and Hazardous Materials

40.321: Purpose and Scope

310 CMR 40.320 through 40.327, cited collectively as 40.320, (1) identify and otherwise describe those oils and hazardous materials which are subject to 310 CMR 40.000; (2) set forth the criteria used by the Department to list certain oils and hazardous material at 310 CMR 40.900 and to identify the characteristics of unlisted hazardous material as set forth in 310 CMR 40.327; and (3) set forth the procedures for adding and deleting oil or hazardous material to or from 310 CMR 40.900.

40.322: Methods of Identification of Oil and Hazardous Material

- (1) The Department employs three methods to identify or otherwise describe those oils and hazardous materials which are subject to M.G.L. c. 21E and 310 CMR 40.000. These methods are:
 - (a) identification of those substances which meet the definitions of oil or hazardous materials set forth at 310 CMR 40.020;

Outdated
- 1988 version -

40.322: continued

- (b) listing of specific oils and hazardous materials; and
 - (c) identification of the characteristics of a material which make it hazardous.
- (2) Accordingly, a substance is an oil or hazardous material if:
- (a) the substance meets any of the definitions of oil or hazardous material set forth at 310 CMR 40.020; or
 - (b) the substance is listed at 310 CMR 40.900; or
 - (c) the substance exhibits any of the characteristics of oil or hazardous material identified at 310 CMR 40.327(1) through (4).

40.323: Criteria for Listing Oil or Hazardous Materials

In determining whether to list a substance as an oil or hazardous material, the Department shall consider whether or not such substance meets the statutory definition of oil or hazardous material. This determination by the Department shall include, but not be limited to, a consideration of the following factors:

- (1) Whether or not other state or federal agencies with expertise in the regulation and management of such substances have identified or characterized that substance as hazardous to public health, safety, welfare, or to the environment;
- (2) The extent to which the substance exhibits the characteristics of acute toxicity, chronic toxicity, carcinogenicity, mutagenicity, ignitability, corrosivity, reactivity, infectivity or radioactivity; and
- (3) Any substantial and relevant scientific data submitted by any person in support of adding any substance to or deleting any substance from 310 CMR 40.900.

40.324: Adding and Deleting Substances to or from the Massachusetts Oil and Hazardous Materials List

- (1) The Department shall review the Massachusetts Oil and Hazardous Materials List, which appears at 310 CMR 40.900, at least once every five years for the purposes of adding or deleting hazardous materials.
- (2) Substances may be added to or deleted from 310 CMR 40.900 at any time in accordance with the following procedures:
 - (a) The Department may, in accordance with the procedures set forth in M.G.L. c. 30A and other applicable laws for adopting, amending or repealing regulations, (1) add substances to 310 CMR 40.900 that meet any of the criteria set forth in 310 CMR 40.323 or (2) delete substances from 310 CMR 40.900 that do not meet the criteria set forth in 310 CMR 40.323.
 - (b) Any person may petition the Commissioner to add a substance to or delete a substance from 310 CMR 40.900. Any petition shall include scientific evidence that a material does or does not meet the criteria set forth in 310 CMR 40.323.
- (3) Any substance that is added to or deleted from either the CERCLA List of Hazardous Substances set out at 40 CFR Part 302.4 or the List of Extremely Hazardous Substances set out at 40 CFR Part 355, Appendix A after the date of promulgation of 310 CMR 40.300 will be evaluated by the Department to determine if that substance should be added to or deleted from 310 CMR 40.900.

40.325: The Massachusetts Oil and Hazardous Materials List

The oils and hazardous materials listed in 310 CMR 40.900 are subject to the requirements of 310 CMR 40.000 unless they are specifically excluded from regulation thereunder. The reportable quantities which appear beside each hazardous material or oil represent those quantities which, upon their release or threat of release, invoke the reporting requirements of 310 CMR 40.370 through 40.379.

40.326: Criteria for Determining the Characteristics of Hazardous Materials

In determining whether a substance should be identified as a hazardous material by characteristic, the Department shall first determine that the characteristic can be either:

- (1) measured by an available standardized test method which is within the capability of independent laboratories that are available to the public; or
- (2) reasonably detected by persons handling hazardous materials through their knowledge of those materials.

40.327: Characteristics of Hazardous Materials

310 OMR 40.327 describes the characteristics of materials which are hazardous materials but which may not be listed at 310 CMR 40.900. Any material that exhibits one or more of the following characteristics is subject to 310 CMR 40.000 unless it is specifically excluded from regulation thereunder.

(1) Ignitability

(a) A substance is a hazardous material if a representative sample exhibits any of the following properties:

1. It is a liquid and has a flash point of less than 60°C (approximately 140°F). However, an aqueous solution of ethyl alcohol which contains less than 24 percent alcohol by volume is not considered ignitable under 310 CMR 40.000; or
2. It is not a liquid and is capable under standard temperature and pressure of catching fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard; or
3. It is a compressed gas and ignitable; or
4. It is an oxidizer.

(b) The flash point of liquids shall be determined by any of the following methods:

1. A Pensky-Martens Closed Cup Tester, using the test method specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods";
2. A Setaflash Closed Cup Tester, using the test method specified at 310 CMR 30.152(1)(a); or
3. An equivalent test method approved by the Department.

(c) Compressed gas shall be characterized as ignitable if any of the following occurs when the gas is subjected to any of the following tests:

1. Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure using sampling methods and test procedures acceptable to the U.S. Bureau of Explosives.
2. Using the Flame Projection Apparatus of the U.S. Bureau of Explosives, the flame projects more than 18 inches beyond the ignition source with the valve opened fully, or the flame flashes back and burns at the valve with any degree of valve opening.
3. Using the Open Drum Apparatus of the U.S. Bureau of Explosives, there is any significant propagation of flame away from the ignition source.
4. Using the Closed Drum Apparatus of the U.S. Bureau of Explosives, there is any explosion of the vapor-air mixture in the drum.

(2) Corrosivity

(a) A material is a hazardous material if a representative sample exhibits any of the following properties:

1. It is aqueous and has a pH less than or equal to 2.0 or greater than or equal to 12.5.
2. It is a liquid and corrodes steel (Type SAE 1020) at a rate greater than 6.35 mm per year at a test temperature of 55°C.
3. It is a liquid or solid that causes visible destruction or irreversible alterations in mammalian skin tissue at the site of contact.

Outdated
- 1988 version -

40.327 continued

(b) pH shall be determined by a pH meter using either method 5.2 in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" or by an equivalent test method approved by the Department.

(c) The rate of corrosion of steel shall be determined by the test method specified by the National Association of Corrosion Engineers, standard TM-01-60, as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" or by an equivalent test method approved by the Administrator of EPA and by the Department.

(3) Reactivity. A material is a hazardous material if a representative sample exhibits any of the following properties:

(a) It is normally unstable and readily undergoes violent changes without detonating;

(b) It reacts violently with water;

(c) It forms potentially explosive mixtures with water;

(d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to public health, safety, or welfare, or to the environment;

(e) It is a cyanide or sulfide-bearing material which, when exposed to a pH of between 2.0 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to public health, safety, or welfare, or to the environment;

(f) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement;

(g) It is readily capable of detonation or explosive decomposition or reaction at a standard temperature and pressure; or

(h) It is a forbidden explosive, a Class A or Class B explosive, as defined in 49 CFR ss. 173.50, 173.53 and 173.88, respectively.

(4) Infectious Material. Infectious materials are those materials, which, because of their infectious characteristics may (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. Infectious materials include but are not limited to those infectious wastes described in 105 CMR 130.360.

(40.328 through 40.349: Reserved)

40.350: Reportable Quantities For Oil and Hazardous Materials

(1) The reportable quantities for the following substances are established in 310 CMR 40.351 and 40.352: (a) oils and hazardous materials that are listed at 310 CMR 40.900; and (b) hazardous materials that exhibit one or more of the characteristics set out at 310 CMR 40.327(1) through (4).

(2) All releases into the environment of the same oil or hazardous material from a single facility in a 24 hour period shall be aggregated to determine if a reportable quantity for the respective oil or hazardous material has been reached or exceeded.

40.351: Reportable Quantities for Oil

Releases or threats of release to the environment of oils that appear at 310 CMR 40.900 shall be reported to the Department, pursuant to 310 CMR 40.370 through 40.379, if the amount of the release or threat of release:

(a) is equal to or greater than the applicable reportable quantity listed at 310 CMR 40.900; or

(b) results in the appearance of a sheen as defined in 310 CMR 40.020.

40.352: Reportable Quantities for Hazardous Material

(1) Listed Hazardous Material

(a) Releases or threats of release to the environment of hazardous

40.352: continued

materials listed at 310 CMR 40.900 shall be reported to the Department, pursuant to 310 CMR 40.370 through 40.379, if the release or threat of release is equal to or greater than the reportable quantity specified for that substance at 310 CMR 40.900.

(b) Releases of waste oil that result in the appearance of a sheen as defined in 310 CMR 40.020 shall be reported to the Department, pursuant to 310 CMR 40.370 through 40.379.

(c) The applicable reportable quantity for a hazardous material that is listed at 310 CMR 40.900 and that also exhibits one or more of the characteristics described at 310 CMR 40.327(1) through (4) shall be the reportable quantity listed at 310 CMR 40.900 for that particular hazardous material.

(2) Unlisted Hazardous Materials Identified by Characteristic. Releases or threats of release of hazardous materials that are not listed at 310 CMR 40.900 but that exhibit one or more of the characteristics of ignitability, corrosivity or reactivity described at 310 CMR 40.327(1) through (3) or that are infectious material as described at 310 CMR 40.327(4) shall be reported to the Department, pursuant to 310 CMR 40.370 through 40.379, if the release or threat of release is equal to or greater than ten pounds.

(3) Unlisted Hazardous Materials which are Hazardous Wastes because they Exhibit Extraction Procedure Toxicity. Releases or threats of release of hazardous materials which are hazardous wastes as defined in M.G.L. c. 21C prior to their release because they exhibit the characteristic of extraction procedure toxicity, as described in 310 CMR 30.125, shall be reported to the Department, pursuant to 310 CMR 40.370 through 40.379, if the total quantity of material released or threatened to be released is equal to or greater than the reportable quantity specified at 310 CMR 40.900 for the component material on which the characteristics of extraction procedure is based. If a material which is a hazardous waste prior to its release exhibits extraction procedure toxicity on the basis of more than one of its component materials, the reportable quantity for the hazardous waste shall be the reportable quantity for that component material which has the lowest reportable quantity in 310 CMR 40.900.

(4) Mixtures

(a) When a mixture contains one or more component materials that are hazardous materials which appear at 310 CMR 40.900 or that exhibit one or more of the characteristics described at 310 CMR 40.327 (1) through (3), releases or threats of releases to the environment of the mixture shall be reported to the Department pursuant to 310 CMR 40.370 through 40.379, when any of the following conditions exists:

1. the concentrations of the component hazardous materials are known and the quantity of any of the component hazardous materials released or threatened to be released is equal to or greater than the reportable quantity for those component hazardous materials; or
2. the concentrations of the component hazardous materials are known and the quantity of any of the component hazardous materials released or threatened to be released does not exceed their respective reportable quantity but the total quantity of the mixture or solution released or threatened to be released is equal to or greater than 50 pounds; or
3. the concentrations of the component hazardous materials are not known, and the total quantity of the mixture released or threatened to be released is equal to or greater than the reportable quantity for that component hazardous material which has the lowest reportable quantity in 310 CMR 40.900 or the total quantity is equal to or greater than ten pounds, whichever is less.

(b) The reportable quantity for mixtures which are hazardous wastes as defined in M.G.L. c. 21C prior to their release because they exhibit the characteristic of extraction procedure toxicity, as described in 310 CMR 30.125, shall be determined according to 310 CMR 40.352(3).

40.352: continued

(5) Materials Containing Polychlorinated Biphenyls. Releases or threats of release to the environment of materials that contain polychlorinated biphenyls shall be reported to the Department pursuant to 310 CMR 40.370 through 40.379, if:

- (a) the concentration of polychlorinated biphenyls in a material is known to be less than 500 parts per million, and the release or threat of release of such material is equal to or greater than 10 gallons; or
- (b) the concentration of polychlorinated biphenyls in a material is either unknown or is equal to or greater than 500 parts per million, and the release or threat of release of such material is equal to or greater than one gallon; or
- (c) any amount of such material is released into:
 - 1. surface waters; or
 - 2. private or public water system drinking water sources; or
 - 3. animal grazing land, farmland, or vegetable gardens; or
- (d) any amount of such material is released and results in direct exposure to humans or personal property.

(40.353 through 40.369: Reserved)

40.370: Notification Requirements

40.371: Purpose and Scope

(1) 310 CMR 40.371 through 40.379, cited collectively as 40.370, describes the procedures for notifying the Department of releases or threats of release of those oils and hazardous materials which must be reported pursuant to 310 CMR 40.300.

40.372: Who Shall Report

(1) The following persons shall notify the Department in accordance with 310 CMR 40.373 of a release or threat of release of oil or hazardous material described in 310 CMR 40.374 or 40.375.

- (a) the owner or operator of a vessel or a site from or at which there is or has been a release or threat of release of oil or hazardous material;
- (b) any person who at the time of storage or disposal of any hazardous material owned or operated any site at or upon which such hazardous material was stored or disposed of and from which there is or has been a release or threat of release of hazardous material;
- (c) any person who by contract, agreement, or otherwise, directly or indirectly, arranged for the transport, disposal, storage or treatment of hazardous material to or in a site or vessel from or at which there is or has been a release or threat of release of hazardous material;
- (d) any person who, directly or indirectly, transported any hazardous material to transport, disposal, storage or treatment vessels or sites from or at which there is or has been a release or threat of release of such material;
- (e) any person who otherwise caused or is legally responsible for a release or threat of release of oil or hazardous material from a vessel or site; and
- (f) any other person required to notify the Department of a release or threat of release pursuant to M.G.L. c. 21E.

(2) It shall be the responsibility of an owner or operator of a site or vessel from which there is a possibility of a release or threat of release to determine if the substances contained at such site or vessel appear at 310 CMR 40.900 or exhibit any of the characteristics described at 310 CMR 40.327.

40.373: Timing of Notification

Notification to the Department shall be made as soon as possible but not more than two (2) hours after obtaining knowledge of a release or threat of release to the environment of any oil or hazardous material that is listed in 310 CMR 40.900 or identified by characteristic in 310 CMR 40.327 unless the person responsible for notifying persuades the Department that extenuating

40.373: continued

circumstances prevented such notification. Extenuating circumstances include but are not limited to (1) the lack of reasonably available communication equipment at the site of release; (2) the need to take actions prior to notification in order to mitigate an imminent threat; or (3) a physical injury caused by or associated with such release or threat of release to the person responsible for notifying when such injury reasonably prevents such person from notifying. Nothing in this provision shall be construed to prevent the person responsible for notifying from implementing a response action necessary to mitigate or prevent an imminent threat. Nothing in this provision shall be interpreted to permit an unreasonable delay of notification after obtaining knowledge of a release or threat of release of oil or hazardous material.

