



## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

# Dealing with a Spill/Contamination at Your Home or Business

Once you've had a spill, or observed contamination in the environment, certain actions are necessary. For a thumbnail sketch of required regulatory actions, see [Overview of Cleanup Process](#). General advice for the most common contamination scenarios are provided below.

## Whom to Contact

If you had a spill of oil at your home or business, or are aware of contamination related to your oil storage tank or delivery line, your first point of contact should be the local fire department. Certain matters are under their direct jurisdiction (e.g., tank removal, public safety issues), and they will in many cases provide advice on how to best proceed. Under state law, you must also contact the Massachusetts Department of Environmental Protection (DEP) if certain reporting thresholds are reached or exceeded. In all, there are 22 specific threshold conditions that would require notification to MassDEP - in as little as 2 hours after becoming aware of the problem. The most common reporting conditions at homes and small businesses are listed below:

- a spill of more than 10 gallons of gasoline or oil within a 24 hour period;
- a spill of any quantity of gasoline or oil that creates a sheen on a surface water body;
- a discovery of oil floating on the surface of the groundwater table;
- the presence of explosive concentrations of petroleum vapors in a building or confined space.

Complete details are available in the Massachusetts Contingency Plan, in Section 40.0300. If you have a sudden spill or other emergency condition, contact MassDEP using the procedures specified in [Report an Environmental Emergency](#). If you don't have a spill or emergency condition, but have encountered contamination, consult with a tank removal/cleanup contractor, environmental consultant, or Licensed Site Professional to determine if notification to MassDEP is required.



This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370



MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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## Required Reading

Make sure that your tank removal/cleanup contractor and/or Licensed Site Professional has a copy of the MassDEP draft publication [Assessing Contamination at Residential Underground Heating Oil Tank Closures](#)  . It is also highly recommended that homeowners carefully review this document, which contains complete step-by-step instructions on how to act and proceed, and the pitfalls that should be avoided.

## Investigating the Problem

When contamination is discovered, it must be assessed. If you are removing an underground storage tank, the tank removal contractor should be able to perform this service. Make sure they follow the procedures outlined in [Assessing Contamination at Residential Underground Heating Oil Tank Closures](#)  . If less than 10 gallons of oil were spilled, and there is no indication of oil floating on the groundwater surface, you may be able to undertake a Limited Removal Action, to excavate and properly manage up to 100 cubic yards of oil contaminated soil. If you complete this action within 120 days of discovering the problem - and remove all contamination above applicable standards - you will not be required to report this matter to MassDEP, though you should keep good records, for future reference and availability. Again, your tank removal or cleanup contractor should be able to advise you in this regard. Or, you can download relevant BWSC policies to get the details for yourself.

## Hiring a Licensed Site Professional

If you have a spill or site condition that requires reporting to MassDEP, you will have to hire a Licensed Site Professional (LSP) to oversee further actions at the site, and file the necessary paperwork. (You could also hire an LSP to find out if a reporting condition exists, and/or oversee work that does not require reporting to MassDEP - though you are not required to do so.) An LSP is a scientist or engineer that is licensed by the state to assess and clean up contaminated sites. A list of LSPs can be obtained from the [Board of Registration of Hazardous Waste Site Professionals](#). You should consult the MassDEP publication [A Massachusetts Property Owner's Guide to Hiring a Licensed Site Professional](#) for more details. *Bear in mind that hiring an LSP is like securing any professional services - you need to shop around, ask for references, and feel comfortable with whomever you choose.*

