



# Department of Environmental Protection

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## Massachusetts Contingency Plan (MCP) First Year Compliance Fact Sheet

The Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act (M.G.L. c.21E) and the Massachusetts Contingency Plan (the MCP), 310 CMR 40.0000, contain the requirements and timeframes for completing the cleanup of releases. The progress of all cleanups is tracked to see if required information is being submitted to DEP on time. DEP staff audit a percentage of MCP submittals to make sure that response actions are scientifically and technically sound and that cleanups are protective and are in compliance with the MCP. Please read the following information carefully. It will help explain what you must do to comply with the MCP and c. 21E.

### **1. Why does DEP think I am responsible for the cleanup at this site?**

At some point during the past year, DEP was notified of a release of oil and/or hazardous material at your property. You are listed in DEP's records as the person who is responsible for cleaning up this release. For example, at the time you or another party notified DEP that the release occurred, you either informed DEP that you accepted responsibility for the cleanup or you were sent a "Notice of Responsibility" (NOR) by DEP informing you that you were responsible for the release. In any case, DEP has reason to believe that you are an owner, operator, generator, transporter, disposer, or person who is otherwise responsible for the release at the subject property (referred to as the "site"). This means that, under Section 5 of M.G.L. Chapter 21E, you are a *Potentially Responsible Party* (PRP) and you are liable for response action costs associated with the release. As a PRP, you are required to conduct and complete certain response actions outlined in the MCP to clean up the release of oil and/or hazardous materials expeditiously.

### **2. Why are the MCP submittal deadlines important?**

Timely MCP submittals to DEP inform both DEP and the public that the site's environmental problems are being addressed and that cleanup is being conducted. It is in your best interest to conduct response actions properly and to provide DEP with the required submittals and information about your site's cleanup by the deadlines set in the MCP to avoid violation notices and penalties. If you fail to provide DEP with the required submittals by your site's one-year deadline, you will be violating the MCP and your site will be deemed Tier ID and DEP will assess you a \$4,915 fee (\$2,455 for certified Homeowner) for the first year and each year thereafter. If that happens, you and your LSP should classify your site to return to compliance and change the fee category. DEP may initiate enforcement action to get your site into compliance through DEP's Civil Administrative Penalty Regulations, 310 CMR 5.00. You could also be assessed a significant penalty if you fail to return to compliance.

### **3. What do I have to do by the site's one-year deadline to stay in compliance with the MCP?**

Your first step is to contact your Licensed Site Professional (LSP) to find out the status of your site.

- If you believe the cleanup at your site has been completed, ask your LSP to prepare and submit a **Permanent Solution Statement** [310 CMR 40.1000], as soon as possible, or by your one-year deadline. If you submit a Permanent Solution Statement more than 120 days after the date of notification and before the site is tier classified, you must also pay DEP a Permanent Solution Compliance Fee of \$1,470 (\$735 for certified Homeowner); or
- If more environmental studies or cleanup are needed and you will not be able to submit the required reports before the one-year deadline, ask your LSP to complete the work necessary to file a **Tier Classification Submittal**.

The information obtained from a *Phase I Initial Site Investigation* is used to classify a site as *Tier I* or *Tier II* [310 CMR 40.0480 and 40.0500].

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If a site is proactively Tier Classified within one-year of notification, DEP will not assess an Annual Compliance Assurance Fee for the first year. After a site is Tier Classified, Comprehensive Response Actions must be undertaken to assess and clean up the site under the direction of a *Licensed Site Professional* (LSP). You will also be assessed an Annual Compliance Assurance Fee for each year based on the status of your site on each Annual Status Date. These fees range from \$490 to \$4,915 per year (see item 5 below).