40.374: Releases Which Require Notification

The following releases require notification to the Department in accordance with 310 CMR 40.370:

- (1) A sudden, continuous or intermittent release to the environment of any hazardous material that is listed at 310 CMR 40.900 or that exhibits one or more of the characteristics described in 310 CMR 40.327 when such release is equal to or greater than the applicable reportable quantity specified at 310 CMR 40.352 and 40.900 and when it is likely that such release occurred within any period of 24 consecutive hours or less;
- (2) A sudden, continuous or intermittent release to the environment of any hazardous material that is listed at 310 CMR 40.900 or that exhibits one or more of the characteristics described in 310 CMR 40.327 that is of unknown quantity when there is a possibility that the quantity of such release is equal to or greater than the applicable reportable quantity specified at 310 CMR 40.352 and 40.900 and when it is likely that such release occurred within any period of 24 consecutive hours or less;
- (3) A sudden, continuous or intermittent release to the environment of any hazardous material that is listed in 310 CMR 40.900 or that exhibits one or more of the characteristics described in 310 CMR 40.327 and that constitutes an imminent hazard, irrespective of the quantity released or the time over which the release occurred;
- (4) A sudden, continuous or intermittent release to the environment of oil that is listed in 310 CMR 40.900 when such release is equal to or greater than the applicable reportable quantity specified at 310 CMR 40.351 and 310 CMR 40.900 and when it is likely that such release occurred within any period of 24 consecutive hours or less;
- (5) A sudden, continuous or intermittent release to the environment of oil that is listed in 310 CMR 40.900 which is of unknown quantity when there is a possibility that the quantity of such release is equal to or greater than the applicable reportable quantity specified at 310 CMR 40.351 and 40.900 and when it is likely that such release occurred within 24 consecutive hours or less;
- (6) A sudden, continuous or intermittent release to the environment of oil that is listed in 310 CMR 40.900 and which constitutes an imminent hazard, irrespective of the quantity released or the time over which the release occurred.

40.375: Threats of Release Which Require Notification

The following threats of release require notification to the Department in accordance with 310 CMR 40.370:

- (1) A threat of release to the environment of oil or hazardous material that is listed in 310 CMR 40.900 or that exhibits one or more of the characteristics described in 310 CMR 40.327 when it is likely to result in a release that is equal to or greater than the applicable reportable quantity specified at 310 CMR 40.351, 40.352 and 40.900.

40.375: continued

(2) A threat of release to the environment of an unknown quantity of oil or hazardous material that is listed in 310 CMR 40.900 or that exhibits one or more of the characteristics described in 310 CMR 40.327 when it is likely that the quantity of such release will be equal to or greater than the applicable reportable quantity specified at 310 CMR 40.351, 40.352 and 40.900; or

(3) A threat of release to the environment of oil or hazardous material that is listed in 310 CMR 40.900 or that exhibits one or more of the characteristics described in 310 CMR 40.327 which constitutes an imminent hazard, irrespective of the quantity likely to be released.

40.376: Notification of Results of Tests of Underground Storage Tanks

The Department shall be notified pursuant to 310 CMR 40.370 if a tank test, which is conducted in conformance with the methodology prescribed for that test establishes that:

(1) there is a leak equal to or greater than .05 gallons per hour in a single walled tank; or

(2) there is a leak equal to or greater than .05 gallons per hour in the inner wall of a double-walled tank; or

(3) there is a leak in the outer wall of a double-walled tank as established by the relevant parameters of that test.

40.377: How to Notify

Persons described in 310 CMR 40.372(l)(a) through (f) shall notify the Department of a release or threat of release of oil or hazardous material into the environment by calling a telephone number published by the Department and designated for this purpose and by providing the information specified at 310 CMR 40.378.

40.378: Content of the Notification

(1) Notification to the Department shall consist of the following information to the extent known to the person responsible for notifying:

- (a) the name and telephone number of the caller;
- (b) the location of the release or threat of release;
- (c) the date and time the release occurred;
- (d) the name of the oil or hazardous material released or threatened to be released;
- (e) the approximate quantity of the hazardous material or oil which has been released or of which there is a threat of release;
- (f) the source of the release or threat of release;
- (g) a brief description of the release or threat of release;
- (h) the name and telephone number of the owner/operator of the site or vessel where a release has occurred or a threat of release exists;
- (i) the name and telephone number of a contact person at the site or vessel where a release has occurred or a threat of release exists;
- (j) measures taken or proposed to be taken in response to the release or threat of release as of the time of the notification;
- (k) any other information, including but without limitation, potential environmental impacts, which is relevant to assessing the degree of hazard posed by the release or threat of release.

(2) Persons required to report releases or threats of release to the Department pursuant to 310 CMR 40.300 shall make reasonable efforts to obtain the information required by 40 CMR 40.378 and furnish it to the Department if such information is not known to that person at the time of the initial notification.

40.379: Written Notification

The Department may at its discretion require a follow-up written notification for a release or threat of release of any oil or material required to be reported pursuant to 310 CMR 40.300.

(40.380 through 40.399: Reserved)

SUBPART D: EMERGENCY RESPONSE ACTIONS: RESERVED

(310 CMR 40.400 through 40.499: Reserved)

Outdated
- 1988 version -

SUBPART E: REMEDIAL RESPONSE ACTIONS

40.500: Remedial Response Actions

310 CMR 40.500 through 40.599, cited collectively as 310 CMR 40.500, contain requirements and procedures for the performance of remedial response actions.

(40.501: Discovery of Locations to Be Investigated: Reserved)

(40.502-40.519: Reserved)

40.520: List of Locations and Disposal Sites

(1) The Department shall maintain and publish quarterly updates to the List of Locations and Disposal Sites. This List is comprised of:

- (a) The Locations To Be Investigated (LTBI) List which consists of locations which the Department considers reasonably likely to be disposal sites;
- (b) The Confirmed Disposal Sites List which consists of locations confirmed by the Department to be disposal sites and for which remedial response actions have not been completed;
- (c) The Remedial List which consists of disposal sites for which remedial response actions have been completed, and for which the Department has determined, based on information currently available, that no further remedial response actions are necessary;
- (d) The Deleted List which consists of LTBI's or disposal sites for which the Department has determined, based on information currently available that:
 1. pursuant to 310 CMR 40.541(4)(b), the LTBI's are not disposal sites and therefore no further remedial response actions are necessary; and
 2. pursuant to 310 CMR 40.543(3)(b) or 310 CMR 40.545(5)(c), the disposal sites do not currently require further remedial response actions; and

(e) Any other list the Department determines is appropriate.

(2) The fact that a location, site, or disposal site has not been placed on the LTBI List or the Confirmed Disposal Site List, or that it has been placed on the Deleted List or the Remedial List, shall not prevent the Department from taking or arranging for response or other actions at such locations, sites or disposal sites which are consistent with M.G.L. c. 21E, this Contingency Plan or any other law; or from taking any enforcement action pursuant to M.G.L. c. 21E or any other applicable law or regulation.

(3) For any location reported to the Department by a Massachusetts resident, the Department shall decide whether to list such location as an LTBI no later than one month after it was reported to the Department.

(4) The Department may hold confidential for up to 180 days all information regarding any LTBI if it is determined that public disclosure could interfere with enforcement actions; except that the Department shall publish the name of the community and the number of locations held confidential for each community.

(5) A location may be placed simultaneously on the LTBI List and any other list(s).

40.521: Screening Criteria For Locations To Be Investigated

(1) The Department shall determine that a location where an alleged or reported release of oil or hazardous material has occurred constitutes an LTBI if the location:

- (a) is or was a structure, well, pit, pond, lagoon, impoundment, ditch, land-fill, or is a location which has or had one or more of these, or is another place or area where uncontrolled oil or hazardous materials are alleged or reported to be located; and
- (b) is reasonably likely to be a disposal site.

Such determination shall be based upon the past and present uses of the property in question, the conditions reported, and any other information available to the Department.

(2) The Department shall determine that a location where an alleged or reported release of oil or hazardous material has occurred is not an LTBI if the location is not reasonably likely to be a disposal site, or the location contains or consists solely of one or more of the following:

- (a) lead-based paint emanating from a point of original application;
- (b) an oil or hazardous material which resulted from emissions from the exhaust of an engine used to power a vehicle of conveyance;
- (c) building materials still serving their original intended use or emanating from such use;
- (d) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in 42 U.S.C. s. 2044, if such a release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. s. 2210; or
- (e) the ambient air or surface water of the Commonwealth.

40.522: Placement of a Location on the LTBI List

(1) The Department shall list a minimum of one thousand locations on the LTBI List each calendar year to the extent the Department has identified or has had reported to it such locations.

(2) If more than one thousand LTBI's are available for listing, the Department shall list at least one thousand LTBI's each calendar year and may place in reserve the remaining LTBI's for listing at a later date. In determining which LTBI's shall be placed in reserve, the Department shall evaluate the LTBI's and place those LTBI's with a lower likelihood of being a disposal site, or a lower potential seriousness in reserve.

(3) In evaluating the potential seriousness posed by a location, the Department shall consider, but not be limited to, available information, its quality and completeness, and the following factors:

- (a) the type and quantity of the oil or hazardous material alleged or reported to be released;
- (b) the potential hazard posed by the oil or hazardous material alleged or reported to be released;
- (c) the potential receptors (animal or human populations) in the vicinity and the likelihood and the potential degree of exposure to oil or hazardous material through direct contact, drinking water, air, or the food chain;
- (d) the degree of threat of fire or explosion; and
- (e) the likelihood and degree of potential effects on the environment posed by conditions at the location.

(40.523-40.529: Reserved)

40.530: General Provisions for Remedial Response Actions40.531: Minimum Requirements

(1) This Contingency Plan sets forth certain activities which shall be performed and requirements which shall be met at all LTBI's and disposal sites regardless of whether the Department, PRPs, or other persons are

40.531: continued

performing the remedial response actions. The Department retains the authority to impose additional requirements which are consistent with, or necessary to further the purposes of, M.G.L. c. 21E or this Contingency Plan.

(2) The Department may waive certain requirements at LTBI or disposal sites where remedial activities have already been performed pursuant to other environmental laws or programs if the Department determines that such activities are consistent with the requirements set forth in M.G.L. c. 21E and this Contingency Plan.

40.532: Phases of Remedial Response Actions

Remedial response actions are performed in phases, the sequence of which is intended to ensure the comprehensive assessment of the nature, extent, and risk of harm posed by an LTBI or disposal site. The phases of a remedial response action occur in the following sequence:

- (1) Preliminary Assessment;
- (2) Phase I - Limited Site Investigation, including disposal site classification;
- (3) Phase II - Comprehensive Site Assessment;
- (4) Phase III - Development of Remedial Response Alternatives and the Final Remedial Response Plan;
- (5) Phase IV - Implementation of the Approved Remedial Response Alternative; and
- (6) Phase V: (Reserved)

40.533: Assessment of Hazard

The types of hazards that are identified at LTBI or disposal sites shall determine the type and timing of the remedial response action.

- (1) If an imminent hazard is identified at an LTBI or disposal site, a Short Term Measure as set forth at 310 CMR 40.542 shall be performed immediately.
- (2) If a disposal site would pose a significant or otherwise unacceptable risk of harm to health, safety, public welfare, or the environment if it continued to be present for several years, the disposal site is a priority disposal site for which a temporary or permanent solution shall be implemented as set forth in 310 CMR 40.534(2).
- (3) If a disposal site would pose a significant or otherwise unacceptable risk of harm to health, safety, public welfare or the environment during any foreseeable period of time, and it is not a priority site, the disposal site is a non-priority disposal site for which a Final Remedial Response Plan shall be prepared as set forth in 310 CMR 40.534(3).

40.534: Statutory Deadlines for Remedial Response Actions

- (1) A Preliminary Assessment shall be completed on an LTBI or disposal site within one year of its initial listing. A Phase I - Limited Site Investigation shall be completed on an LTBI or disposal site within two years of its initial listing.
- (2) For a disposal site determined by the Department to be a priority disposal site pursuant to 310 CMR 40.544, a permanent or a temporary solution shall be implemented within four years of initial listing as an LTBI or within three years if it was first listed as a confirmed disposal site on January 15, 1987. A permanent solution shall be implemented within such time periods if feasible and more cost effective than phased implementation of a temporary and permanent solution. If a permanent solution is not implemented, a temporary solution and a Final Remedial Response Plan shall be completed within such time periods.

40.534: continued

(3) For a disposal site determined by the Department to be a non-priority disposal site, a Final Remedial Response Plan shall be completed within seven years of initial listing as an LTBI.

(4) The Department may extend any deadline for the completion of a temporary solution at a priority disposal site for up to one year if conditions peculiar to the disposal site substantially impede compliance with the deadline or if the Department reasonably anticipates that federal monies will be made available.

(5) The Department may establish and implement interim deadlines for each disposal site which are consistent with M.G.L. c. 21E and 310 CMR 40.000 including, but not limited to, deadlines for compliance with orders or determinations and for the termination of settlement discussions.

40.535: Submittals Necessary for Remedial Response Actions

(1) In order to assure that remedial response actions conducted by PRPs or other persons are consistent with this Contingency Plan, submission to the Department of the following documents is required:

- (a) Preliminary Assessment Form as described in 310 CMR 40.541;
- (b) Phase I - Limited Site Investigation Report as described in 310 CMR 40.543;
- (c) Scope of Work for the Phase II - Comprehensive Site Assessment as described in 310 CMR 40.545;
- (d) Phase II - Comprehensive Site Assessment Report as described in 310 CMR 40.545;
- (e) Phase III - Final Remedial Response Plan as described in 310 CMR 40.546;
- (f) Phase IV - Remedial Response Implementation Plan as described in 310 CMR 40.547;
- (g) Phase IV - Final Inspection Report as described in 310 CMR 40.547; and
- (h) Short Term Measure documentation and evaluation as set forth in 310 CMR 40.542.

(2) The above submissions represent minimum requirements. The Department may require additional submissions based upon specific conditions at a disposal site.

40.536: Approvals Necessary For Remedial Response Actions

(1) Except as set forth in 310 CMR 40.536(1)(c) or 40.537, approval of the following shall be obtained in writing from the Department by the PRP or other person prior to initiation of the next phase of the remedial response action:

- (a) disposal site classification determination pursuant to 310 CMR 40.544;
- (b) scope of work for Phase II - Comprehensive Site Assessment as described in 310 CMR 40.545;
- (c) Phase II - Comprehensive Site Assessment Report as described in 310 CMR 40.545. If approved by the Department in the Phase II scope of work, the Phase II Report may be submitted for approval by the Department concurrently with the Phase III - Final Remedial Response Plan;
- (d) Phase III - Final Remedial Response Plan as described in 310 CMR 40.546;
- (e) Phase IV - Remedial Response Implementation Plan as described in 310 CMR 40.547; and
- (f) Final Inspection Report as described in 310 CMR 40.547(2)(f).

