	Comment	Commenter(s)	MassDEP Response
1.	MassDEP already has the ability to assess NRD penalties for releases to surface water and groundwater and has done so effectively in the past. This new NRD Program, in contrast, is an attempt to pursue NRD penalties on smaller spills with no requirement to actually demonstrate that impacts to natural resources have occurred. While the program, as proposed, will fund projects that are designed to restore, replace or acquire the equivalent of injured natural resources – the notion that a responsible party should be further assessed for theoretical damages is far beyond the scope of what we believe to be a rational state environmental policy.	New England Convenience Store & Energy Marketers Association Massachusetts Petroleum Council	As the comments note, Massachusetts has statutory authority to pursue and settle Natural Resource Damages (NRD) claims under section 5 of Chapter 21E and section 2A of Chapter 21A of the Massachusetts General Laws. NRD claims are not penalties as they are not punitive. Rather, they compensate the public for impairment of natural resources due to the release of oil and/or hazardous materials and the ecosystem services that they provide. Compensatory damages aim to "make the public whole" for the harm and punitive penalties are intended to punish the actor that caused the harm. The framework of the proposed oil spill method is based on Habitat Equivalency Analysis (HEA) which is established standard practice in NRD assessment. The principal concept underlying the method is that a loss of ecological services provided by habitat resources due to release of oil and/or hazardous materials can be compensated through habitat restoration. Two key inputs to the method are: • the area of open water or wetland habitat impacted by the oil spill (rather than volume spilled); and • the toxicity, mechanical injury, and persistence of the oil spilled. These inputs are not theoretical; they are related to injuries to natural resources. The method was tested on oil spills that occurred over the period of 1/1/2009 and 12/31/2017 that impacted 0.1 acres of habitat or greater, which is an area considered by Massachusetts to be significant for the protection of wildlife habitat. The majority of spills tested impacted less than 20 acres. Oil types were organized into categories based on their documented toxicity, potential for mechanical injury and persistence.. For example, gasoline has high toxicity, but is less likely to cause mechanical injury to aquatic organisms and does not persist in the environment.
2.	How will MassDEP address "adequately regulated" sites? Will MassDEP seek to use the standardized approach at sites being addressed under the solid waste program? Will this incentivize sites to be addressed outside of the MCP?	Licensed Site Professional Association	Based on feedback provided by stakeholders and additional evaluation, MassDEP intends to pursue groundwater NRD cases on a site-specific basis. That is, MassDEP intends to promulgate a standard groundwater method, but not standardize the process for initiating groundwater claims. NRD settlements have been reached at landfills where releases of hazardous substances occurred (e.g., Sutton Brook Disposal Area Superfund Site) and it is possible that NRD assessments could be conducted at landfills being addressed under the solid waste program but where hazardous materials releases occur. Thus, the standard approach should not affect how landfills are addressed.