## What to Expect

Once you report the contaminated site to MassDEP, you will receive a Notice of Responsibility (NOR). Although this document may look a little intimidating, it is a form letter issued to all parties to advise them of their potential liabilities. If you had a sudden spill or other time-critical site condition, you will be required to conduct an Immediate Response Action (IRA); your LSP and/or cleanup contractor will be able to advise and assist you in this regard. In most cases, IRAs are verbally approved by MassDEP, but you will have to submit a formal plan if the cleanup is not completed in 60 days. Once the site has been adequately cleaned up, it can be closed out by a Licensed Site Professional by filing a Response Action Outcome (RAO) statement to DEP. If levels of contamination are left behind at a site that would not be suitable for unrestricted residential use, you will be required to file a Notice of Activity and Use Limitations (AUL). If the site can not be (or is not) cleaned up in 1 year, you will have to file a Tier Classification document, and perform more extensive assessment actions. (see [Overview of Cleanup Process](#) )

## Timing is Important

The longer you wait or take to clean up a problem, the more it will cost you - in more ways than one. First off, the longer a problem is left unaddressed, the worse it will get. That's because contamination released to the environment tends to expand and migrate beneath the ground surface. Moreover, the rules governing the clean up of these sites specify more submittals and fees the longer a site situation remains open. If possible, you should try to close out a problem (i.e., file an RAO document) with 60 days of notifying MassDEP of the problem. That way, the only paperwork you will be required to file is a Release

Notification Form and a Response Action Outcome (with appropriate supporting reports and documentation), and there will be no fees assessed by DEP. After 60 days, you may need to file an Immediate Response Action Plan (filled out by an LSP). After 120 days, you will have to pay a \$1,200 fee to MassDEP to file the Response Action Outcome document. After 1 year, you will have to pay an LSP to prepare a Phase I report and file a Tier Classification submittal. After your site is Tier Classified, MassDEP will bill you a compliance assurance fee of up to \$5,000 per year.

## Items to Consider

While you will need to rely heavily upon your Licensed Site Professional and other persons you have retained to address problems of this nature, you should keep the following items in mind:

- *MassDEP Involvement* - In most cases, a MassDEP staff person will not be able to maintain an active role in overseeing actions at your site. While we will try to provide as much advice as possible, we simply do not have enough staff engineers and scientists to provide comprehensive oversight at the thousands of sites under our jurisdiction. Under the "privatized" system that governs site cleanup in Massachusetts, your Licensed Site Professional is the primary decision maker in these cases, though their decisions are subject to future audit by MassDEP.
- *Insurance Claims* - Unfortunately, many insurance policies have a "pollution exclusion" provision. You should investigate this issue immediately with your insurance agent and/or your attorney, to see where you stand in this regard. In cases where claims will only be paid out for damages to third parties, note that impacted groundwater which migrates to an adjacent property could constitute damage to a third party.
- *Contaminated Soil* - Some LSPs and cleanup contractors can get carried away with digging up contaminated soil, to the point where hundreds of cubic yards are stockpiled, requiring proper off-site treatment or disposal - which can add up to a significant amount of money. Expect to pay about \$50/ton to dispose of petroleum contaminated soil. Talk with your contractor and/or LSP before the first shovel goes into the ground, and come to an understanding about your financial ability to properly manage these contaminated soils. Note that a failure or unwillingness to pay for removal of contaminated soil does not mean that it will be OK to leave it in the ground, but if you cannot afford to remove it now, don't dig it up, unless it is causing a direct health or environmental impact. It will still have to be addressed, but a more careful assessment of the situation may find better and less expensive alternatives.
- *Building Integrity* - Note that it is almost never necessary or appropriate to move, demolish or significantly alter a permanent structure, or compromise the integrity of building, to clean up a site. At sites where direct exposures are occurring (e.g., vapors infiltrating into a building from the subsurface), there are usually engineering approaches that can be used to address the problem, without significantly affecting the structure. As long as significant impacts are not present, this contamination can remain, if a Class A-3 or Class C Response Action Outcome is filed.
- *Extent of Cleanup* - You should take an active role in deciding the most appropriate cleanup approach and strategy for your site. While state regulations (i.e., MCP) dictate the minimum degree of cleanup that must be achieved, there is some flexibility in how and when to comply with these standards. In simple terms, the MCP recognizes four degrees of cleanup, for documentation in a "Response Action Outcome" submittal:
  - **Background** - If you are able to remove all of the contamination at a site, you achieve what is known as a "background" condition. Obviously, this is the most protective and desirable degree of cleanup, but it may not always be possible or feasible. This qualifies for a class A-1 Response Action Outcome.