(2) Approval of proposed Short Term Measures is required prior to implementation, to the degree and extent set forth at 310 CMR 40.542.

(3) If at any time a PRP or other person concludes that no further remedial response action is required at an LTBI or disposal site, such conclusion shall not become effective unless and until it is approved in writing by the Department.

(4) The above approvals represent minimum requirements. The Department may require additional approvals based upon specific conditions at a disposal site.

Outdated
- 1988 version -

40.537: Waiver of Approvals for Non-Priority Disposal Sites

- (1) A PRP or other person ("the applicant") may apply to the Department for waiver of the approval requirements set forth in 310 CMR 40.536. Such waiver may be granted only for disposal sites which have been classified by the Department as non-priority disposal sites pursuant to 310 CMR 40.544.
- (2) An application for waiver pursuant to 310 CMR 40.537 shall be:
 - (a) submitted on a form prescribed by the Department; and
 - (b) accompanied by a payment of \$1,550.00 (fifteen hundred and fifty dollars). Said payment shall be refunded only if: (1) the Department determines that the disposal site for which application has been made is a priority disposal site or (2) an application is returned to the applicant is incomplete..
- (3) Upon submission of a final inspection report, and the payment of all costs as set forth at 310 CMR 40.602(3), the Department shall determine that:
 - (a) complete the remedial response action in accordance with all applicable requirements of this Contingency Plan, including the deadlines set forth in 310 CMR 40.534;
 - (b) provide notice to the public in accordance with 310 CMR 40.202(4). A copy of such notice shall be sent simultaneously to the Department;
 - (c) perform public involvement activities as specified by the Department in the Public Involvement Plan, if applicable;
 - (d) prepare and distribute notices in accordance with 310 CMR 40.545(6)(a), 40.546(7)(a), and 40.547(4)(a). The applicant shall distribute the required notifications promptly upon completion of each remedial response phase, respectively, and shall provide the Department with a copy of each notification simultaneous to distribution;
 - (e) ensure that the remedial response action is performed and supervised by persons who are competent and expert in a field of oil and hazardous material remedial response action;
 - (f) obtain all necessary federal, state or local permits, licenses or approvals and any necessary agreements;
 - (g) submit to the Department all documents required pursuant to 310 CMR 40.536 promptly upon completion;
 - (h) notify the Department immediately if any information becomes available which indicates either that the original classification of the disposal site as a non-priority disposal site pursuant to 310 CMR 40.544 should be revised, or that an imminent hazard requiring a Short Term Measure pursuant to 310 CMR 40.542 exists; and
 - (i) make any payments required by this Contingency Plan.
- (4) The following documents shall be submitted with an application for waiver if the disposal site has not been classified previously as a non-priority disposal site pursuant to 310 CMR 40.544:
 - (a) a Preliminary Assessment Form in accordance with 310 CMR 40.541;
 - (b) a Phase I - Limited Site Investigation Report in accordance with 310 CMR 40.543; and
 - (c) a justification for classifying the disposal site as a non-priority disposal site.
- (5) Upon receipt of a complete application for waiver, the Department shall consider the following factors and shall approve or deny the application:
 - (a) the type, complexity and extent of the release of oil or hazardous material at or from the disposal site;
 - (b) the potential routes and magnitude of exposure of human or environmental receptors to oil or hazardous material at or from the disposal site;
 - (c) the likely type, complexity and approximate cost of the remedial response alternatives available to address conditions at the disposal site;
 - (d) the designation of the disposal site as a Public Involvement Plan Site pursuant to 310 CMR 40.203;
 - (e) the award of a Technical Assistance Grant pursuant to 310 CMR 40.700; and
 - (f) any other factors that are specific to the disposal site and which the Department determines to be relevant.

40.537: continued

An application shall be considered complete if all information and signatures requested on the application have been provided and if all necessary attachments have been submitted, regardless of the adequacy thereof.

(6) The Department may request additional information from the applicant.

(7) The Department may impose additional conditions on the applicant consistent with this Contingency Plan as it deems necessary. Such conditions may include, but shall not be limited to, the requirements set forth in 310 CMR 40.170.

(8) An application for waiver shall be approved, with or without additional conditions, or denied by the Department and returned to the applicant. Once an approved application is counter-signed by the applicant and the counter-signed approved application has been returned to the Department, remedial response actions may commence and shall be performed in accordance with the terms and conditions of the approved application.

(9) An approved application shall not be transferred or reassigned.

(10) If warranted by information which becomes available or circumstances which arise after the application has been approved, the Department may withdraw or impose any additional conditions on the approval consistent with this Contingency Plan. Such circumstances may include but shall not be limited to the designation of the disposal site as a PIP site pursuant to 310 CMR 40.203.

(11) Upon completion of a remedial response action performed pursuant to 310 CMR 40.537, the applicant shall submit to the Department a statement that the remedial response action has been completed in accordance with the approved application and is consistent with M.G.L. c. 21E and this Contingency Plan. The statement shall also include an opinion as to whether the remedial response alternative constitutes a permanent solution. The statement shall be signed by the applicant and the applicant's remedial response action consultant(s).

(12) The Department shall provide the applicant with a receipt for the completed statements submitted pursuant to 310 CMR 40.537(11).

(13) The Department's acknowledgement pursuant to 310 CMR 40.537(12) shall not prevent the Department from taking or arranging for response actions at the disposal site consistent with M.G.L. c. 21E and this Contingency Plan.

(14) A violation of the terms of an accepted application under 310 CMR 40.537 shall constitute a violation of this Contingency Plan.

(40.538 and 40.539: Reserved)

40.540: Phases of Remedial Response Actions

Outdated
- 1988 version -

40.541: Preliminary Assessment(1) Purpose and Scope

- (a) A Preliminary Assessment is an initial evaluation to determine whether or not a location is a disposal site, whether a Short Term Measure is necessary, and whether further remedial response action is necessary.
- (b) Any person who performs a Preliminary Assessment or completes a Preliminary Assessment Form shall do so in accordance with all applicable requirements and deadlines prescribed in 310 CMR 40.000.
- (c) The Preliminary Assessment includes researching and assembling existing data and conducting at least one reconnaissance visit. This information shall be compiled on a Preliminary Assessment Form or in another manner prescribed by the Department.

(2) Activities. Preparation of the Preliminary Assessment Form shall include, without limitation, the following:

- (a) obtaining physical and historical information about the location;
- (b) identifying the location on maps; the Universal Transverse Mercator (UTM) coordinates and latitude and longitude shall be included;
- (c) performing a file search to review local, state, and federal records (e.g., permits, past environmental violations and complaints);
- (d) identifying oil and hazardous materials used, treated, stored, or disposed of at the location;
- (e) identifying potential human and environmental receptors; and
- (f) summarizing environmental monitoring data for the location.

(3) Additional Activities. The Department may determine that additional activities are necessary for completion of the Preliminary Assessment. These activities may include, but are not limited to:

- (a) consulting with community officials and residents; and
- (b) performing initial sampling and analysis and field screening.

(4) Possible Outcomes. After reviewing the Preliminary Assessment Form and any other information currently available, the Department shall determine that:

- (a) the location is not a disposal site; or
- (b) the location is a disposal site for which no further remedial response action is necessary; or
- (c) the location is a disposal site and further remedial response action is necessary; or
- (d) it is unclear whether the location is a disposal site, and therefore further remedial response action is necessary.

(5) Public Involvement. The determination as to whether or not an LTBI is a disposal site shall be documented to the public in the quarterly List of Locations and Disposal Sites.40.542: Short Term Measures(1) Purpose and Scope

- (a) Short Term Measures shall be taken to abate, prevent, or eliminate imminent hazards due to a release or threat of release of oil or hazardous material, the continued or future migration of oil or hazardous material, the potential for fire or explosion, or direct contact with oil or hazardous materials at an LTBI or a disposal site.
- (b) Any person who performs a Short Term Measure shall do so in accordance with all applicable requirements and deadlines prescribed in 310 CMR 40.000.
- (c) Short Term Measures shall contain, isolate, remove, or secure a release of oil or hazardous material and thereby abate, prevent, or eliminate an imminent hazard until such time as conditions at the LTBI or disposal site can be addressed through further remedial response actions. Whenever a Short Term Measure is implemented, the disposal site shall continue to be evaluated through the remaining phases of the remedial response action.
- (d) The need for performing Short Term Measures shall be continually evaluated throughout the remedial response action and undertaken immediately whenever an imminent hazard is discovered.

40.542: continued

(2) Identification of Imminent Hazard. The following factors shall be considered in identifying an imminent hazard and in determining the need for and extent of a Short Term Measure:

- (a) existing or potential exposure of nearby human, plant, and animal populations to releases of oil or hazardous materials;
- (b) existing or potential contamination of drinking water supplies or environmentally sensitive areas by oil or hazardous materials;
- (c) the presence and levels of oil or hazardous materials in soils at or near the surface;
- (d) weather conditions that could cause or contribute to the migration of oil or hazardous materials;
- (e) threat of fire or explosion;
- (f) the continued or future migration of oil or hazardous material; and
- (g) any other site-specific factors which the Department determines may constitute an imminent hazard.

(3) Notification of Imminent Hazards and Implementation of Short Term Measures

- (a) If a PRP or other person identifies an imminent hazard at an LTBI or disposal site, he shall notify the Department immediately. Department approval is required prior to implementation of a Short Term Measure. The Short Term Measure shall be implemented in accordance with the terms and conditions of such approval.
- (b) The PRP or other person shall provide the Department with documentation regarding the nature of the imminent hazard, a description of the proposed Short Term Measure, the potential on-site and off-site impacts, and proposed monitoring during and after implementation. The timing and process for submittal and approval of such documentation shall be determined by the Department at the time of notification.
- (c) The PRP or other person shall immediately ensure the elimination or prevention of an imminent hazard by conducting a Short Term Measure. The action chosen shall be designed to facilitate future remedial response actions and shall comply with all existing local, state and federal permitting and approval requirements.
- (d) A Health and Safety Plan shall be prepared or revised and implemented for all on-site personnel involved in the implementation of a Short Term Measure.
- (e) In the event that the PRP or other person fails to act in a timely manner, the Department shall implement an appropriate Short Term Measure.

(4) Selection of Short Term Measure. Short Term Measures may include, and shall not be limited to, the following:

- (a) fences, warning signs (multilingual and symbolic, if appropriate), or other security or site control precautions;
- (b) drainage controls;
- (c) construction or stabilization of berms, dikes, or impoundments;
- (d) temporary covering or capping of contaminated soils or sludges;
- (e) installation of waste or product recovery and groundwater treatment systems;
- (f) removal of contaminated soils;
- (g) removal of the contents of or removal of drums, barrels, tanks or other bulk containers which contain or may contain oil or hazardous materials;
- (h) temporary evacuation of the area or relocation of residents;
- (i) provision of temporary alternative water supplies; and
- (j) any other action that is consistent with the purpose and scope of a Short Term Measure.

(5) Monitoring and Evaluation at Completion. Monitoring and evaluation of the effectiveness of the Short Term Measure in abating, preventing, or eliminating imminent hazards shall be performed and submitted to the Department if the Department determines such monitoring and evaluation are necessary.

40.542: continued

(6) Public Involvement

(a) Minimum Activities In Remedial Response Actions. Prior to implementation of a Short Term Measure, the Board of Health, the Chief Municipal Officer, and when public safety is involved, the Fire Chief and Police Chief, shall be notified about the purpose, nature and expected duration of the Short Term Measure. The public shall be notified in advance of field work requiring the use of heavy construction equipment or protective clothing (Level A or B as defined by "Standard Operating Safety Guides" published by the U.S. Environmental Protection Agency). Provision of advance notification may be waived by the Department only in cases where such notice would delay the timely implementation of the Short Term Measure.

(b) Minimum Activities for Public Involvement Plan Sites. For Public Involvement Plan Sites, a Public Involvement Plan which is consistent with 310 CMR 40.203 shall be implemented.

40.543: Phase I - Limited Site Investigation(1) Purpose and Scope

(a) A Phase I - Limited Site Investigation and Report shall confirm whether or not the location is a disposal site, if this was not established in the Preliminary Assessment. The Phase I Report shall also provide information necessary for the Department to classify a disposal site pursuant to 310 CMR 40.544.

(b) A Phase I - Limited Site Investigation is not intended to provide a comprehensive investigation of conditions at a location. A Limited Site Investigation shall build upon the information assembled in the Preliminary Assessment and provide the necessary information to develop a Phase II scope of work.

(c) The level of detail in Phase I - Limited Site Investigation activities and Phase I Report shall reflect the nature and complexity of the location or disposal site being investigated.

(d) Any person who performs a Phase I - Limited Site Investigation and prepares a Phase I Report shall do so in accordance with all applicable requirements and deadlines prescribed in 310 CMR 40.000.

(2) Activities. A Phase I - Limited Site Investigation shall include development of the following, which shall be described in a Phase I Report:

(a) Location History. The location history shall include, and shall not be limited to:

1. a list of past and present owners and operators of the location and of other potentially responsible parties;
2. a description of past and present uses of the location, including commercial activities and industrial or manufacturing processes;
3. a description of types (including generic names, chemical names, and trade names, if available) and quantities of oil or hazardous materials used, treated, stored, disposed, or generated through past and present uses of the location;
4. a history of all disposal methods for oil or hazardous materials at the location, including an identification of disposal areas and types and quantities of material disposed;
5. locations of wells, septic systems, piping, storage tanks, outdoor storage areas, or other places where oil or hazardous materials were used, stored, treated, or disposed; and
6. a summary of all releases of oil or hazardous material; fires and explosions which have occurred at the location; environmental licenses, permits and approvals issued for activities at the location; and all environmental enforcement actions by federal, state or local agencies.

(b) Location Description. The location description shall include, and shall not be limited to:

1. geographical placement of the location, including the locus on a United States Geological Survey map; the Universal Transverse Mercator (UTM) coordinates and latitude and longitude shall also be included;
2. a representation of the location through copies of plot-plans, topographic maps, aerial photos, or property photos;

40.543: continued

3. a characterization of the geologic, hydrologic, and hydrogeologic conditions at and surrounding the location using existing information;
4. a description of present conditions at the location including, but not limited to:

- a. evidence of a release, including identification of areas, if any, of uncontained, migrating or free-floating oil or hazardous materials in groundwater;
- b. overt evidence of environmental damage; and
- c. overt evidence of filling or excavating.

