

Haley & Aldrich MCP Comments

2019 MCP Revisions – Proposed Amendments to the Massachusetts Contingency Plan, 310 CMR 40.0000

Provided below are Haley & Aldrich’s comments on the 2019 “Proposed MCP Revisions for Public Comment”

“Page No.” refers to the pages in the 2019 Proposed MCP Revisions made available electronically in redline/strikeout format published in .PDF.

“MCP Reference” refers to the new citations in the 2019 Proposed Revisions draft, unless otherwise noted.

H&A Comments on 2019 Proposed MCP Amendments			
Page No.	MCP Reference	Comment and Note to Reviewer Reference # (if applicable)	
10	40.00002(1)(e)	NTR 1: No comment	
13	40.0005 (11) Effective Dates	NTR 2: We recommend that use of the new risk characterization protocol (see 40.0926(8)(a)(2)) be optional for sites that notify prior to the publication date. A two-month phase-in process could have negative impacts on "non-simple" sites in active redevelopment that have already notified, assessed, and conducted risk characterizations based on current regulations. By the time the new regulations go into effect, these sites could be in the middle of implementing Release Abatement Measures, cleanups and/or construction based on that risk characterization. Remedial goals established for these sites would have been based on risk characterizations performed under the current regulations; once construction begins, collecting additional data may be impossible. Without collecting more data, a no-conditions site closeout might no longer be possible for some of these sites, which would be very disruptive to development. Also see comment at NTR 61	
15	40.0006 AEPMM	NTR 3: We support what we believe is the intent of this clarification to the definition of Active Exposure Point Mitigation Measure. However, we note that the current Vapor Intrusion Guidance includes discussion of pressurized systems (block-wall and sub-slab), and the revised language would appear to exclude these from the definition of Active Exposure Point Mitigation Measures.	
17	40.0006 Anthropogenic Background	NTR 4: We support this clarification but question how to define “ash landfill.” Is there a formal definition? Can we refer to the MassDEP’s most recent list of “Inactive & Closed Landfills & Dumping Grounds”? Does COMM-97-001 cover these types of landfills?	
20	40.0006 CSM	NTR 5: The proposed language is vague. "Foreseeable future" covers what time period? A guidance document would be useful.	

22	40.0006 Containerized Waste	NTR 6: We support this clarification.	
24	40.0006 Current Drinking Water Source Area	NTR 7: No comment	
34	40.0006 MGP	NTR 10: We support the addition of this definition.	
35	40.0006 Monitoring Well	NTR 11: We support the idea of geolocating monitoring wells used in response actions, but the requirement to geolocate should not be made part of the definition. A better place for this would be 40.0028 Well Maintenance and Security. Including Global Positioning System (GPS) coordinates of wells used in MCP submittals would not be difficult, but for the associated data to be usable by the public, MassDEP or Licensed Site Professionals, a format for providing the coordinates will be necessary. For example, MassDEP could develop a "Monitoring Well Table" to be included with each Licensed Site Professional submittal. Also – MassDEP's Bureau of Water Resources already collects much of this information from well drillers; adding the requirement to collect and submit well-specific GPS coordinates to the well driller regulations would complement the proposed changes to the MCP.	
36	40.0006 NPDWSA	NTR 12: Is this meant to exclude inactive landfill and landfills that were closed prior to the implementation of the current permitting system?	
41	40.0006 Radiation	NTR 13: We support these additions.	
41	40.0006 RRROW	NTR 14: No comment	
44	40.0006 Remedial System	NTR 15: We recommend leaving the language in. Although not strictly necessary, it does provide clarity in an area that is easy to misinterpret.	
61	40.0020(5) CERCLA AULs	NTR 16: We support this addition.	
63	40.0027 RMRs	NTR 17: No comment	
65	40.0028 Well Maintenance	NTR 18: We support this clarification, but also see comment above re NTR 11. Geolocation of monitoring wells should be included in this section. It could be renamed "Well Installation, Geolocation, Maintenance and Security"	
67	40.0031(8)(a) Remediation Waste (mixing)	NTR 19: As written this appears to preclude amending soil for geotechnical purposes such as jet grouting or soil solidification. Suggest adding the following language "...amendments to achieve specific remedial goals, not including dilution, or geotechnical purposes, and... "	
72	40.0041(1) Rem Wastewater	NTR 20: No comment	