- **Unrestricted Use** - If all of the contamination is not removed, but the levels that remain are suitable for any type of use (e.g., residential, schools), the site qualifies for a class A-2 Response Action Outcome (or class B-1 if no cleanup was required to achieve these levels). There are no requirements for any deed notice in this instance.
- **Restricted Use** - If contamination is left behind that would not be suitable for unrestricted use (e.g., surface fill at homes or schools), but in its current state and location is posing no significant risk, the site would qualify for a class A-3 Response Action Outcome (or Class B-2 if no cleanup was required to achieve these levels). In these situations, a Notice of Activity and Use Limitation (AUL) is required to be attached to the deed of the property. A common example of this situation occurs when oil leaks below the foundation of a home: since no one is likely to contact contaminated soil below the foundation, and assuming it is not causing an unacceptable threat to groundwater quality, or generating vapors that are unacceptably impacting the quality of air within the structure, the oil may be posing no threat at present. However, if the building is demolished in the future, and the soil is dug up and brought to a new residential development, it may become a problem. For this reason, a notice (AUL) is attached to the deed of the property, warning future land owners that this soil would need to be managed in an appropriate manner, if it is ever disturbed.
- **Temporary Solution** - In situations where "gross" levels of contamination are left behind at a site (because it is not feasible to remove them), the MCP allows the attainment of a "Temporary Solution", assuming that a demonstration can be made that this contamination is not posing an immediate threat to human health or the environment. A common example of such "gross" levels are concentrations of contaminants in excess of listed "Upper Concentration Limits" (UCLs). This level of cleanup is documented by filing of a Class "C" Response Action Outcome. In these situation, a Licensed Site Professional has to review conditions at the site every 5 years, to ensure that conditions have not worsen, and to see if new technologies have been developed that would make achievement of a Class A-1, A-2, or A-3 solution feasible.
- *Activity and Use Limitations* - One of the biggest problems and concerns faced by most homeowners is the prospect of having to place a notice on the deed of their property (AUL). There is great concern that such a notice will significantly devalue their property, or otherwise restrict their use and enjoyment of their home. BWSC is aware of homeowners who have spent tens of thousands of dollars in an attempt to avoid having to place these types of notices - through painstaking excavation of contaminated soil located beneath and around their basement floors and foundation walls. While this is one option you may chose, it is not what MassDEP would recommend. Some background and items to consider in this regard:
  - The AUL notice was actually conceived as a sensible alternative to excessive cleanup costs. Note that in many states, parties are still required to restore their property to the highest and strictest standards. While this is still a goal of the Massachusetts regulations, there is also a recognition that this goal cannot be achieved at many sites without spending an exorbitant amount of money. In these cases, the rules require that the site be cleaned to a level that is sufficient for current uses and conditions - and that a notice (AUL) be attached to the deed that documents this achievement, notes any uses that should be avoided or better evaluated (e.g., "don't garden in this area"), and provides advice or requirements for any future disturbance of contaminated areas (e.g., "if this area is excavated in the future, make sure that workers are properly protected, and that the soil goes to appropriate locations"). In most cases, these provisions and notices have no adverse impact on the day-to-day use of a property.
  - Admittedly, there are legitimate fears that such a notice would devalue a property, or impede its future sale. However, as this tool becomes more and more common (and its use is increasing dramatically), we believe any such effects will be modest, especially in comparison

to other property conditions that warrant communication to future buyers - like lead paint, radon, asbestos, etc. Moreover, note that these notices can be removed at a future time, if additional cleanup is conducted, or, in the case of oil contamination, levels decrease through the natural breakdown processes.

The choice is yours. Have your LSP explain the issues and options, as they apply to your site. Then, make the decision that is right for you.