5. the placement of utility lines at and nearby the location including: municipal water supply lines, private water supply lines, sewer lines, and other subsurface utilities; and

6. initial identification and characterization of potential migration pathways, receptors and exposure points including, but not limited to:

- a. the identification of Zone IIs, public water supply wells, or private water supply wells nearby the location;
- b. a characterization of the potential for direct human contact with oil or hazardous materials at or from the location;
- c. a characterization of the past and present land use nearby the location;
- d. the identification of nearby surface waters that are public recreation areas, are upstream of a potable water supply intake, or are upstream of the recharge area for public or private water supply wells;
- e. the identification of any food chain exposure pathways; and
- f. the identification of nearby environmentally sensitive areas (e.g., terrestrial or aquatic habitats, marine sanctuaries, wetlands, tidal areas, wilderness areas and areas subject to flooding).

(c) Initial Location Sampling and Screening

1. The initial field investigation and observations shall be designed to:
 - a. enable the Department to determine whether the location is a disposal site and whether it is a priority or non-priority disposal site;
 - b. identify the types and quantities of oil or hazardous materials present at the location; and
 - c. characterize the pathways and extent of migration of oil or hazardous material at or from the location.
2. Techniques which may be used in a Phase I field investigation include but are not limited to:
 - a. field screening (e.g., using portable instrumentation);
 - b. field sampling of various media and subsequent laboratory analysis; and
 - c. geophysical investigations.
3. All quality assurance/quality control procedures employed in field investigations shall be documented.

- (d) Site Health and Safety Plan. A site health and safety plan shall be prepared or revised and implemented for all on-site personnel involved in the Phase I - Limited Site Investigation.

- (e) Short Term Measures. The Phase I - Limited Site Investigation shall include an evaluation to determine the existence of an imminent hazard and the need for Short Term Measures as described in 310 CMR 40.542.

- (3) Possible Outcomes. After reviewing the Phase I Report and any other information currently available, the Department shall make one of the following determinations:

- (a) the location is not a disposal site; or
- (b) the location is a disposal site for which no further remedial response action is necessary; or
- (c) the location is a disposal site and further remedial response action is necessary.

(4) Public Involvement

- (a) Minimum Activities in Remedial Response. Actions At the end of a Phase I - Limited Site Investigation, the following actions shall be taken to inform the public about the status and outcome of the investigation:

40.543: continued

1. within thirty days of the completion of the Phase I Report and disposal site classification, a notice that has been approved by the Department shall be published in newspapers which circulate in communities potentially affected by oil or hazardous material from the location. The notice shall summarize the results of the investigation; and shall state whether or not the location is a disposal site. If the location is a disposal site, the notice shall also include a statement as to whether the disposal site is a priority disposal site or a non-priority disposal site and a description of how the public can indicate its interest in participating in planning for remedial response action(s) and obtain additional information;

2. within thirty days of the completion of a Phase I - Limited Site Investigation and disposal site classification, a press release that has been approved by the Department shall be provided to newspapers which circulate in communities potentially affected by oil or hazardous material from the location. The press release shall contain the same information as the notice described in 310 CMR 40.543(4)(a)1; and

3. at least three days prior to publication of the notice and press release, a copy of the notice, the press release, and any Notices of Responsibility shall be sent to the Chief Municipal Officer and the Board of Health in the affected community(ies).

(b) Minimum Activities For Public Involvement Plan Sites. For Public Involvement Plan Sites, a Public Involvement Plan which is consistent with 310 CMR 40.203 shall be implemented.

(c) Compliance with MEPA. For all locations classified as priority disposal sites, a notice shall be placed in the Environmental Monitor which contains the information described in 310 CMR 40.543(4)(a)1. This notice shall also describe methods by which the public can submit information or comments on the Phase I Report and disposal site classification, and shall establish a specific time period within which such information or comments shall be submitted to the Department. Responses to comments or information submitted in response to such notices shall be made available to the public. A mailing list shall be established for any priority disposal site for which members of the public ask to be informed of subsequent phases of the remedial response action.

40.544: Interim Disposal Site Classification System

(1) Purpose and Scope. The Interim Disposal Site Classification System shall be used by the Department to determine whether a disposal site is a priority disposal site or a nonpriority disposal site. Classification shall be based on information provided on the Preliminary Assessment Form, in the Phase I Report, and other information which may be available to the Department.

(2) Activities. Unless the Department is persuaded otherwise, a disposal site shall be classified by the Department as a priority disposal site if it currently meets or may meet within several years one or more of the following criteria:

(a) there is or could be physical access to the disposal site that provides the opportunity for direct contact with hazardous materials via surface contamination, open lagoons, drum storage areas, sludges or other conditions present at the disposal site;

(b) there is uncontained, migrating and free-floating oil or hazardous materials in groundwater or surface water at the disposal site;

(c) there is evidence of groundwater contamination with oil or hazardous materials at or from the disposal site at levels exceeding state or federal drinking water standards or guidelines (or detectable levels of contaminants for which there are no state or federal standards or guidelines) and the evidence of groundwater contamination is:

1. within an Interim Zone II or Zone III;
2. found in or is likely to be found in private water supply well(s); or
3. found in or is likely to be found in areas of planned or potential water supplies.

A disposal site which meets any of the above criteria shall be considered a priority disposal site unless the Department is persuaded that one or more

40.544: continued

of the following circumstances exists: there is no hydrogeologic connection between the groundwater containing oil or hazardous materials and the water supply; the concentrations of oil or hazardous materials for which there are no drinking water standards or guidelines will not be harmful to those drinking the water; or the oil or hazardous materials have not and will not migrate to the public or private water supply well(s);

(d) there is evidence of a release of oil or hazardous materials from the disposal site into surface water that is upstream of a public water supply intake structure, or upgradient of a wellhead protection area or public well recharge area. A disposal site which meets one of these criteria shall be considered a priority disposal site unless the Department is persuaded that one or more of the following circumstances exists:

1. there is no hydrogeologic connection between the release of oil or hazardous materials and the well(s);
2. where a hydrogeologic connection does exist, concentrations at the well are not likely to exceed state or federal drinking water standards or guidelines;
3. the release of oil or hazardous materials has not reached and is not likely to reach the surface water supply intake at concentrations exceeding state or federal drinking water standards or guidelines; or
4. concentrations of oil or hazardous materials for which there are no drinking water standards or guidelines will not pose a risk of harm to those drinking the water if such oil or hazardous material is found or likely to be found at either the surface water supply intake structure, the wellhead protection area, or the recharge area of a public water supply well(s);

(e) there is evidence of a release of oil or hazardous materials from the disposal site to surface water or groundwater that has resulted, or is likely to; result in, surface water concentrations which exceed ambient water quality criteria for the protection of aquatic life or human health. Such surface water may be public recreation areas or sensitive environmental areas, including but not limited to, marine sanctuaries, wild and scenic rivers, tidal areas, farmland and wilderness areas;

(f) there is a threat of fire or explosion posed by the disposal site;

(g) there are or are likely to be air emissions from oil or hazardous materials at the disposal site which are likely to adversely impact human or environmental receptors, as established by state or federal standards or guidelines;

(h) there is a release of oil or hazardous material at or from the disposal site which adversely affects or is likely to adversely affect the human food chain; or

(i) there is any other information available to the Department that indicates that the disposal site poses or is likely to pose a substantial hazard.

(3) Possible Outcomes. After reviewing the Preliminary Assessment Form, the Phase I report, and any other information currently available, the Department shall determine that:

- (a) the disposal site is a priority disposal site;
- (b) the disposal site is a non-priority disposal site; or
- (c) further information is necessary in order to classify the disposal site and therefore additional Phase I work is necessary.

40.545: Phase II - Comprehensive Site Assessment

(1) Purpose and Scope

(a) Phase II consists of scope of work development, site assessment activities, and Phase II Report preparation. The Phase II - Comprehensive Site Assessment is a systematic investigation and assessment of the entire disposal site which shall characterize the type and quantity of oil or hazardous materials released at or from the disposal site. Phase II shall also characterize and evaluate the risk of harm that the disposal site poses to health, safety, public welfare, and the environment. The Phase II - Comprehensive Site Assessment is intended to provide data necessary to develop remedial response alternatives as required in 310 CMR 40.546.

40.545: continued

(b) A scope of work for a Phase II - Comprehensive Site Assessment shall be prepared for all disposal sites. The investigation and assessment shall be conducted according to the scope of work, and the methods and results shall be documented in a Phase II Report.

(c) The level of detail in Phase II - Comprehensive Site Assessment activities and a Phase II Report shall reflect the nature and complexity of the disposal site being investigated.

(d) Any person who performs Phase II - Comprehensive Site Assessment or prepares a Phase II Report shall do so in accordance with all applicable requirements and deadlines prescribed in 310 CMR 40.000.

(2) Phase II Scope of Work. The Phase II scope of work shall be based upon the results of the Preliminary Assessment and Phase I Report and any other available information. The Phase II scope of work may be revised as specific information becomes known about a disposal site. Such revisions shall be documented in the Phase II Report. The Phase II scope of work shall include, and shall not be limited to:

(a) a plan to fill in data gaps identified in Phase I and to perform the activities identified in 310 CMR 40.545(3);

(c) a schedule for implementation of the Phase II - Comprehensive Site Assessment;

(d) a sampling plan for all media, and analytical protocols. If certain media are not included in the sampling plan, justification shall be provided for their exclusion;

(e) a quality assurance/quality control plan; and

(f) a health and safety plan, including measures to safeguard nearby residents.

(3) Phase II Activities. The following activities shall be performed in Phase II unless justification has been provided for their exclusion in the approved Phase II scope of work:

(a) Investigation of Physical Site Characteristics. Data shall be collected that describe and define the topography, geology, hydrogeology, and surface characteristics of the disposal site. The data shall be provided in maps or graphic form as appropriate. The following activities shall be conducted at and near the disposal site, and shall not be limited to:

1. preparation of site and locus maps including locations of all buildings and other pertinent features. The scale used, property boundaries, and geographical coordinates (Universal Transverse Mercator (UTM) and latitude and longitude) shall also be included;

2. characterization of the topography, surface drainage and vegetation;

3. identification and characterization of surface water locations;

4. characterization of the flooding potential;

5. identification and characterization of wetlands and critical habitats;

6. characterization of the types of overburden materials and thickness, as well as soil classification and permeability;

7. characterization of the types of bedrock and depths to bedrock;

8. characterization of water table elevations, horizontal and vertical variations in piezometric elevations where necessary, hydraulic gradients, ground water flow direction and flow rate;

9. identification of existing and reasonably foreseeable land uses;

10. characterization of all relevant meteorological and ambient air dispersion parameters;

11. identification and characterization of all other pertinent physical site characteristics such as buried utility lines, sewers and water mains; and

12. any other information necessary for the completion of Phase II.

(b) Identification of Source and Extent of Release. At a minimum, each area of release of oil or hazardous material at or from the disposal site identified in either a Phase I Report or through a systematic search of the disposal site shall be investigated to establish:

1. the source(s) of all releases of oil or hazardous materials;

2. the horizontal and vertical extent and concentrations of oil or hazardous materials in all media;

3. the estimated volume of contaminated soil and water or other material;

40.545: continued

4. all existing or potential migration pathways, including potential soil, groundwater, surface water, air, and food chain pathways;
 5. the existence of plume(s) of oil or hazardous materials in the groundwater and the potential migration of the plume; and
 6. the magnitude of existing and potential air emissions (both vapors and particulates) from the disposal site.
- (c) Characterization of Oil or Hazardous Materials. In order to characterize the oil or hazardous material released at or from the disposal site, the following shall be described:
1. the type, volume, composition, nature, physical and chemical characteristics of the released oil or hazardous materials; and
 2. the environmental fate and transport characteristics of the oil or hazardous materials (e.g., mobility, stability, volatility, ability and opportunity for bioaccumulation, and persistence).
- (d) Identification of Exposure Points and Determination of Exposure Point Concentrations. Exposure of human and environmental receptors to oil and hazardous materials at or from the disposal site shall be identified and quantified as follows. The current and reasonably foreseeable uses of the disposal site and the surrounding environment shall be considered in identifying and quantifying the exposure points and the concentrations.
1. Identify human and environmental receptors who are or who are likely to be exposed currently, or who it is reasonable to foresee are likely to be exposed in the future, to oil or hazardous materials at or from the disposal site;
 2. Identify all exposure points for the human and environmental receptors identified pursuant to 310 CMR 40.545(3)(d)1.;
 3. For the exposure points identified pursuant to 310 CMR 40.545(3)(d)2., identify routes of exposure; and
 4. Determine, if possible, or estimate current and reasonably foreseeable exposure point concentrations for each oil and hazardous material at each exposure point for each route of exposure.
- (e) Identification of Background Levels of Oil or Hazardous Materials. The level of oil or hazardous material in the environment that would exist in the absence of the disposal site shall be identified.
- (f) The results of the Phase II - Comprehensive Site Assessment shall be provided on maps showing, to the the extent possible, the interrelationships of the following:
1. all physical site characteristics;
 2. all identified sources of releases of oil or hazardous materials;
 3. the extent and concentration of existing releases of oil or hazardous material in all media;
 4. the projected future migration of oil or hazardous material; and
 5. any other information relevant to the Phase II - Comprehensive Site Assessment.
- (g) Characterization of Risk of Harm to Human Health. Based on the information collected pursuant to 310 CMR 40.545(3)(a) through (f), the risk of harm to human health posed by the disposal site shall be characterized based on the current and reasonably foreseeable uses of the disposal site and the surrounding environment, as follows:
1. If there is an applicable or suitably analogous standard, excluding those specific sets of clean-up levels set forth in 310 CMR 40.800, for each oil and hazardous material at each current and reasonably foreseeable exposure point, the risk of harm to health shall be characterized by comparing current and reasonably foreseeable exposure point concentrations to the applicable or suitably analogous standards. Whether a standard is applicable or suitably analogous shall be determined by the Department on a case-by-case basis when the Department determines whether or not to approve the Phase II Report. A list of citations of regulations containing potentially applicable or suitably analogous standards shall be published by the Department from time to time.
 2. If 310 CMR 40.545(3)(g)1. does not apply and if a specific set of clean-up levels which are applicable to the disposal site is set forth in 310 CMR 40.800, the risk of harm to health shall be characterized by comparing current and reasonably foreseeable exposure point concentrations to the applicable set of clean-up levels, unless the

40.545: continued

characterization of risk of harm to health is performed in compliance with 310 CMR 40.545(3)(g)3., in which case 310 CMR 40.545(3)(g)2. does not apply.