79	40.0046(3) Remedial Additives	NTR 21: We support these changes	
99	40.0111(10)(a) Federal Superfund Program	NTR 22: No comment	
103	40.0115 Radioactive Material	NTR 23: We support adding releases of radiation to the adequately regulated section of the MCP, and we agree with use of the MassDPH dose-based approach to evaluate risks from radionuclides.	
116	40.0185(1)(f) DPS – don't impede future	NTR 24: No comment	
117	40.0191 RAPS	NTR 25: See comment at NTR 71	
123	40.0312(1)(a) TOR – 2 hr Bilge	NTR 26: No comment	
123	40.0313(1) 72-hr NAPL ½"	NTR 27: We support this clarification	
123	40.0313(2) 72-hr UST	NTR 28: We support this clarification	
125	40.0314 TOR 72-hr	NTR 29: No comment	
126	40.0317(1) Oil/Water Sep	NTR 30: No comment	
127	40.0317(13)(a) Reclamation Soil	NTR 31: As written this could be read to apply to disposal sites that are not in compliance. We suggest the addition of commas as follows: "...the soil has been excavated and transported either from a disposal site in compliance with 310 CMR 40.0000, or from a location that is not a disposal site, in compliance with all applicable regulations and license, permit or approval requirements..."	
129	40.0317(20) PWS Disinfectants	NTR 32: No comment	
129	40.0317(24) Gas Releases	NTR 33: No comment	
133	40.0321(2)(b) IH Surficial Soil	NTR 34: No comment	
136	40.0335(7) PPA Retract	NTR 35: No comment	

137	40.0336(2) NOR Requirements	NTR 36: No comment	
151	40.0414(7) Cap	NTR 37: No comment	
155	40.0426(6) AEPMM Termination	NTR 38: No comment	
159	40.0441(1)(b) RAM/IRA	NTR 39: As written this precludes implementation of Release Abatement Measures (RAMs) anywhere on a site that has an Immediate Response Action condition. Sites with a 72-hr Underground Storage Tank notification or a 2-hr Asbestos in Soil notification somewhere on the property would be forced to stop all RAM work. Suggest replacing "any" with "the" or "a."	
161	40.0442(3)(b) Scope of RAM	NTR 40: We suggest clarifying this section by adding "...that could prevent or impede the implementation of likely response actions in the future."	
163	40.0443(2) RAM Approvals	NTR 41: As written this would require MassDEP approval for any and all Release Abatement Measure (RAM) activities included in a RAM plan if one element of that RAM plan is application of remedial additives near sensitive receptors. We suggest rewording to clarify that MassDEP approval is required only for the application of remedial additives near sensitive receptors, and that other elements of the RAM plan may proceed without MassDEP approval.	
167	40.0461(3) URAM	NTR 42: See comment at NTR 39. Suggest replacing "any" with "a" or "the."	
169	40.0461(9) URAM/OP	NTR 43: No comment	
169	40.0462(1) URAM Oral	NTR 44: We support this revision.	
173	40.0481(1)(b) No TS	NTR 45: No comment	
181	40.0520 Reclassification	NTR 46: No comment	
180	40.0560(7)(a) TC ext for TS	NTR 47: No comment	
186	40.0560(7)(d) TC ext no 45	NTR 48: No comment	
187	40.0560(7)(e) and (f)	NTR 49: No comment	
187	40.0560(7)(g) and (h) TC ext post ROS or PS	NTR 50: typo at 40.0560(7)(g); should read...shall take effect on the date the Tier Classification Extension Submittal is received..."; typo at 40.0560(7)(h); should read ... "shall take effect on the date the Tier Classification Extension Submittal is received..."; missing citation at 40.0560(7)(h); should read "...pursuant to 310 CMR 40.1067(4)(c), 310 CMR 40.1067(5)(c) and 310 CMR 40.1067(6) ..."	
186	40.0560(8)(e) Tier Class /Change in Person	NTR 51: No comment	

