



# Department of Environmental Protection

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## Downgradient Property Status Fact Sheet

### OVERVIEW OF DOWNGRADIANT PROPERTY STATUS

DEP recognizes that people whose property has been affected by contamination from an upgradient or upstream source may not be able to meet the requirements of the MCP because they do not control the source of contamination. The Downgradient Property Status provisions allow people in this circumstance to provide DEP with information showing that contamination on their property is coming from an upgradient property. Once this information (called a "Downgradient Property Status Submittal") is filed in accordance with the MCP, the Downgradient Property Status becomes effective and DEP suspends the deadlines for Tier Classification and Comprehensive Response Actions and also suspends the assessment of annual compliance fees. This suspended schedule allows time for the upgradient source to be discovered and brought into the MCP system, leading to a more comprehensive assessment and resolution of the contamination problem. The Downgradient Property Status also includes requirements and incentives for downgradient property owners to communicate with and provide reasonable access to upgradient property owners so they can meet their MCP cleanup requirements.

The Downgradient Property Status (DPS) Transmittal Form may be filed using eDEP:  
<https://www.mass.gov/lists/waste-site-cleanup-forms>

### REQUIREMENTS FOR DOWNGRADIANT PROPERTY STATUS

The general requirements for establishing and maintaining Downgradient Property Status are as follows:

- Downgradient property owners/operators must comply with the MCP notification requirements;
- Downgradient property owners/operators must submit a Licensed Site Professional Opinion indicating that the source of contamination is located upgradient or upstream of the property and, through groundwater migration or surface water, has come to be located at the downgradient property;
- Downgradient property owners/operators must certify that they have not contributed to the release, nor done anything to make release conditions worse;

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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- Downgradient property owners/operators must certify that they have no affiliation with the upgradient property owner(s)/operator(s) who may have been the owners/operators of the source of the release;
- Any prior response actions taken by the person filing the DPS Submittal must have been performed in compliance with the requirements and procedures in M.G.L. c. 21E and the MCP;
- A person providing a Downgradient Property Status Submittal to DEP must use a Downgradient Property Status transmittal form; provide a copy of the Downgradient Property Status Submittal to abutting upgradient and downgradient property owners/operators, and to any owner(s)/operator(s) known or suspected to be a source of the release; and inform local officials of the availability of the Downgradient Property Status Submittal; and
- Downgradient property owners/operators must provide reasonable site access to persons conducting response actions in order to maintain Downgradient Property Status.

## **EFFECT OF DOWNGRADIENT PROPERTY STATUS**

If a Downgradient Property Status Submittal is filed prior to Tier Classification, a one-time fee must accompany the Submittal. Deadlines for Tier Classification and Comprehensive Response Actions are suspended while Downgradient Property Status is maintained. If the Downgradient Property Status Submittal is filed after Tier Classification, there is no fee for filing the Submittal. However, the applicable Tier I or II annual compliance fee will be assessed for the year in which the Downgradient Property Status Submittal is filed. Thereafter, annual compliance fees will be suspended.

DEP may establish Interim Deadlines, request a Downgradient Property Status Management Plan, and/or issue orders requiring downgradient property owners to perform response actions. Downgradient Property Status may also be terminated by DEP if new information indicates that the requirements for maintaining Downgradient Property Status are not being met.

Downgradient Property Status does not relieve any person from any obligation to perform Immediate Response Actions or to provide notification of releases or threats of release in accordance with the MCP.

Downgradient property owners may terminate Downgradient Property Status at any time by notifying DEP of their intentions to perform Comprehensive Response Actions.