3. If neither 310 CMR 40.545(3)(g)1. nor 2. applies to the disposal site, the risk of harm to health shall be characterized as follows:

- a. (i) If oil and hazardous materials are or are likely to be transported to exposure points through only one medium, risk of harm to health shall be characterized by comparing current and reasonably foreseeable exposure point concentrations to applicable or suitably analogous standards for those oil and hazardous materials for which such standards exist. For those oil and hazardous materials for which such standards do not exist and for which health- or risk- based guidelines or policies approved by the Department do exist, the risk of harm to health shall be characterized by comparing current and reasonably foreseeable exposure point concentrations to such guidelines or policies. Whether a guideline or policy is applicable or suitably analogous shall be determined by the Department on a case-by-case basis when the Department determines whether or not to approve the Phase II Report. For each oil and hazardous material for which neither such standards nor such guidelines or policies exist, and to the extent sufficient information concerning the health risks posed by the oil or hazardous materials is available, a health- or risk-based guideline shall be proposed in the Phase II Report. If sufficient information is not available, the Phase II Report shall so state.

(ii) Each proposed guideline shall be medium-specific and shall be set so that the daily receptor dose resulting from exposure to the concentration specified in the guideline shall not exceed twenty percent (20%) of the appropriate Reference Dose or other allowable daily dose specified by the Department and shall not be associated with an excess lifetime cancer risk greater than one in one million. This specified excess lifetime cancer risk limit applies only for the purpose of proposing a guideline pursuant to 310 CMR 40.545(3)(g)3.a. A list of citations of potentially applicable or analogous health- and risk-based guidelines and policies, and lists of citations of Reference Doses and other allowable daily doses specified by the Department, shall be published by the Department from time to time.

- b. If oil and hazardous materials are or are likely to be transported to exposure points through more than one medium, the risk of harm to health shall be characterized by comparing current and reasonably foreseeable exposure point concentrations to applicable or suitable analogous standards for those oil and hazardous materials for which such standards exist. In addition, current and reasonably foreseeable exposure point concentrations and the estimated frequency and duration of exposure to each oil and hazardous material at or from the disposal site shall be used to calculate the magnitude of current and reasonably foreseeable exposure and to estimate total site cancer risks and total site non-cancer risks. Total site cancer risks shall be compared to a total site cancer risk limit of one in one hundred thousand. Total site non-cancer risks shall be compared to a total site non-cancer risk limit which is a Hazard Index equal to 0.2.

(h) Characterization of Risk of Harm to Safety, Public Welfare, and the Environment. Based on the information collected pursuant to 310 CMR 40.545(3)(a) through (f), the risk of harm to safety, public welfare and the environment posed by the disposal site shall be characterized based on the current and reasonably foreseeable uses of the disposal site and the surrounding environment. The risk of harm to safety, public welfare, and the environment shall be characterized by comparing current and reasonably foreseeable conditions at the disposal site and in the surrounding environment to applicable or suitably analogous safety, public welfare, and environmental standards, and to policies and guidelines specified by the Department. Whether a standard, guideline or policy is applicable or

40.545: continued

suitably analogous shall be determined by the Department on a case-by-case basis when the Department determines whether or not to approve the Phase II Report. A list of citations of regulations containing potentially applicable or suitably analogous safety, public welfare, and environmental standards, and of policy and guidelines, shall be published by the Department from time to time.

(i) When No Further Remedial Response Action is Necessary. A disposal site will not pose a significant risk of harm to health, safety, public welfare and the environment during any foreseeable period of time, and therefore no further remedial response action is necessary if:

1. the current and reasonably foreseeable conditions at the disposal site and in the surrounding environment comply with applicable or suitably analogous standards, policies and guidelines identified pursuant to 310 CMR 40.545(3)(h); and
2. the current and all reasonably foreseeable exposure point concentrations are less than or equal to the concentrations specified pursuant to whichever of the following applies to the disposal site:
 - a. the applicable or suitably analogous standards identified pursuant to 310 CMR 40.545(3)(g)1;
 - b. a specific set of clean-up levels identified pursuant to 310 CMR 40.545(3)(g)2.; or
 - c. the applicable or suitably analogous standards, guidelines, policies or risk limits to which the exposure point concentrations are required to be compared pursuant to 310 CMR 40.545(3)(g)3.

(j) Requirements When a Remedial Response Action is Necessary.

1. If 310 CMR 40.545(3)(i) does not apply to the disposal site, the remedial response alternative recommended pursuant to 310 CMR 40.546(4)(a)1. and 2. shall, when implemented, achieve compliance with whichever of the following apply to the disposal site:
 - a. the applicable or suitably analogous standards identified pursuant to 310 CMR 40.545(3)(g)1. and 310 CMR 40.545(3)(h),
 - b. a specific set of clean-up levels identified pursuant to 310 CMR 40.545(3)(g)2. and 310 CMR 40.545(3)(h), or
 - c. the applicable or suitably analogous standards, guidelines, policies or risk limits to which the exposure point concentrations are required to be compared pursuant to 310 CMR 40.545(3)(g)3, except as provided in 310 CMR 40.545(3)(j)2.
2.
 - a. If a remedial response action is necessary for a disposal site which is subject to 310 CMR 40.545(3)(g)3.a., and if the levels of oil and hazardous materials which would exist in the absence of the disposal site exceed the guidelines or policies identified pursuant to 310 CMR 40.545(3)(g)3.a., such levels of oil and hazardous materials may, upon approval of the Department, be considered to meet the requirements for a permanent solution.
 - b. If a remedial response action is necessary for a disposal site subject to 310 CMR 40.545(3)(g)3.b., and if the levels of oil and hazardous materials which would exist in the absence of the disposal site would prevent achievement of the total site risk limits, identified pursuant to 310 CMR 40.545(3)(g)3.b., achievement of such levels of oil and hazardous materials may, upon approval of the Department, be considered to meet the requirements for a permanent solution.

(4) Phase II Report. The Phase II Report shall set forth in narrative and, as appropriate, in maps, graphs, and other visual aids, the approach, methods and results of the Phase II - Comprehensive Site Assessment. This report shall include at a minimum:

- (a) a summary of findings and conclusions;
- (b) Phase II scope of work;
- (c) physical site characteristics;
- (d) source(s) and extent of release(s) of oil or hazardous materials;
- (e) characterization of oil or hazardous materials;
- (f) identification of exposure points and determination of exposure point concentrations;
- (g) identification of background levels of oil or hazardous materials;
- (h) characterization of risk of harm to human health;

40.545: continued

- (i) characterization of risk of harm to safety, public welfare and the environment;
 - (j) conclusions;
 - (k) recommendations for future actions; and
 - (l) appendices including, but not limited to, the following:
 - 1. raw data and summary of data; and
 - 2. documentation of revisions to the approved scope of work.
- (5) Possible Outcomes. Upon submittal of a Phase II Report, the Department shall make one or more of the following determinations:
- (a) that the Phase II Report is incomplete or inadequate and additional Phase II activities are necessary;
 - (b) that the Phase II Report is approved. The Department may impose terms and conditions on such approval;
 - (c) that, based on current information, the disposal site does not pose, and is not expected to pose, a significant risk of harm to health, safety, public welfare, or the environment over any foreseeable period of time, and therefore no further remedial response action is necessary. The Department may require confirmatory monitoring upon such a determination.
- (6) Public Involvement
- (a) Minimum Activities in Remedial Response Actions. For all disposal sites in Phase II, the Chief Municipal Officer and the Board of Health shall be notified of the results of the Phase II Report. Such notification may take the form of copies of correspondence which contain or summarize Department decisions regarding the report or a notice of the availability of the Phase II Report, and shall include information about where the report can be reviewed.

40.545: continued

(b) Minimum Activities for Public Involvement Plan Sites. For Public Involvement Plan Sites, a Public Involvement Plan consistent with 310 CMR 40.203 shall be implemented.

40.546: Phase III - Development of Remedial Response Alternatives and the Final Remedial Response Plan

Outdated
- 1988 version -

(1) Purpose and Scope

(a) In Phase III, remedial response alternatives shall be developed which, when implemented, shall eliminate for any foreseeable period of time significant risk of harm to health, safety, public welfare and the environment posed by the disposal site. Where feasible, remedial response alternatives shall reduce, to the extent possible, the level of oil and hazardous materials in the environment to the level that would exist in the absence of the disposal site. A Final Remedial Response Plan (FRRP) shall be prepared in Phase III which recommends a remedial response alternative for implementation in Phase IV.

(b) Any person who performs a Phase III - Development of Remedial Response Alternatives or prepares a Final Remedial Response Plan shall do so in accordance with all applicable requirements and deadlines prescribed in 310 CMR 40.000.

(c) The scope of Phase III activities and the resulting FRRP will vary. At some disposal sites, the performance of certain steps in Phase III may be unnecessary because of conditions at the disposal site or because adequate and relevant information on remedial response alternatives for the disposal site is available from remedial response actions performed on other disposal sites. If certain steps of Phase III are not performed, justification shall be provided in the FRRP for their exclusion.

(d) Phase III is conducted in three sequential steps:

1. identification of remedial response alternatives;
2. evaluation of remedial response alternatives; and
3. preparation of a Final Remedial Response Plan (FRRP).

(2) Identification of Remedial Response Alternatives

(a) The identification of remedial response alternatives shall be based on the data collected and analyzed in Phases I, II and III and any other available information. The development of alternatives may involve bench tests or pilot studies, which shall only be conducted with all necessary permits, licenses and approvals. Consideration shall be given to the development of alternatives which incorporate innovative technologies.

(b) At every disposal site, remedial response alternatives shall be considered in each of the following categories:

1. on-site treatment;
2. off-site treatment;
3. on-site containment or disposal and monitoring;
4. off-site disposal;
5. elimination or minimization of exposure;
6. no further remedial response action;
7. any other remedial response alternative which is consistent with the purposes of M.G.L. c. 21E and this Contingency Plan; and
8. combinations of any of the above.

(3) Evaluation of Remedial Response Alternatives

(a) The purpose of evaluating remedial response alternatives is to ascertain whether they are feasible and whether they would, if implemented:

1. eliminate significant risk of harm to health, safety, public welfare, and the environment for any foreseeable period of time; and
2. reduce, to the extent possible, the level of oil or hazardous material in the environment to the level that would exist in the absence of the disposal site.

(b) The evaluation is performed in two steps:

1. an initial evaluation to eliminate those remedial response alternatives which are not likely to be feasible or to eliminate significant risk; and

40.546: continued

2. a detailed evaluation of the remaining remedial response alternatives to ascertain which will meet the purposes set forth in 310 CMR 40.546(3)(a) and whether they constitute a permanent or a temporary solution.

(c) A remedial response alternative shall be considered feasible unless:

1. no technology exists to achieve the extent of response action mandated by M.G.L. c. 21E;
2. the costs of implementing, or the risks resulting from the implementation of the remedial response alternative would not be justified by the benefits, considering such factors as potential damage to the environment or health, costs of environmental restoration, long-term operation and maintenance costs and nonpecuniary values;
3. individuals with the expertise needed to effectively implement available solutions would not be available, regardless of the arrangement for securing their services; or
4. the only available means of achieving the extent of response action mandated by M.G.L. c. 21E would necessitate land disposal other than at the site itself and no off-site facility is available in the Commonwealth or in other states that is in full compliance with all applicable federal and state regulatory requirements.

(d) The evaluation of each remedial response alternative shall include, and shall not be limited to, a consideration of the following factors:

1. feasibility of the remedial response alternative as set forth in 310 CMR 40.546(3)(c);
2. expected residual risk of harm to health, safety, public welfare, and the environment that would remain at the disposal site after implementation of the remedial response alternative;
3. the level of oil or hazardous material that would remain at the disposal site after implementation of the remedial response alternative;
4. specific characteristics of the disposal site that may affect the implementation or effectiveness of the remedial response alternative, including such characteristics as topography, geology, depth to bedrock, piezometric surfaces, and the existence of utilities;
5. logistical difficulties involved in implementing the remedial response alternative including, and not limited to, site accessibility, magnitude of remedial response action, transportation constraints, and weather conditions;
6. established reliability of technologies proposed in the remedial response alternative;
7. projected costs of implementing the remedial response alternative, including design, construction, disposal, land acquisition, relocation, and operation and maintenance costs;
8. projected design life of the remedial response alternative;
9. potential for future releases of oil or hazardous material from the disposal site following implementation of the remedial response alternative;
10. risks of harm to health, safety, public welfare and the environment during implementation of the remedial response alternative;
11. time required to implement the remedial response alternative;
12. permits, approvals, licenses, and land acquisitions or property access agreements which will be required to implement the remedial response alternative; together with an estimate of the time required for obtaining each of them;
13. reasonably foreseeable land uses at and nearby the disposal site; and
14. any other factors necessary to evaluate the remedial response alternative.

(4) Recommended Remedial Response Alternative

(a) Based on the detailed evaluation and in compliance with the provisions set forth in 310 CMR 40.545(3)(j), a remedial response alternative shall be recommended which is:

1. for priority disposal sites, a permanent solution if one is feasible and more cost effective than would be the phased implementation of a temporary and permanent solution. If there is no such permanent solution, a temporary solution shall be recommended and a plan shall be prepared for the identification and development of a permanent solution;

or

40.546: continued

2. for non-priority disposal sites, a permanent solution if one is feasible. If a permanent solution is not feasible, a plan shall be prepared for the identification and development of a permanent solution. In addition, to the extent necessary to protect health, safety, public welfare or the environment, temporary measures shall be recommended which will:

- a. reduce the risk of harm to health, safety, public welfare and the environment posed by the disposal site; or
- b. ensure that a substantial hazard will not exist at the disposal site prior to implementation of a permanent solution; and
- c. facilitate a permanent solution;

3. for every disposal site, a permanent solution shall, where feasible, include measures designed to reduce, to the extent possible, the level of oil or hazardous material to the level that would exist in the absence of the disposal site;

(b) For any disposal site, a combination of permanent and temporary solutions may be recommended;

(c) A remedial response alternative which is a temporary solution for a priority disposal site shall:

1. have a design life of a minimum of 15 years unless a schedule is developed to ensure the implementation of a permanent solution within 15 years. If a permanent solution will be implemented in less than 15 years, the design life of the temporary solution may have an appropriately shorter design life;
2. be effective until a permanent solution is implemented;
3. include systems to monitor its effectiveness; and
4. facilitate a permanent solution.

(d) The removal of oil or hazardous material or contaminated soil or water from a priority disposal site for land disposal at another location shall not be recommended as a temporary solution unless no other feasible and acceptable temporary solution exists.

(5) Final Remedial Response Plan

(a) The purpose of a FRRP is to recommend a remedial response alternative, set forth in detail the process by which the recommended remedial response alternative was developed in Phase III, and to provide a rationale for that recommendation. A FRRP shall contain:

1. a description of all remedial response alternatives initially identified;
2. for remedial response alternatives which were eliminated in the initial evaluation, an explanation of why they were eliminated;
3. a detailed evaluation of the remedial response alternatives remaining after initial evaluation;
4. a recommendation of a remedial response alternative for the disposal site, including a justification as to why that remedial response alternative was recommended in preference to all those evaluated pursuant to 310 CMR 40.546(3)(b)2. and 40.546(3)(d);
5. a preliminary schedule for implementation in Phase IV of the recommended remedial response alternative;
6. an evaluation of whether the recommended remedial response constitutes a permanent or temporary solution and whether it reduces, to the extent possible, the level of oil and hazardous material to the level that would exist in the absence of the disposal site.
7. a plan for the identification and development of a feasible permanent solution whenever a feasible permanent solution is not recommended. The plan shall include a detailed description of definitive and enterprising steps to identify and develop a permanent solution and a schedule for their implementation. These steps may include, and are not limited to:
 - a. investigating other technologies or alternatives;
 - b. performing pilot tests, bench studies, or field studies;
 - c. training or recruiting appropriate personnel to acquire the needed expertise;
 - d. searching for innovative ways to reduce the costs or the risks of implementing a specific alternative; and
 - e. developing new technologies.