	Comment	Commenter(s)	MassDEP Response
3.	How will the standard approach account for individuals who are eligible for liability exemptions that exist under Chapter 21E? Would the proposed approach apply to "Other Persons" who conduct response actions but are in fact not liable under Chapter 21E?	Licensed Site Professional Association	NRD liability is set forth in M.G.L. Chapter 21E, Section 5 (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section5). The proposed approach does not change liability for natural resource damages. To date the NRD Program and Trustee have offered liability relief for eligible persons for Brownfields projects. Requests for Covenants Not to Sue are reviewed by MassDEP, in coordination with the Massachusetts Attorney General's Office (AGO), on a case-by-case basis.
4.	The MassDEP proposed NRD surface water program is discriminatory as it exclusively focuses on oil rather than including the more than 1,000 other compounds on the MassDEP Oil and Hazardous Materials List.	New England Convenience Store & Energy Marketers Association	Of the 11,572 releases between 1/2009 and 12/31/2017, 8,193 were oil or oil and hazardous materials releases. That is, 71% of all releases over that time period involved oil. It is therefore reasonable that a standard method be focused on this category of releases. Of these releases, only 693 were to surface waters and only 517 were of a reported volume of between 10 and 10,000 gallons – the majority of these impacted less than 20 acres. In addition to the lower percentage of hazardous material releases to surface waters as compared to oil, the diversity of hazardous materials and their impacts on biota and ecosystems does not facilitate the development of a standard approach. Oil types, in contrast, do have known and documented properties and impacts to ecosystems which make oil releases suitable for a standard approach. The states of Florida, Washington, and Louisiana have adopted regulations using standard NRD approaches for oil spills. The MassDEP NRD Program is not focused exclusively on oil; the agency will continue to conduct site-specific NRD assessments for hazardous materials releases to surface waters and intends to address both oil and hazardous material releases to groundwater under the standard groundwater method.
5.	The program will unfairly penalize Massachusetts business owners for unintended releases to the environment.	New England Convenience Store & Energy Marketers Association	The proposed approach does not change business owners' liability for natural resource damages. As part of the regulatory review under Executive Order 562, MassDEP is working with Industrial Economics, Inc. (IEc) on a cost-benefit analysis, including potential effects on small businesses. That analysis will review the Release Tracking Numbers (RTNs) included in the oil spills to surface water model run to characterize business categories responsible for spills that reach surface waters.
6.	The program has the unintended consequence of penalizing homeowners who have heating oil releases and who are already burdened with the significant cost of clean-up.	New England Convenience Store & Energy Marketers Association	Only 693 of the 8,193 releases of oil or oil/hazardous materials that were reported between 2009 and 2017 reached surface waters. Of the 48 releases that were identified as residential, homeowners were identified as parties responsible for the cleanup for 41 releases.

Comment		Commenter(s)	MassDEP Response
7.	The program has the unintended consequence of penalizing motor vehicle operators who have a spill while refueling their vehicle or from an auto accident that results to a release to surface water or groundwater.	New England Convenience Store & Energy Marketers Association	Releases from passenger vehicles do not require notification (310 CMR 40.0317(2), therefore, it is unlikely that natural resource damage assessment, standard or site-specific, would be conducted.
8.	Does a National Pollutant Discharge Elimination System (NDPES) violation trigger an NRD penalty?	New England Convenience Store & Energy Marketers Association	NPDES discharges regulated under a valid permit do not require notification (310 CMR 40.0317(3)) unless they exceed the amount allowed by that permit and represent an Imminent Hazard. NPDES violations could result in a standard or site-specific NRD assessment.
9.	Does a discharge to a public way that has a stormwater system with an outfall to a wetland trigger NRD damages?	New England Convenience Store & Energy Marketers Association	Yes, discharges to public ways that reach surface waters via stormwater outfalls could result in a standard or site-specific NRD assessment.
10	By shifting MassDEP's resources and focus to this program, regulatory changes to other MassDEP administered programs related to spills are suffering.	New England Convenience Store & Energy Marketers Association	MassDEP intends to maximize efficiency for both the agency and program stakeholders with the implementation of the standard method. The implementation of the standard method is not anticipated to divert MassDEP resources from other program functions or priorities.
11.	The NRD program will unfairly penalize sites located in drinking water areas or areas without an AUL since the NRD penalty amount increases with the time to reach spill closure.	New England Convenience Store & Energy Marketers Association	An NRD claim is not a penalty intended to punish the actor that caused harm. Rather it is compensatory-compensating the public for impairment of natural resources and the ecosystem services they provide due to the oil and/or hazardous materials release. MassDEP is proposing to put into regulation the standard method for groundwater that it has been using to settle claims for releases that impact drinking water resource areas. It intends to continue to apply the method on a case-specific basis. The method does account for damages from interim loss of use of drinking water resources from longer term cleanups, such as those that implement Monitored Natural Attenuation, where the groundwater is above drinking water standards over many years. The implementation of an AUL should not be relevant since it is not an option for meeting groundwater cleanup requirements.