- If site studies prove that contamination migrated onto your property from an upgradient property, you may (but are not required to) have your LSP prepare and submit a **Downgradient Property Status** [310 CMR 40.0180] form and supporting documentation to DEP. If you file a DPS submittal that complies with 310 CMR 40.0000, deadlines for most cleanup work will be put on hold for you unless DEP rejects your submittal. However, you will be responsible for any serious problems on your property (such as direct contact hazards) if the party responsible for the contamination refuses to deal with them. Your LSP can explain this requirement in more detail. You must also pay DEP a DPS Compliance Fee of \$1,965 if the submittal is made prior to the one-year deadline. If you submit the DPS after the one-year deadline without Tier Classifying your site, you will be assessed \$4,915 Tier ID fees (\$2,455 for certified Homeowner) for each applicable year.

### **4. Are there any other submittals required during the site's first year that I should be aware of?**

Several other submittals are required before the site's one-year deadline, depending on the nature of the release. As with any submittal requirement, if you fail to provide DEP with a submittal at all or fail to provide submittals on time, you will not be in compliance with the MCP. You could be assessed a significant penalty if you fail to comply. The following is a list of several key submittals. Consult your LSP and the MCP for an explanation of all of your compliance obligations.

- Within sixty (60) days of your notifying DEP of the release condition, or within sixty (60) days of your receipt of a Notice of Responsibility (NOR) from DEP, you should have submitted a **Release Notification Form (RNF)** to DEP [310 CMR 40.0333 and 40.0336]. If you have not submitted an RNF to DEP, do so immediately.
- If you notified DEP of a release requiring an **Immediate Response Action (IRA)**, you should have submitted an **IRA Plan** to DEP by now, unless you have completed your IRA or your cleanup is completely finished.
- If your IRA is completed but you have more work to do to complete your cleanup, you must submit an **IRA Completion Statement** [310 CMR 40.0427] within 60 days of completion of the IRA, and Tier Classify or submit a Downgradient Property Status Submittal by your site's one-year deadline. However, if your cleanup is completely finished, you may submit a Permanent Solution by the site's one-year deadline with the required \$1,470 fee (\$735 for certified Homeowner).
- If you are still conducting Immediate Response Actions, make sure you are submitting **IRA Status Reports**. An IRA Status Report must be submitted to DEP within 120 calendar days of the date you notified DEP of the need to perform an IRA, unless an IRA Completion Report or a Permanent Solution Statement is received by DEP within this 120-day period [310 CMR 40.0425(1)]. Additional Status Reports must be submitted to DEP every six months thereafter, until you submit an IRA Completion Statement or a Permanent Solution Statement.

### **5. What happens after the first year when a Permanent Solution Statement is not submitted?**

If you submit a Tier Classification by the one-year deadline you have up to five years to complete the assessment and cleanup and submit a Permanent or Temporary Solution Statement. During this five year period there are specific deadlines for each phase of work that you should discuss with your LSP. Additionally, **you will be assessed an Annual Compliance Assurance Fee** for each year based on your one year deadline (also known as the Status Date). The **annual fee ranges from \$490 to \$4,915 per year** and is based on your site status (e.g., Tier I, Tier ID, Tier II, Temporary Solution, or Phase V) on your Annual Status Date. The fees are billed to you by DEP for each billable year until and including the year that the final Permanent Solution Statement is submitted. However, if you do not submit either a Permanent Solution Statement or Tier Classification by the one-year deadline, your site will be deemed Tier ID by default and you will be assessed a \$4,915 Tier ID fee for the first year and each year thereafter. You must then classify your site to return to compliance and change the fee category. Additional fee information is available at <http://www.mass.gov/eea/agencies/massdep/cleanup/grants/waste-site-cleanup-fees.html>.

### **6. Where can I get a copy of the MCP and Fee regulations?**

The MCP, 310 CMR 40.0000, may be viewed at <http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/>. Copies of the MCP and fee regulations, 310 CMR 4.00, may be purchased at the State Book Store in the State House (617-727-2834).

Please note that as of January 1, 2009, all submittals that require an LSP Opinion must be submitted through e-DEP, MassDEP's electronic document and form submittal repository. For more information on electronic submittal of forms and reports, please visit MassDEP's website, <http://www.mass.gov/eea/agencies/massdep/service/approvals/>.