40.546: continued

(6) Department Determination. Upon submittal of the FRPP, the Department shall make one of the following determinations:

- (a) that the FRPP is incomplete, inadequate, or inconsistent with M.G.L. c. 21E or this Contingency Plan, or other applicable laws or regulations and that further Phase III activities are necessary; or
- (b) that the FRPP is approved. The Department may impose terms and conditions on its approval, including a schedule and sequence for submission of the elements of a Remedial Response Implementation Plan in Phase IV.

(7) Public Involvement

(a) Minimum Activities in Remedial Response Actions. For all disposal sites in Phase III, the Chief Municipal Officer and the Board of Health shall be notified of the availability of the FRRP. Such notification may take the form of copies of correspondence which summarize Department decisions regarding Phase III or a notice of availability of the FRRP which shall include information about where the FRRP can be reviewed.

(b) Minimum Activities for Public Involvement Plan Sites. For PIP Sites, a Public Involvement Plan which is consistent with 310 CMR 40.203 shall be implemented.

(c) Compliance with MEPA. For all priority disposal sites in Phase III which meet either of the following thresholds, a notice shall be placed in the Environmental Monitor after preparation of the FRRP.

1. the total cost of design, engineering, and construction of the recommended remedial response alternative is expected to exceed one million dollars;

2. it is expected that the recommended remedial response alternative will require a permit from an agency of the Commonwealth and such permit requires the filing of an Environmental Notification Form or an Environmental Impact Report pursuant to 310 CMR 11.00.

Such notice shall provide information on the availability of the FRRP and shall establish a specific time period of not less than twenty calendar days within which public comments may be submitted to the Department. The Department shall not approve the RRIP until the public comment period has ended. Responses to comments submitted shall be made available to the public.

40.547: Phase IV - Implementation of the Approved Remedial Response Alternative

(1) Purpose and Scope

(a) Phase IV consists of the development of a Remedial Response Implementation Plan (RRIP), which consists of several elements, and construction and initial operation of the approved remedial response alternative.

(b) The complexity and detail of a RRIP shall reflect the nature of the disposal site and the approved remedial response alternative.

(c) Any person who implements an approved remedial response alternative shall do so in accordance with all applicable requirements and deadlines prescribed in 310 CMR 40.000 and in accordance with best design and engineering practices.

(2) Activities

(a) All federal, state and local permits, licenses or approvals and any agreements necessary for construction and operation of the approved remedial response alternative shall be identified. Prompt action shall be taken to obtain such permits, licenses, approvals, and agreements in order to avoid delays in implementing the approved remedial response alternative.

(b) Remedial Response Implementation Plan. A Remedial Response Implementation Plan shall be developed for all approved remedial response alternatives. A RRIP includes the following elements, as may be necessary: a list of contacts, a disposal site map, a final design, a construction plan, an initial operation and maintenance plan, and any other plans and documents as may be required by the Department. The elements of a RRIP may be combined into a single document or submitted separately. The Department may be persuaded that certain elements or portions of elements of a RRIP

40.547: continued

are unnecessary. A determination by the Department as to whether or not an element or portion of an element is necessary shall be based on, and not be limited to, the nature and complexity of the disposal site and the complexity of the approved remedial alternative. The elements of a RRIP are described below:

1. A List of Contacts including:
 - a. names, addresses, and telephone numbers of persons responsible for submittal of the RRIP;
 - b. names, addresses, and telephone numbers of consultants or other persons responsible for preparing the RRIP, or separate elements thereof; and
 - c. other information as may be necessary for the proper identification of persons responsible for preparing or submitting the RRIP;
2. A Disposal Site Map which indicates:
 - a. the boundaries of the disposal site and all abutting properties;
 - b. the location of all proposed and existing utilities, structures and roads;
 - c. all areas in which remedial response action activities will be conducted; and
 - d. all other disposal site information relevant to the design, construction, or operation of the approved remedial response alternative;
3. A Final Design, consisting of complete plans and specifications, which shall include and shall not be limited to:
 - a. schedule for implementation of the approved remedial response alternative;
 - b. complete plans and specifications for all on-site treatment, storage, and disposal activities;
 - c. preliminary health and safety plan;
 - d. environmental monitoring plan, including construction and long-term monitoring;
 - e. other monitoring as may be appropriate;
 - f. preliminary contingency plan;
 - g. preliminary security plan;
 - h. estimated cost of design, construction, and operation and maintenance; and
 - i. other information as may be necessary for evaluation by the Department of the final design;
4. A Construction Plan consisting of:
 - a. construction schedule;
 - b. implementation plan for monitoring during construction;
 - c. final health and safety plan;
 - d. general statement of duties of a resident engineer or clerk of the works;
 - e. final site security plan;
 - f. final contingency plan;
 - g. identification of all records, reports, logs and other pertinent information which shall be maintained to document construction activities for the final inspection and report as set forth at 310 CMR 40.547(2)(f); and
 - h. all other information as may be necessary for evaluation by the Department of the construction plan.
5. An Initial Operation and Maintenance Plan which shall describe:
 - a. start-up, testing, and maintenance over the first year of operation;
 - b. identification of equipment necessary for operation and maintenance;
 - c. specification of the type, frequency, and duration of testing or monitoring;
 - d. a quality assurance and quality control plan; the plan shall provide a description of the criteria to be used in detecting and evaluating deficiencies, selecting corrective measures, and implementing corrective measures to assure conformity with the approved RRIP; and

40.547: continued

- e. all other information as may be necessary for evaluation by the Department of the initial operation and maintenance plan.
- (c) Department Approval of the RRIP. The elements of the RRIP shall be submitted to the Department for approval. Construction shall not commence unless and until the RRIP is approved by the Department. The Department may impose terms and conditions in its approval of the RRIP which shall become a part of the approved RRIP. The Department shall consider the following in reviewing the RRIP:
1. completeness and accuracy of the elements of the Remedial Response Implementation Plan;
 2. consistency of the Remedial Response Implementation Plan with the approved Final Remedial Response Plan and this Contingency Plan; and
 3. any other factors the Department deems relevant.
- (d) Construction Activities
1. Construction shall be conducted in accordance with the approved RRIP and the following conditions:
 - a. if a PRP or other person is conducting the construction, he shall provide a resident engineer or clerk of the works with expertise in environmental construction projects and proceedings. The amount of time the resident engineer or clerk of the works is present at the disposal site shall be commensurate with the complexity and nature of the approved remedial response alternative;
 - b. the resident engineer or clerk of the works shall verify that construction is conducted in compliance with the approved RRIP and all terms and conditions imposed by the Department in such approval. The resident engineer or clerk of the works shall be responsible for stopping or correcting all activities not in compliance with the approved RRIP or which endanger nearby property or the health, safety, or welfare of on-site personnel or nearby persons;
 - c. the resident engineer or clerk of the works shall maintain a daily log; and
 - d. the resident engineer or clerk of the works shall review all daily logs, progress reports, and construction activities to verify that all work is in compliance with the approved RRIP and shall note and resolve all discrepancies immediately. The resident engineer or clerk of the works shall review and initial all reports and logs. All comments on these reports and logs shall be noted in the resident engineer's or the clerk of the works' daily log.
- (e) Department Inspections. The Department may conduct an inspection at any time to monitor, and verify compliance with the approved Remedial Response Implementation Plan. The Department may:
- a. halt any work which threatens health, safety, public welfare, or the environment;
 - b. halt any activity which is not in compliance with the approved Remedial Response Implementation Plan;
 - c. require that specific corrective measures be taken in order to protect health, safety, public welfare, or the environment or to bring the work into compliance with the approved RRIP;
 - d. review all records, reports, logs or other documentation; and
 - e. take any other action necessary to monitor, verify and ensure compliance of construction activities with the approved RRIP.
- (f) Final Inspection of Construction
1. As construction nears completion, the Department may require a conference with the PRP or other person, if the PRP or other person is conducting Phase IV. This conference shall address procedures and requirements for construction completion and the final inspection.
 2. Upon completion of construction, a final inspection shall be conducted by the resident engineer or clerk of the works. The Department may participate in, or conduct, such inspection. If any items are still unresolved, the inspection shall be considered a prefinal inspection and another final inspection shall be required. Upon satisfactory completion of the final inspection, a final inspection report shall be submitted to the Department which certifies that construction has been completed in compliance with the approved RRIP.

40.547: continued

(g) Initial Operation and Maintenance Activities. Operation and maintenance activities shall be conducted in accordance with the approved Remedial Response Implementation Plan.

(3) Possible Outcomes. Upon submission of a final inspection report, the Department shall determine that:

- (a) the construction has been completed in compliance with the approved RRIP and therefore the final inspection report is approved; or
- (b) the construction has not been completed in compliance with the approved RRIP and therefore the final inspection report is not approved and further Phase IV work is necessary.

(4) Public Involvement

(a) Minimum Activities in Remedial Response Actions

1. For all disposal sites in Phase IV, the Chief Municipal Officer and Board of Health in the affected community(ies) shall be notified of the availability of the approved RRIP and the final inspection report. This notification may take the form of copies of correspondence which summarize Department decisions regarding Phase IV or a notice of availability of the RRIP or the final inspection report, and shall include information about where the reports can be reviewed.

2. Prior to implementation of Phase IV field work, the public involvement activities identified in 310 CMR 40.542(6) shall be implemented.

(b) Minimum Activities for Public Involvement Plan Sites. For Public Involvement Plan Sites, a Public Involvement Plan which is consistent with 310 CMR 40.203 shall be implemented.

(c) Compliance with MEPA. For any priority disposal site which meets the thresholds established in 310 CMR 40.546(7)(c), a notice shall be placed in the Environmental Monitor after preparation of the RRIP. Such notice shall provide information about how to review the RRIP and shall establish a specific time period of not less than twenty days within which public comments concerning the RRIP may be submitted to the Department. The Department shall not approve the RRIP until the public comment period has ended. Response to comments submitted shall be made available to the public.

(40.548: Phase V: Reserved)

(40.549-40.599: Reserved)

SUBPART F ENFORCEMENT AND COST RECOVERY

40.600: Enforcement and Cost Recovery

40.601: Purpose and Scope

310 CMR 40.600 through 40.699, cited collectively as 310 CMR 40.600, set forth a process for, and apply to, recovery by the Department on behalf of the Commonwealth of all costs incurred by the Commonwealth as a result of performing, arranging for, or overseeing response actions performed pursuant to M.G.L. c. 21E, this Contingency Plan, and other applicable law. 310 CMR 40.600 does not apply to any other compensation, recovery, or reimbursement to which the Commonwealth is entitled. The Commonwealth has the right to seek such other compensation, recovery, or reimbursement pursuant to M.G.L. c. 21E or other applicable law. Such right is in addition to, and may be pursued even in the absence of, a cost recovery action.

40.602: General Provisions

(1) The Department shall collect and maintain documentation of response actions and response action costs. This documentation shall form the basis for recovery of the Commonwealth's costs. The circumstances of every release or threat of release of oil or hazardous material which is the subject of a response

Outdated
- 1988 version -

40.602: continued

action shall be compiled and maintained in records. Such records shall contain a description of response actions undertaken, PRPs identified, and an accounting of costs incurred by the Department.

(2) Costs incurred by the Department or any other agency of the Commonwealth shall be recoverable pursuant to 310 CMR 40.600 provided they are incurred in actions performed in a manner consistent with M.G.L. c. 21E and this Contingency Plan.

40.603: Cost Recovery or Damage Actions By Other Persons

(1) Neither 310 CMR 40.600 nor this Contingency Plan is intended to provide procedures for the recovery of costs or damages by private persons.

(2) No person shall have a cause of action against the Department or the Commonwealth of Massachusetts for recovery of costs or damages pursuant to M.G.L. c. 21E unless the Department or the Commonwealth is a person identified pursuant to M.G.L. c. 21E, s. 5 as liable for a release or threat of release of oil or hazardous material.

(40.604-40.619: Reserved)

40.620: Recovery of Response Action Costs by the Department

Applicants for a waiver pursuant to 310 CMR 40.537 shall pay the average cost of reviewing, processing, and ensuring compliance with waiver applications. This average cost shall be reviewed annually, compared to the actual cost of reviewing, processing, and ensuring compliance with waiver applications in the previous twelve months, and revised if necessary. However, for fiscal year 1989, costs shall be based on an estimate of the actual cost of reviewing, processing, and ensuring compliance with waiver applications. If a request for a waiver is denied after review of a complete application, actual response action costs are recoverable.

(40.621-40.629: Reserved)

40.630: Procedures for Cost Recovery and Enforcement

310 CMR 40.630 through 40.641 describe the procedures whereby the Department may recover its costs from PRPs or other persons through administrative and judicial means.

40.631: Documentation

Documentation relied upon by the Department in deciding to perform response actions in calculating costs and damages for which PRPs or other persons may be liable shall be made available to PRPs subject to the provisions of M.G.L. c. 66, s. 10; M.G.L. c. 4, s. 7; M.G.L. c. 21E, s. 12; and 310 CMR 3.00.

40.632: Demand For Payment

To initiate cost recovery, the Department may make a written demand of PRPs or other persons for payment. The Department may initiate administrative cost recovery against a PRP at any time after the Department has identified that expenditures described in 310 CMR 40.600 will be necessary. The Commonwealth may seek cost recovery in court at any time.

40.633: Interest Calculation

Interest on an uncollected debt shall be assessed at a rate of one percent per month, or twelve percent per year, and shall be compounded annually until the debt is paid or otherwise resolved.

40.634: Lien Placement

The Department may file a lien or a priority lien against the property of a PRP in accordance with the provisions of M.G.L. c. 21E, s. 13. The Department shall provide PRPs with notice of the filing of such a lien or priority lien.

(40.635-40.640: Reserved)

40.641: Form and Extent of Limited Release From Liability

Whenever the Department receives payment of its response action costs from a PRP, either in full or under the terms of a negotiated administrative settlement or judicial settlement or judgment, the Department may provide the PRP with a Limited Release From Liability pursuant to M.G.L. c. 21E, s. 5. The Release shall not relieve a PRP from: liability for damages to natural resources, liability for personal injury, liability for property damage, liability for costs which the Department may incur after the date of the Limited Release From Liability, liability for costs associated with conditions existing but unknown at the time the Limited Release From Liability is executed, or liability for other releases or threats of release of oil or hazardous material, unless the Limited Release From Liability expressly provides otherwise.

