



Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs

Department of Environmental Protection

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Bureau of Waste Site Cleanup

Financial Inability Program Fact Sheet

Updated March 25, 2026

- **Regulatory Requirement:** Section 310 CMR 40.0172 of the Massachusetts Contingency Plan (MCP) requires Responsible Parties (RPs), Potentially Responsible Parties (PRPs) and any Other Persons to promptly notify the Massachusetts Department of Environmental Protection (MassDEP) when the performance of Response Actions under the MCP is beyond their financial ability.
- **Protection Afforded by Financial Inability Status:** Financial inability is a defense to any civil administrative penalty that MassDEP seeks to assess for noncompliance, arising out of such inability, with MCP deadlines (except a violation of any Notification Requirement), provided that such noncompliance occurs after the date of MassDEP's receipt of such notice. See 310 CMR 40.0172(5). MassDEP's Bureau of Waste Site Cleanup (BWSC) has created a financial inability (FI) program to streamline and provide predictability to determinations of financial inability. If MassDEP agrees with an assertion of financial inability, a financial inability status (FI Status) designation will be assigned to the applicant. FI Status means that MassDEP agrees that one or more response actions are beyond the applicant's financial ability. While FI Status is maintained, it acts as a protection against penalties stemming from noncompliance with MCP deadlines.
- **Application Process:** Interested parties may obtain information and an application package by contacting BWSC's Cost Recovery and Fee Unit at the address or telephone number listed below. To apply, the applicant must mail a completed application package, including the Release Tracking Number (RTN), three (3) years of federal and state tax returns (plus all schedules) and two (2) cost estimates from Licensed Site Professionals (LSPs) for the next required MCP Response Actions at the Site.

• **FI Evaluation Process:** MassDEP will evaluate the FI application package as well as the timeline of required Response Actions at the Site. MassDEP will disagree with an applicant's assertion of financial inability if the costs of conducting the next step of required work can be met through available cash, assets, or by qualifying for a loan using lending industry debt-to-income qualification standards. MassDEP will provide applicants an opportunity to clarify or complete partial applications but will not grant FI Status to those applicants who do not respond to MassDEP's request in a timely manner. MassDEP may also require additional documentation or explanation to fully understand the nature of some corporate structures, trust agreements, and other complex financial arrangements. To properly evaluate the financial capabilities of a Nominee Trust, or any other trust where the beneficiaries direct the actions of the Trustee, MassDEP will require financial information from each beneficiary listed in the schedule of beneficiaries. Failure to provide this information may result in MassDEP not granting FI Status. Living expenses are factored into the evaluation of an individual's ability to pay. MassDEP's BWSC staff typically completes its review in thirty (30) days, but additional time may be necessary depending on the complexity of the FI application.

• **Transactions Intended to Avoid, Reduce or Postpone Ability to Perform Response Actions:** Notice of an applicant's assertion of financial inability must be provided in good faith. See 310 CMR 40.0172(5)(b). Indications of lack of good faith may include circumstances where there has been (1) the establishment of any form of estate or trust with the intent to be a device to avoid, reduce or postpone the applicant's ability to pay, or (2) any conveyance or transfer of ownership or control of property or assets of any kind that purports to be a bona fide transaction but that is intended to avoid the applicant's ability to pay for such liability, or (3) any other means that purport to be bona fide but that are intended to avoid, reduce, or postpone the applicant's ability to pay for such liability. See M.G.L. c.21E §5(i).

Examples:

#1. An individual receives a Notice of Responsibility (NOR) from MassDEP with respect to a release of oil and/or hazardous materials on property that the individual owns. One month later the individual transfers the property to a limited liability company (LLC), which the individual or a person affiliated with the individual owns, for a nominal payment. The LLC does not have any assets other than the property and applies for financial inability. The individual does not apply for FI.

- This is an example of an application that appears not to have been given in good faith per M.G.L. c.21E §5(i). The individual appears to have attempted to avoid liability by passing ownership of the property to an unfunded LLC.