187	40.0560(7)(d)(3) TC/Temp Soln	NTR 52: We support the intent to provide clarification in this area, but we note that no provision has been made for transition of existing sites. Many existing sites with Temporary Solution status have no effective Tier Classification now – how will these sites come into compliance under the new regulations? We suggest including a transition time period of one year, within which the next status report submittal would be deemed to meet the requirements for a Tier Classification Extension. See also NTR 58.	
196	40.0855(3) 40.0861(2)(a) 40.0871(1)(a) 40.0874(3)(b)(2) 40.0891(3) CSM in CRAs	NTR 53: No comment	
200	40.0859(5) Feasibility for portion	NTR 54: How do you define "portion"? A feasibility evaluation might determine that it is feasible to remove small quantities of contaminated soil from one corner of a site (for example, removing one 20 yd truckload of contaminated soil from an acre-sized parcel might be feasible.) Is this what is intended?	
202	40.0861 (2)(a) 40.0861(2)(f)(2) 40.0861(2)(g) 40.0861(2)(h) 40.0861(2)(i) Rem Action Plan	NTR 55: 40.0861(2)(g) and 40.0861(2)(e) appear to be redundant. Is the language at 40.0861(2)(h)(1) meant to include factors such as removal of an existing building?	
206	40.0871(6) Phase IV Impl	No NTR provided: As written the language would require Department approval for all elements of a Comprehensive Remedial Action plan that includes application of remedial additives near sensitive receptors. We suggest narrowing the scope of the required approval to allow elements other than application of remedial additives near sensitive receptors to proceed.	
212	40.0893 Rem Ops	NTR 56: No comment	
216	40.0897(1)(c) Post-TS O&M	NTR 57: No comment	
218	40.0898(1) Post-TS Status/RMR	NTR 58: Is this provision meant to be retroactive? Please clarify due date of Tier Classification Status Report vis a vis due date of annual report. Does this mean that no other submittals are necessary to extend Tier Classification? See also NTR 52 re 40.0560(7)(d)(3)	
224	40.0924 ID of Exp Points	NTR 59: (5) seems redundant to (3)	
224	40.0924(6) GW Exp Points	NTR 60: Is the intent of the language at 40.0924(6)(a) to still allow averaging of Groundwater Exposure Point Concentrations when using Method 3?	
228	40.0926 EPCs	NTR 61: Typo at 40.0926(2) - "CNR" should be "CMR".	

229	40.0926(8)(a)(2) EPCs Soil/Upper Conf Limit	<p>NTR 61: Implementation of 40.0926(8)(a)(2) on sites in active redevelopment that have already notified, assessed, and conducted risk characterizations based on current regulations will be disruptive. By the time the new regulations go into effect, these sites could be in the middle of implementing Release Abatement Measures, cleanups and/or construction based on that risk characterization. Remedial goals established for these sites would have been based on risk characterizations performed under the current regulations; once construction begins, collecting additional data may be impossible. Without collecting more data, a no-conditions site closeout might no longer be possible for some of these sites, which would be very disruptive to development. We suggest that the use of the new risk characterization protocol be optional for sites that notify prior to the publication date. Also see NTR 2.</p> <p>Please clarify whether using the average concentration is acceptable for modeling purposes, i.e. using the average concentration of lead as the Exposure Point Concentration for modeling using the Integrated Exposure Uptake Biokinetic (IEUBK) model, consistent with EPA guidance.</p>	
229	40.0926(9) EPCs/IA	NTR 61: The language at 40.0926(9)(a)(1) and (2) is unnecessary; MassDEP's Vapor Intrusion Guidance Document provides detailed information on performance standards for determining nature and extent of Vapor Intrusion as well as for developing Exposure Point Concentrations. We suggest deleting the language at (a)(1) and (2) and retaining only the language at (a).	
230	40.0926(12)(a) Hotspot	NTR 61: Please provide a note to reviewer regarding the intent of this addition. This will assist Licensed Site Professionals in remaining in compliance.	
242	40.942(1)(e) Method 1 OK Gardening BMP	NTR 62: No comment	
245	40.0955(2)(b) IH = or > 1	NTR 63: No comment	
247	40.0956(2)(c) Eco Subst Haz	NTR 64: No comment	
253	40.0974(2) Table 1	NTR 65: No comment	
277	40.0993 Human Health Risk Assessment	NTR 66: No comment	
279	40.0993 Human Health Risk Assessment	NTR 67: 40.0993(6) We recommend deleting Section 6 in its entirety (remove Sections 6(a) through (f).) Specific toxicity values should not be written into regulation. Values could change prior to next regulatory update. The text should reference use of MassDEP-developed values.	
282	40.0995(3) Eco Risk/MGP Waste	NTR 68: No comment	