(40.642-40.699: Reserved)

SUBPART C TECHNICAL ASSISTANCE GRANTS

40.700: Technical Assistance Grants

310 CMR 40.700 through 40.799, cited collectively as 310 CMR 40.700, specifies terms and conditions of eligibility for, and use of, technical assistance grants.

40.701: Purpose and Scope

The Department may provide for limited grants to be given to groups of affected individuals in order to:

- (1) provide them with access to expert advice and technical assistance;
- (2) encourage affected individuals to acquire and make use of information which will enable them to participate more effectively in remedial response actions; and
- (3) allow affected individuals to address issues of concern related to the disposal site.

(40.702: Reserved)

Outdated
- 1988 version -

40.703: Grant Availability

- (1) Grants shall be made available to applicant groups subject to 310 CMR 40.700 and to the availability of funding.
- (2) For each disposal site, there shall be no more than one grant available per funding round.
- (3) Each year, the Department shall designate a maximum amount for any single grant which shall apply to both funding rounds referred to in 310 CMR 40.707 in that given year. The maximum amount shall be set forth in the notice to be published by the Department pursuant to section 310 CMR 40.706. For the year beginning July 1, 1988, the maximum amount for any single grant shall be \$10,000.
- (4) Any other source of funding obtained by an applicant group for expert advice or technical assistance shall not be subtracted from any specified grant maximum designated by the Department provided the total of grant funds received by the grantee from all sources shall not exceed 100% of the total cost of the proposed project.

40.704: Eligible Grantee Groups

- (1) Any group of affected individuals shall be eligible to receive a grant if the group exists as a legal entity that will have the ability to receive, disburse, and be responsible for funds at the time the grant would be awarded.
- (2) Any group which unreasonably restricts the meaningful participation and involvement of affected individuals shall be ineligible to receive a grant.

40.705: Eligible Activities

- (1) Eligible activities for grants may include, but are not limited to:
 - (a) interpretation, review or critique of technical analyses related to a disposal site as presented in reports developed by or on behalf of the Department or PRPs or by other public or private entities. Such reports shall include and not be limited to:
 1. the scope of work for Phase II, the Phase II Report, the Phase III - Final Remedial Response Plan, the Phase IV - Remedial Response Implementation Plan, and the Final Inspection Report; and
 2. sampling and analysis plans;
 - (b) observation of assessment, sampling or remedial response action activities conducted by the Department or a PRP or other person. Such observation shall be conducted in accordance with 310 CMR 40.705(3);
 - (c) analysis of split samples taken by the Department, a PRP or other person, provided that the grantee's consultant performs testing and analysis which is identical to that performed by the Department, PRP, or other person;
 - (d) health surveys to gather existing information through interviews with, and questionnaires answered by, affected individuals;
 - (e) legal advice concerning public involvement in remedial response actions; and
 - (f) public education activities.
- (2) The following activities shall be ineligible for grants:
 - (a) development of new environmental data;
 - (b) development of new medical data;
 - (c) organizational development or membership building;
 - (d) litigation or any other adversarial proceeding; and
 - (e) partisan political activity or any activity to further the election or defeat of any candidate for public office.
- (3) Conditions on Eligible Activities
 - (a) Grantees shall obtain approval from the person(s) responsible for the conduct of a remedial response action and from the owner or operator of the disposal site prior to conducting activities at the disposal site.

40.705: continued

- (b) Grantees shall comply with the health and safety plan established for the disposal site and all operational protocols and requirements imposed by the Department.
- (c) Grantees shall not interfere with the efficient, expeditious, and safe conduct of the remedial response action, as determined by the Department.

40.706: Notice Provisions

- (1) On a semi-annual basis, the Department shall publish a notice in the Environmental Monitor announcing the availability of grants for the next funding round. The notice shall contain at a minimum:
 - (a) a description of eligible applicant groups and eligible projects as established in 310 CMR 40.704 and 310 CMR 40.705;
 - (b) the designated maximum amount for any grant;
 - (c) the place or places from which grant applications may be obtained; and
 - (d) the dates of the next grant application period.
- (2) The information listed in 310 CMR 40.706(1)(a) shall also be published by the Department through the following means:
 - (a) with the List of Locations and Disposal Sites published pursuant to 310 CMR 40.520;
 - (b) as part of the notice published pursuant to 310 CMR 40.543(4)(a)1.; and
 - (c) as part of the press release provided pursuant to 310 CMR 40.543(4)(a)2.

40.707: Grant Application Process

Grant applications shall be received and evaluated by the Department in accordance with the following procedures:

- (1) The Department shall establish two funding rounds each year. Within each funding round, the Department shall establish an application period of forty (40) days during which applications shall be accepted for consideration. The Department may extend said application periods at its discretion. The Department shall provide notice of said application periods pursuant to 310 CMR 40.706.
- (2) Applications received after the application period shall not be considered for a grant in that funding round.
- (3) Grant applications shall be submitted on a Technical Assistant Grant Application Form provided by the Department, together with all other documentation required by the Department.
- (4) Any applicant group applying for a grant shall submit Part I of the Technical Assistance Grant Application Form which shall include, and shall not be limited to, the following information:
 - (a) a description of the applicant group, including but not limited to:
 - 1. name of applicant group;
 - 2. name(s) and telephone number(s) of the individual(s) who shall act as the contact person(s) for the applicant group;
 - 3. documentation that the group will meet the requirements set forth in 310 CMR 40.704(1);
 - 4. copy of the group's by-laws, if any;
 - 5. description of any affiliation of group members with PRPs known to the applicant group;
 - 6. identification of the disposal site;
 - 7. description of the applicant group's efforts to include affected individuals;
 - 8. description of how individuals in the group are affected by the disposal site; and
 - 9. description of the applicant group's history and experience, if any, in conducting activities similar to those proposed in the application.
 - (b) a description of the proposed project, including:
 - 1. activities to be conducted, issues to be addressed, products to be produced, overall goal(s) and a projected schedule;

40.707: continued

2. nature of the technical assistance to be obtained, including a description of the appropriateness of the background of the consultant(s) to be hired to provide technical assistance;
3. a description of the means by which the results or products of the applicant group's project will be disseminated and an identification of the audience which is to receive such information;
4. if the applicant group has ever received a grant or grants pursuant to 310 CMR 40.700, a description of:
 - a. the relationship between any incomplete or unfinished project or projects for which said grant funds were received and the project for which the applicant group is currently applying for a grant; and
 - b. the amount of any unexpended funds from previous grant(s) and the activities for which those grant funds are to be spent; and
5. if the total cost of the applicant group's project exceeds the designated grant maximum referred to in 310 CMR 40.703, an identification of the amount and the sources of any and all additional funding which has been or may be secured by the applicant group when the grant would be awarded.

(5) Within each funding round, the Department shall designate a date by which all Part I Applications shall be submitted to the Department. Within a reasonable time after this date, the Department shall publish a list of all Part I Applications submitted. The Part I List shall be published in the Environmental Monitor, and shall also be mailed to every contact person for each applicant group whose name appears on the list. The Department shall publish a notice with the Part I List stating that affected individuals interested in participating in any technical assistance grant proposal or project identified on the list may contact the group(s) applying for the grant.

(6) Any applicant group applying for a grant shall submit Part II of the Technical Assistance Grant Application Form which shall include the following information.

- (a) a description of the applicant group's proposed project and a schedule for completing the project;
- (b) information and documentation describing the background and qualifications of any and all consultants to be employed by the applicant group;
- (c) description of the applicant group's procedures for supervision and accountability of experts and for management of grant-funded activities; and
- (d) description of the applicant group's procedures for financial management and accounting of grant funds.

(7) Within each funding round, the Department shall designate a date by which all Part II Applications shall be submitted to the Department. An applicant group shall not submit a Part II Technical Assistant Grant Application unless it has already submitted a Part I in the same funding round.

(8) The Department shall review both Part I and Part II of each application to determine the completeness of the information and the eligibility of the applicant group. Upon completion of its review of each application, the Department shall determine whether the application is complete, and whether the applicant group is eligible pursuant to 310 CMR 40.704 and shall notify the applicant group of its determination in writing. In the case of an incomplete application or ineligible group, the Department shall set forth the reasons for such determination, and shall specify a date by which additional documentation shall be submitted to the Department. The Department may then determine that the application is complete. Only applications determined by the Department to be complete may be considered for a grant.

40.708: Grant Selection Process

Grant applications which have been determined by the Department to be complete shall be evaluated according to the criteria listed below. Each

Outdated
- 1988 version -

40.708: continued

individual criterion shall be rated according to the following rating system. Any application which receives a score of zero for the criteria set forth in 310 CMR 40.708(l)(a)5. or 40.708(1)(b)1. shall be ineligible for funding.

(1) Evaluation Criteria(a) Need for Proposed Project and Anticipated Benefit (maximum - 42 points).

1. Complexity of the disposal site.
 - Highly complex12 points.
 - Moderately complex8 points.
 - Minimally complex4 points.
 - Not complex0 points.
2. Impact of disposal site on health, safety, public welfare, and the environment.
 - High impact.....12 points.
 - Moderate impact.....8 points.
 - Minimal impact.....4 points.
 - No impact.....0 points.
3. Extent to which project results or products will be disseminated to the public.
 - High.....6 points.
 - Moderate.....4 points.
 - Minimal.....2 points.
 - Unacceptable.....0 points.
4. Potential of proposed project to foster public participation in response actions at the disposal site.
 - High potential.....6 points.
 - Moderate potential.....4 points.
 - Minimal potential.....2 points.
 - No potential.....0 points.
5. Relationship of proposed project to the impacts of the disposal site on health, safety, public welfare, and the environment.
 - Excellent relationship.....6 points.
 - Good relationship.....4 points.
 - Fair relationship.....2 points.
 - Unacceptably unrelated.....0 points.

(b) Nature of Applicant Group (maximum - 6 points).

1. Representation of affected individuals in applicant group.
 - High representation.....3 points.
 - Moderate representation.....2 points.
 - Minimal representation.....1 points.
 - No representation.....0 points.
2. Demonstrated effectiveness of applicant group.
 - Highly effective.....3 points.
 - Moderately effective.....2 points.
 - Minimally effective.....1 points.
 - No demonstrated effectiveness.....0 points.

(c) Overall Quality of Applicant Group's Proposal (maximum - 24 points).

1. Completeness of description of proposed activities.
 - Very complete.....6 points.
 - Moderately complete.....4 points.
 - Minimally complete.....2 points.
 - Unacceptably incomplete.....0 points.
2. Feasibility of completing proposed project within the proposed work schedule for the grant.
 - Highly feasible.....6 points.
 - Moderately feasible.....4 points.
 - Minimally feasible.....2 points.
 - Not feasible.....0 points.
3. Appropriateness of background of consultants to be employed by applicant group.
 - Highly appropriate.....6 points.
 - Moderately appropriate.....4 points.
 - Minimally appropriate.....2 points.
 - Not appropriate.....0 points.

40.708: continued

4. Presence of identifiable goals and/or products as part of proposed project.

Strong presence.....6 points.
 Moderate presence.....4 points.
 Minimal presence.....2 points.
 Lack of presence.....0 points.

(2) In each funding round, the Department shall rate each application determined to be complete according to the criteria set forth in 310 CMR 40.708(1). The Department shall establish a grant funding priority list which shall indicate which grants are likely to be funded during that funding round. In the event that the Department must choose between two applications having the same point value, the Department shall select the application having the earliest date of submission of the Part I Application. The Department shall determine the number of grants on the grant funding priority list it will distribute based on the following considerations:

- (a) the Department's administrative capacity to manage the technical assistant grant program at the time the grant funding priority list is established; and
- (b) the total amount of funding available for the grant program in a given round.

(3) The Department shall appoint a Grant Review Committee of which a subcommittee of five individuals shall review the Department's grant funding priority list for a given funding round before the priority list is released to the public. The subcommittee shall also review all completed applications received by the Department for that funding round. The subcommittee shall ascertain whether the Department has made its decisions in accordance with the evaluation criteria specified in 310 CMR 40.708(1), and shall submit a written opinion to the Department. The Department reserves the right to revise the grant funding priority list based on the information received from the subcommittee. If any member of the Grant Review Committee has a relationship to, or interest in, a disposal site that is the subject of a grant application which is being reviewed by the Department and if that interest would pose a potential conflict of interest, then the individual shall not be a member of the subcommittee for that funding round.

(4) Upon final determination of the Department's grant funding priority list, the Department shall publish the list in the Environmental Monitor and shall mail a copy to the contact person for each applicant group which has applied for a grant for that funding round.

(5) Any applicant group on the grant funding priority list may be bypassed for an award if the Department determines that the applicant group is for any reason unable to accept or receive the grant during that funding cycle. Any application that is bypassed shall not retain its priority rating for future funding rounds. Each application bypassed on the grant funding priority list shall be replaced by the next highest ranked application which was otherwise not likely to be funded. Each grant funding priority list shall be in effect only during the funding round in which it was established.

(6) A grant shall be deemed awarded when a grant agreement is entered into by the Department and the grantee. The grant agreement shall consist of the grant offer as executed by the Department and the grant acceptance as executed by the grantee as well as any and all terms and conditions under which the grant is being awarded to the grantee.

40.709: Payment Method

Payment of a grant award to a grantee shall be made as reimbursement for costs incurred by the grantee and shall be subject to 310 CMR 40.700. The terms and conditions of payment, and all required supporting documentation to be submitted by the grantee prior to payment shall be set forth in the grant agreement.

40.710: Fiscal Management of Grants

- (1) The grantee is responsible for complying with 310 CMR 40.700 and the terms and conditions contained in the grant agreement. This responsibility shall not be delegated, transferred, or assigned by the grantee.
- (2) The grantee shall establish for its project a separate account in a bank with insurance coverage by the Federal Deposit Insurance Corporation (FDIC). Project funds and all interest earned on such funds shall be credited to said account and all project payments shall be made from said account.
- (3) The grantee shall maintain a financial management system which shall provide for effective control over and accountability for all project funds. Grantees shall safeguard all such funds and ensure that they are used solely for the project.

40.711: Records to be Maintained by Grantees

- (1) The grantee shall maintain books, records, documents, and supporting evidence which shall fully explain the source, amount, and disposition of all grant funds.
- (2) The grantee shall require its contractors, including contractors for professional services, to maintain accurate books, documents, papers, and records which are pertinent to the project.
- (3) The grantee and contractors of the grantee shall retain all records for a period of at least three years from the date of the final grant payment, and longer if required pursuant to 310 CMR 40.711(5).
- (4) The grantee and its contractors shall make records available to the Department at all reasonable times for inspection, copying, and auditing.
- (5) The grantee and its contractors shall retain all records relating to disputes until all appeals, litigation, claims, or exceptions arising out of the grantee's project have been fully resolved.