Unless presented with additional countervailing facts, MassDEP will not grant FI Status to the LLC. As the individual has not applied for FI, they will not receive it.

#2. An LLC purchased property known to be contaminated. The LLC was funded with the amount of money reasonably expected to be necessary to accomplish the remaining cleanup, taking into account reasonable contingencies. However, a substantial amount of additional contamination was discovered thereafter, and the LLC is applying for financial inability now that all funds have been exhausted.

- This is an example of an applicant that may be eligible for FI Status. The LLC showed good faith by initially planning for the cost of cleanup but now that the costs exceed the LLC's means, it may be a candidate for FI Status.

#3. A homeowner receives an NOR from MassDEP. The homeowner retains an LSP and determines that they cannot afford to accomplish the next step of work. The homeowner applies for financial inability and demonstrates that they do not have the available cash, and their only asset is the home they live in.

- This is an example of an applicant that may be eligible for FI status. The homeowner has shown a willingness to engage in the required cleanup process and has demonstrated that they cannot afford the next step of Response Action work. MassDEP does not consider the value of an applicant's primary place of residence when making an FI determination.

#4. A company receives an NOR from MassDEP and applies for financial inability. The company demonstrates that any income it received in the previous three years, and is expected to receive in the coming year, is expended through normal and appropriate business expenses and it does not have sufficient assets to pay for the next step of cleanup.

- This is an example of an applicant that may be eligible for FI Status pending a review of the company's assets and potential to take out a loan.

• **Notice, Status Duration and Responsibilities:** Upon completion of a financial inability evaluation, applicants will be notified in writing.

- If MassDEP **agrees** with the applicant's assertion that one or more response actions are beyond the applicant's financial ability, MassDEP will grant the applicant FI Status for those response actions. FI Status is valid for one (1) year, or until the date

specified in MassDEP's letter of decision, whichever is later. The letter will also contain an explanation of rights and responsibilities, and information on the reapplication process. **FI Status must be renewed annually and may not be transferred between parties.**

- If MassDEP finds that the applicant has not demonstrated that any response actions are beyond the applicant's financial ability, the applicant will be so notified and remain subject to potential enforcement and penalties if they fail to comply with the MCP. An applicant may reapply at any time should they obtain new information or if their financial circumstances materially change.

• **Nature of FI Determination:** MassDEP's determination to grant FI Status outside the context of a penalty appeal is an exercise of its enforcement discretion. It reflects MassDEP's determination not to take certain enforcement actions against the applicant based on MassDEP's view of the applicant's financial status. The granting of FI Status is not an adjudicatory proceeding, is not a final agency decision, and is not subject to appeal. However, should MassDEP issue a penalty assessment notice to the applicant, a previous decision not to grant FI Status is not intended to preclude the applicant from reasserting their financial inability status *de novo* in a penalty appeal brought pursuant to 310 CMR 40.0051.

• **After FI Status is Given:** An FI Status holder is required to notify MassDEP of any material changes in their financial circumstances. In addition, FI Status holders must still give notification of any new releases and/or Imminent Hazards at the Site in accordance with 310 CMR 40.0172(5)(b) and must provide MassDEP with access to the property to conduct response actions. A failure to adhere to these requests may jeopardize current FI Status.

• **What FI Status is Not:** A Notice of Financial Inability is different from a claim of Financial Hardship (310 CMR 4.03), which is made only for the purpose of requesting a payment plan for outstanding debt to the Commonwealth and does not provide any defense for non-compliance under the MCP. An application for Financial Inability Status should also be distinguished from a claim of inability to pay a penalty resulting from a Penalty Assessment Notice issued by MassDEP.

This guidance may not be relied upon to create rights, duties, obligations, or defenses, implied or otherwise, enforceable at law or in equity, by any person in any administrative proceeding or other litigation with MassDEP.

Please direct questions and requests for application materials to:

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Bureau of Waste Site Cleanup
Southeast Regional Office
20 Riverside Dr.
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617-874-6325

To request a translation of a MassDEP document, please complete the form available at the following link: [Request a Translation of a MassDEP Document](#)