285	40.0996(2) UCLs	NTR 69: A new term is needed for "Upper Concentration Limit" to avoid confusion with "Upper Confidence Level". We offer the following replacements for your consideration: "Concentration Limitation", "Concentration Limit", and "Concentration Limit Exceedance."	
286	40.0996(7) Engineered Barrier/FAMs	NTR 70: No comment	
294	40.1005(1) Foreseeable Period	NTR 71: Please further define "foreseeable future"; provide timeline and/or policy	
296	40.1012(d) AUL/NAPL	NTR 72: No comment	
296	40.1012(e) AUL/Radiation	NTR 73: We support this amendment.	
296	40.1012(3)(h) AUL/ROS	NTR 74: No comment	
301	40.1025(4) AEPMM PS	NTR 75: What is timeframe for MassDEP written response?	
304	40.1026(4) AEPMM TS or ROR	NTR 76: What is timeframe for MassDEP written response?	
304	40.1026(7) AEPMM TS or ROR RMR	NTR 77: typo...either "shall require Remedial Monitoring Reports" or "shall require a Remedial Monitoring Report."	
305	40.1030(1) PS TS Categories	NTR 78: No comment	
305	40.1040(2)(d) Post-PS w AEPMM rem waste	NTR 79: Needs refining - as written would eliminate from qualifying for Permanent Solution any site where contaminated Granulated Activated Carbon is generated. Need to allow for management of post-Permanent Solution waste and Active Exposure Point Mitigation Measures.	
308	40.1050(3) TS Req	NTR 80: No comment	
309	40.1050(4)(c) TS Per Review	NTR 81: Thank you for clarifying.	
311	40.1056(1)(l) PS Rem Waste	NTR 82: Except as generated as part of post-Permanent Solution activities such as Active Exposure Point Mitigation Measures. See also NTR 79 re 40.1040(2)(d)	
313	40.1056(4)(3) PS Doc	What is the intent of this proposed revision? Is the expectation that LSPs would reference links to eDEP?	
315	40.1057(3)(3) TS Doc	What is the intent of this proposed revision? Is the expectation that LSPs would reference links to eDEP?	
318	40.1067(5)(b) Post-PS Rem Actions	NTR 83: As written, for a site that has a Permanent Solution with a soil-only condition (historic fill or gardening), a building with an underdrain (as is common in Boston), would have to remain in the MCP conducting a Release Abatement Measure forever.	

319	40.1067(7) URAMs	NTR 84: No comment	
319	40.1067(8) URAMs	NTR 85: We suggest retaining the original language for clarity and consistency with Subpart J format – or move the language to a new section 40.1068	
320	40.1070 AULs/Ad Reg	NTR 86: No comment	
324	40.1072(5) GER Review	NTR 87: No comment	
328	40.1074(2)(a)(5) AUL AEPMM details	NTR 88: typo – missing words – "...features such as any Engineered Barriers..." "Relevant features" is vague. For an Active Exposure Point Mitigation Measure, does this mean location of wiring, piping, stacks, programmable logic controller (PLC)? Including such details in an Activity and Use Limitation (AUL) sketch plan could unnecessarily constrain future repairs to the system. Moving the PLC or stack would require an AUL modification.	
330	40.1080(4) AUL CERCLA	NTR 89: No comment	
333	40.1083 Release of GER or AUL	NTR 90: No comment	
340	40.1099 AUL Form 1072A	NTR 91: No comment	
348	40.1099 AUL Form 1075 Oblig AEPMM	NTR 92: No comment	
385	40.1403(2)(a)(3) Public Involvement Email	NTR 93: We support this revision. The intended recipients of such written notices should be able to issue a one-time blanket approval if they so desire, with the existence of such blanket approval made known to those conducting response actions.	
391	40.1403(11) Notice to Aff Ind re IRA or CEP	NTR 94: Form BWSC124 "Informational Notice About Immediate Response Actions" is not lay-person friendly for risk communication purposes. We request that MassDEP develop two separate fact sheets in layman's terms, to be filled in by the LSP or PRP with site-specific details, for the purposes of communicating information about, respectively, Imminent Hazard conditions and Critical Exposure Pathways.	
397	MOHML Table 1	NTR 95: We note that the proposed GW-1-based soil standard of 0.0002 mg/kg for total Per- and Poly-Fluorinated Alkyl Substances (PFAS) is likely within the range of typical background values. A recent study by the University of Vermont found concentrations of Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) in non-source area soil within the range of the proposed soil standard. In addition, there is currently no EPA-approved analytical method for PFAS in soil. Under these circumstances, the accuracy and reproducibility of analytical results may be questionable.	
397	MOHML Table 2	NTR 96: We support the deletion of Table 2	
	MOHML Table 2	NTR 97: We support the deletion of Table 2	