40.712: Inspection of Projects

The Department may, at a reasonable time and upon reasonable notice, conduct an inspection at any location where a grantee's project is being carried out.

40.713: Honest Practices

- (1) The award and administration of grants shall be accomplished free from bribery, graft, kickbacks and other corrupt or illegal practices. The grantee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. State administrative or other legally available remedies shall be pursued to the extent appropriate.
- (2) The grantee shall take appropriate actions with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee shall advise the Department immediately when such allegations or evidence comes to the grantee's attention, and shall periodically report to the Department the status and ultimate disposition of any such matter.
- (3) The Department may suspend or terminate grant payments or may revoke a grant at any time if the Department becomes aware of any allegations, evidence or appearance of illegality, corruption, or fraud associated with the award of the grant, compliance or noncompliance with 310 CMR 40.700 or the grant agreement between the Department and the grantee, or expenditure of funds for the project. In the event that a grant is revoked, the grantee shall be responsible for returning to the Commonwealth all grant funds.

(40.714 - 40.899: Reserved)

(PAGES 943 THROUGH 1000 ARE RESERVED FOR FUTURE USE.)

Outdated
- 1988 version -

Supplementary Instructions for DEQE Preliminary Assessment Form

Outdated
- 1988 version -

Page 1

Block I. Property Name and Location

I-1. The name should reflect the most recent commercial or industrial use of the property. Avoid names based on the address of the property or the owner-of-record, such as "123 Main Street Property" or "Foxtail Realty Trust".

I-2. Be sure that the municipality specified is a separate, incorporated area. Dorchester, for example, is not a municipality but is part of Boston and should be listed as "Boston--Dorchester". If in doubt, check the list of Massachusetts incorporated municipalities.

I-3. Report both UTM (Universal Transverse Mercator) and Lat-Long coordinates. Coordinates should be reported as accurately as possible.

I-4. USGS Quad: If the site lies on more than one quad, or is situated near the boundary of a quad, list all relevant quads.

Block II. Owners/Operators

II-5. List all previous owners and operators, if known, for the period of time in which the property has been in industrial or commercial use. Attach information for business-owner if different from business-operator.

II-6. Briefly describe specific property uses or activities which could potentially cause or contribute to a release of oil or hazardous materials. Include activities which involve or involved the treatment, use, storage, transportation, production or disposal of oil or hazardous materials.

Block III. General Property/Area Information

III-7. Attach Site Locus map to the Preliminary Assessment form.

III-8. Check "Undeveloped" only if the property was undeveloped immediately prior to its present use.

Block IV. Review of Available Records/Information

IV-9. State sources consulted should include, as appropriate, records kept by the Division of Water Pollution Control, Air Quality, Right-to-Know, Water Supply and Solid Waste, as well as a check of DEQE files for Incident Response, Sites, and RCRA facilities, for the property and vicinity.

IV-10. Describe the Owners'/Operators' personnel or files consulted. Indicate whether information obtained is considered Confidential Business Information.

IV-11. List any additional sources of information consulted. List title and author(s) of any formal reports which pertain to the property or surrounding areas.

Page 2

Block IV. continued

IV-12. Indicate the number of each type of tank on the property.

IV-13. If the property has a separate stormwater receptacle/conduit, check "Other" and describe under Comments.

Block V. Property Reconnaissance

V-14. Identify the person(s) performing the reconnaissance, their name, title, and affiliation. Under Comments, briefly describe any significant findings.

Page 3

Block VI. This section requests a summary of the existing information regarding property features which could cause or contribute to an OHM release. Under "Source", a number of property features are listed. For each feature (Discharge, Tanks, etc.),

VI-15. Check off whether evidence of the feature exists, and list the source of evidence;

VI-16. Check whether Test Data are available which pertain to the feature, and describe the type of test;

VI-17. Indicate the type of evidence, if any, which indicates that an OHM release has occurred on the property;

VI-18. Indicate clearly if the release is suggested to have cause only "de minimis" contamination, and mention any other pertinent information regarding the property feature; and

VI-19. Describe other property features not listed above which could cause or contribute to a release of Oil or Hazardous Materials. Describe any significant data gaps, and indicate whether additional property investigation is planned or ongoing. Indicate here or under d) as appropriate if a release has been alleged but not confirmed.

VI-20. For the purposes of the Preliminary Assessment, the following definitions of property access apply: Restricted -- Fenced and guarded; Partially Restricted -- Fenced only; Unrestricted -- Unhindered access.


Attach additional sheets if necessary to provide a complete response to any section.

Page 4

Block VII

Please answer all questions based on your best professional judgement and all available information.

After providing all requested responses, sign the certification at the end of Block VII.

| | | | |
|--|--|---|--|
|  | Commonwealth of Massachusetts Department of Environmental Quality Engineering | | |
| Potential Oil/Hazardous Material Release Site PRELIMINARY ASSESSMENT REPORT | | | For DEQE Use Only Case No. _____ File Name _____ Date Listed _____ Disposition _____ |
| I. PROPERTY NAME AND LOCATION (See Supplementary Instructions) | | | |
| Property Name ¹ _____ Address _____ | | UTM Coordinates ³ N _____ M E _____ M Latitude/Longitude _____ N _____ W | |
| Municipality ² _____ | Zip Code _____ | USGS Quad(s) ⁴ _____ | |
| II. OWNERS/OPERATORS | | | |
| Present Owner: ⁵ Address: _____ Contact _____ Tel. _____ | | Date Acquired _____ | Specific Property Use/Activity ⁶ SIC # _____ <input type="checkbox"/> Active <input type="checkbox"/> Inactive |
| Present Operator: Address: _____ Contact _____ Tel. _____ | | Date Started _____ | Specific Property Use/Activity SIC # _____ <input type="checkbox"/> Active <input type="checkbox"/> Inactive |
| Previous Owner: Address: _____ Tel. _____ | | From/To Dates _____ | Specific Property Use/Activity SIC # _____ |
| Previous Operator: Address: _____ Tel. _____ | | From/To Dates _____ | Specific Property Use/Activity SIC # _____ |
| Additional Owner/Operator Information is: _____ Attached _____ Unknown _____ Not Pertinent | | | |
| III. GENERAL PROPERTY/AREA INFORMATION | | | Site Locus Map Attached ⁷ <input type="checkbox"/> |
| Property/Area Use ⁸ Industrial _____ Commercial _____ Residential _____ Agricultural _____ Undeveloped _____ | Property Present _____ Property Past _____ Surrounding Area _____ | Check if property is or ever was a known: <input type="checkbox"/> Refuse/Waste Disposal Area <input type="checkbox"/> Gasoline (Service) Station <input type="checkbox"/> Fuel Storage Depot <input type="checkbox"/> Industrial Manufacturing Facility <input type="checkbox"/> Check if Property is Planned for Development | |
| IV. REVIEW OF AVAILABLE RECORDS/INFORMATION | | | |
| Municipal: Date Reviewed _____ By _____ Of _____ Information Source(s): _____ Contact Person(s): _____ Telephone: _____ | | | |
| State: ⁹ Date Reviewed _____ By _____ Of _____ Information Source(s): _____ Contact Person(s): _____ Telephone: _____ | | | |
| Owner/Operator: ¹⁰ Date Reviewed _____ By _____ Of _____ Information Source(s): _____ Contact Person(s): _____ Telephone: _____ | | | |
| Other: ¹¹ Date Reviewed _____ By _____ Of _____ Information Source(s): _____ Contact Person(s): _____ Telephone: _____ | | | |
| Additional Information/Information Sources are attached: <input type="checkbox"/> Yes <input type="checkbox"/> No. | | | |

IV. SURVEY OF AVAILABLE RECORDS/INFORMATION (Continued.)

Based upon records and available information, have petroleum products or hazardous materials been used, treated, stored, or disposed of, on the property?

☐ Yes ☐ No ☐ Petroleum ☐ Hazardous Materials

Underground Storage Tanks: ¹² Records/Evidence of Present/Former Use: ☐ Yes ☐ No

| Indicate Number of Tanks: | Gasoline | Fuel Oil | Waste/Other Oil | Hazardous Materials | Unknown |
|----------------------------|----------|----------|-----------------|---------------------|---------|
| Presently On-site | _____ | _____ | _____ | _____ | _____ |
| Removed | _____ | _____ | _____ | _____ | _____ |
| With Capacity 1100 Gallons | _____ | _____ | _____ | _____ | _____ |
| Over 10 Years Old | _____ | _____ | _____ | _____ | _____ |
| Total Number: | _____ | _____ | _____ | _____ | _____ |

Wastewater: ¹³ Generated? ☐ Yes ☐ No ☐ Unknown Composition ☐ Sanitary ☐ Industrial Disposal ☐ Municipal Sewer ☐ On-site ☐ Other

Present: ☐ Yes ☐ No ☐ Unknown Past: ☐ Yes ☐ No ☐ Unknown ☐ Sanitary ☐ Industrial ☐ Municipal Sewer ☐ On-site ☐ Other

Comments: _____

Is there currently an on-site water supply well? ☐ Yes ☐ No ☐ Unknown. Active? ☐ Yes ☐ No.

Other existing means for sampling groundwater? ☐ Yes ☐ No

Indicate Present or Past Federal/State Environmental Permits/Regulations at the Property.

☐ N.P.D.E.S. ☐ Groundwater Discharge ☐ R.C.R.A. Generator ☐ R.C.R.A. TSD ☐ Air Quality ☐ Other

Comments: _____

Is/are there any record(s) of Criminal, Civil, or Administrative Actions, at the property due to (alleged) violations of environmental statute or regulation? ☐ Yes ☐ No Comments: _____

V. PROPERTY RECONNAISSANCE

Property Reconnaissance by Owner/Operator/Consultant ¹⁴ (Circle one.)

Date _____ By _____ Of _____

Evidence of a Release of Oil or Hazardous Materials? ☐ Yes ☐ No ☐ Potential

If Yes/Potential, Based upon: ☐ visual ☐ olfactory ☐ analytical/screening

Comments: _____

FOR DEQE USE ONLY:

_____ On-site Reconnaissance _____ Off-site Reconnaissance By EPA/DEQE/Contractor: (Circle one.)

Date _____ By _____ Of _____

Evidence of a Release of Oil or Hazardous Materials? ☐ Yes ☐ No ☐ Potential

Comments: _____

VI. PRELIMINARY ASSESSMENT SUMMARY/REPORTING MATRIX

Based upon a review and evaluation of available records, information, and field observations, indicate and summarize applicable property conditions. Abbreviations and table headings are explained at the bottom of the page; additional guidance is contained in direction section. **Please note that responses are mandatory in shaded columns.**

| SOURCE | Past/Present Existence ¹⁶ | | Information Source (f) | Test Data Available ¹⁶ | | Describe (g) | Evidence of OHM Contamination/Release ¹⁷ | | COMMENTS ¹⁸ | |
|--|--------------------------------------|--------------------------|------------------------|-----------------------------------|--------------------------|--------------|---|--------------------------|--------------------------|------|
| | Yes | No | | Yes | No | | Rec. | Obs. Test | | None |
| On-Site (Non-Liquid) Waste Disposal (a) | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Surficial OHM Discharge or Spillage | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Surficial Wastewater Discharge (b) | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Subsurface OHM Discharge (c) | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Subsurface Wastewater Discharge (d) | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Underground Storage Tank(s) - Oil - (e) | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Underground Storage Tank(s) - Haz. Materials - | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Above-Ground Oil/Haz. Material Storage Tank(s) | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Other: | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Unknown Source but Evidence of Contamination | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

FOOTNOTES: (a) includes refuse, demolition wastes, sludges, hazardous wastes; (b) includes domestic or industrial sewage, surface impoundments; (c) via dry wells, leach fields, injection wells, etc.; (d) includes domestic or industrial sewage leach fields/pits; (e) note: waste oil is considered a "hazardous material"; (f) records, field observation, etc.; (g) includes tank testing data, geophysical data, analytical data, etc.

ABBREVIATIONS: Rec = Records; Obs = Observations; OHM = Oil or Hazardous Material

ADDITIONAL COMMENTS: ¹⁹

Property Access: ²⁰ ☐ Restricted ☐ Unrestricted ☐ Partially Restricted

Property Ownership: ☐ Private ☐ Governmental ☐ Military

VII. CONCLUSIONS AND CERTIFICATIONS

Based upon all available information and data, pursuant to MGL Chapter 21E, is there evidence that a release of oil or hazardous materials has or is occurring at the property? ☐ Yes ☐ No ☐ Unknown at this time

Do property conditions constitute a threat of release? ☐ Yes ☐ No ☐ Potential

If either of above is "Yes", are immediate site actions necessary to abate an imminent hazard to public health, safety, welfare, or the environment, due to:

| | | |
|---|------------------------------|-----------------------------|
| <input type="checkbox"/> Proximity to known potable water supplies? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Potential for direct human contact and exposure? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Potential for fire or explosion? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proximity to fisheries/critical habitats? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If a release has been confirmed, are immediate actions necessary to initiate abatement, containment, or recovery actions, in order to avoid a situation where a delay in remedial actions will substantially decrease the efficiency and/or degree of ultimate cleanup?

☐ Yes ☐ No

Have remedial actions already been taken at the site?

☐ Yes ☐ No

NOTE: If immediate actions are needed, or if remedial actions have already been taken at the site, append complete details on nature of problem and proposed/completed site actions.

Owner/Operator/Private Party (Circle one.)

Professional Environmental Consultant

Name _____

Name _____

Title _____

Title _____

Company _____

Firm _____

Date _____

Date _____

Property Affiliation _____

☐ Additional Information attached to Form

Indicate Name(s) of Environmental Assessment Report(s) prepared for Property: _____

If Form completed by Private Party and/or Professional Environmental Consultant, please sign:

I hereby certify that the information furnished in and with this Form, to the best of my knowledge, is true, accurate, and complete.

Signature: _____
(Owner/Operator/Private Party)

Signature: _____
(Consultant)

VIII. DISPOSITION OF CASE

FOR DEQE USE ONLY:

Form completed by: PRP/Consultant/DEQE/DEQE Contractor/Other (Circle one.) Date Received: _____

If not compiled by DEQE, is provided information: ☐ Adequate ☐ Insufficient ☐ Inaccurate

Conclusions: ☐ No Evidence of Release ☐ Release Confirmed ☐ Potential Release - Further Investigation Required

Disposition of Case: ☐ No Action ☐ Re-do P.A. ☐ Perform S.I. ☐ Perform IRM ☐ Other

Enforcement Position: ☐ N.A. ☐ Send N.O.R. ☐ N.O.R. sent _____ ☐ Other

Comments: _____

DEQE STAFF: _____ TITLE: _____

SIGNATURE: _____ DATE: _____