Comment		Commenter(s)	MassDEP Response
12.	The proposed NRD program will result in a government transfer program by transferring money from the 21J fund to the MassDEP. Should any NRD penalties recovered from the 21J Fund be included as these already are governmental dollars intended for assessment/remediation of underground storage tank releases?	New England Convenience Store & Energy Marketers Association Licensed Site Professional Association	An NRD claim is not a penalty intended to punish the actor that caused harm. Rather it is compensatory-compensating the public for impairment of natural resources and the ecosystem services they provide due to the oil and/or hazardous materials release. With regard to the oil spill method, MassDEP cross-referenced the RTNs associated with 21J sites with the 517 RTNs used in the standard method model run and found only one match (for which the 21J claim was denied). The low overlap between 21J (applicable to disposal sites with USTs at eligible gasoline dispensing facilities) and oil releases to surface waters that would be subject to the NRD standard method is not unexpected; the number of situations where a sudden release at gasoline dispensing facility impacts surface water is limited. With regard to the groundwater method, MassDEP cross-referenced the 265 RTNs for releases of oil and oil/hazardous materials to groundwater and 51 were associated with 21J sites. Based on stakeholder comments and additional internal analysis, MassDEP will continue to conduct site-specific NRD assessments for oil and oil/hazardous materials releases to groundwater.
13.	MassDEP is rushing the proposed program through as an alternative means outside the legislative process to raise revenue, including a 10% processing fee.	New England Convenience Store & Energy Marketers Association	MassDEP has developed the standard method approach over a period of several years. Settlements from NRD claims are strictly used to make the public whole through the restoration of natural resources and are not applied to general program costs. NRD recoveries include the costs of assessing and evaluating injury as well as planning and oversight of restoration projects. Site-specific HEA analyses take more time and cost more than applying the standard method. The *T/V Posavina* oil spill assessment, for example, resulted in an NRD settlement of $100,000 and the assessment costs were half that amount. In contrast, the NRD recovery for the J.P. Noonan spill into the Upper Mystic River, utilizing the standard method, was $55,100, with only 10% applied toward assessment and oversight costs. MassDEP feels that it is appropriate that the assessment approach reflect the scope and scale of the oil spill and impacted area, thus keeping assessment costs reasonable. MassDEP has developed options for the claim process and will seek comment on these options as part of public comment on draft regulations.
14.	What is the cost-benefit break-even point of pursuing an NRD penalty where the penalty collected is equal to the MassDEP expense for administering the NRD penalty?	New England Convenience Store & Energy Marketers Association	An NRD claim is not a penalty intended to punish the actor that caused harm. Rather it is compensatory-compensating the public for impairment of natural resources and the ecosystem services they provide due to the oil and/or hazardous materials release. Regarding the cost-benefit evaluation of the proposed standard methods and process, as stated previously, MassDEP is working with IEc on a cost-benefit analysis that will be available for review as part of the public review of the draft regulations.

	Comment	Commenter(s)	MassDEP Response
15.	Commenters expressed concern regarding the proposed standardized approach's use of information collected during the course of response actions under the MCP and included by the LSP in his or her MCP opinions as inputs to a model that will determine the amount of the damage claim. This concern is most acute if the proposed approaches will be used retrospectively by harvesting data from previously submitted reports, for which data was not developed with this method in mind.	New England Convenience Store & Energy Marketers Association LSP Association	To complete prior NRD assessments at Superfund and 21E sites, data generated to inform response and remedial actions has also informed the spatial and temporal extent of natural resource injuries. For site-specific assessments, this practice will continue. In response to stakeholder comments, MassDEP has revised the calculation of baseline in the standard oil spill method to rely on data readily available in MassGIS rather than on field observations. To capture information regarding the extent of surface water or wetland that was oiled, MassDEP will be developing revisions to existing transmittal forms and, where necessary, new forms. The temporal extent of injuries will rely on information provided in MCP submittals.
16.	Will a site-specific wetlands assessment be required to determine the area impacted?	LSP Association	The limits of the resource area impacted will be based on field observations and may include visual assessment or analytical sediment or surface water data collected as part of the response. No wetlands-specific assessment will be needed.
17.	Will the MCP transmittal forms be modified to indicate the area of impacted wetlands?	LSP Association	MassDEP will be developing revisions to existing transmittal forms and, where necessary, new forms to implement the NRD regulations.
18.	The NRD Program would require the LSP hired by the responsible party to clean-up their release to also calculate the NRD, creating a potential conflict of interest.	New England Convenience Store & Energy Marketers Association	While information provided in submittals provided by the LSP will be used in the calculation of NRD, the NRD will be calculated by either by MassDEP when MassDEP initiates the claim or by PRPs through the use of an online tool. PRPs may opt to involve an LSP in the process of calculating NRD.

	Comment	Commenter(s)	MassDEP Response
19.	What will be the process for claims against PRPs, and especially the role of the LSP in that process?	LSP Association	The process will be either initiated by MassDEP or alternatively, by the responsible party. The responsible party may opt to involve the LSP in that process, to the extent the LSP can provide technical support. In terms of the standard oil method, the information used to develop the claim will be based on information provided at the time of the release notification, and from the observation of the area of impact that occurs at the time of notification or during post-notification response action, the latter of which would require an LSP. In terms of the groundwater method, information used to develop the claim will be taken in part from site assessment reports (e.g., groundwater contaminant concentrations, area of impact), including relevant reports prepared by LSPs.
20.	MassDEP has stated that who calculates NRD settlements has not been determined. Given the nuances to the process for calculating damages and the financial impact that may have on a responsible party, MWWA thinks that MassDEP may be in the best position to evaluate sites for damage recovery.	Massachusetts Water Works Association	Based on feedback provided by stakeholders and additional evaluation, MassDEP intends to calculate groundwater NRD on a site-specific basis when the data and information necessary to conduct the analysis is available.
21.	What provisions will be made for liability relief upon payment of an NRD claim that would protect the PRP against future claims related to the same release?	LSP Association	NRD settlements typically include covenants not to sue against future claims. The standard method could include such a covenant as well as standard reservations of rights to seek additional NRD if conditions or information have resulted in injury of a type that that was unknown to the Trustee or are of a magnitude greater than was known to the Trustee.
22.	It is requested that MassDEP provide 3-4 example scenarios for which the proposed NRD calculations are performed for sensitivity analysis and that at least two of those examples include NRD of over $10,000 or more.	New England Convenience Store & Energy Marketers Association	Example scenarios will be included in IEc's final report.
23.	Please clarify how the standardized approach will account for situations in which the area of impact decreases over time.	LSP Association	For oil spills, there are many approaches but the most applicable is to use the predominant acreage over the entire time period, which is that acreage of impact that existed for the most years over that period. For groundwater, MassDEP can adjust the damage assessment to reflect case-specific changes in plume size over time.

	Comment	Commenter(s)	MassDEP Response
24.	Please clarify how baseline conditions are established, and whether MassDEP will be making that determination. Where will be data to determine the baseline factor come from? Will the RP/LSP need to make a determination? Should the Special Resources Factor be included in the assessment of the baseline?	New England Convenience Store & Energy Marketers Association LSP Association	In response to stakeholder comments, MassDEP is revising the approach to determining baseline that will rely on readily obtainable information and not on field observations. MassDEP will use applicable MassGIS data layers for determining baseline (e.g., 303(d) categories and/or % impervious cover, special natural resources) It will be used by MassDEP (when MassDEP initiates the claim) and will be available as an online tool to determine baseline for use by PRPs, LSPs or others. In response to stakeholder comments, the Special Resources Factor will no longer be used as part of calculating the cost of restoration but will be used in the determination of baseline conditions.
25.	Is the Percent Service Loss Factor strictly based on the type of oil released without consideration of the volume of oil released?	New England Convenience Store & Energy Marketers Association	Yes, the percent ecological service loss is based on the type of oil released considering its toxicity, persistence, and mechanical injury characteristics. A reduction in the ability of a resource to provide ecosystem services, as compared to its baseline level of services, is considered a service loss. However, the method also incorporates the area of habitat that is oiled. By using the impacted area and not volume spilled, the standard method accounts for response actions undertaken immediately following the spill by the RP to limit its impact. Thus, if the RP acts quickly to limit the areal extent of impacts, the monetary damages for a similar type and volume of spilled oil will be lower than for a similar spill for which no emergency response actions were taken.

	Comment	Commenter(s)	MassDEP Response
26.	The Habitat Conversion Factor appears to be a multiplier that considers the type of wetland resource impacted. How will an appropriate factor be determined? Will the RP/LSP need to make a determination?	New England Convenience Store & Energy Marketers Association	The standard method for oil spills to surface waters includes a Habitat Conversion Factor in the model (i.e., does not have to be determined by the user) that considers differences in ecological services across habitat types and converts them into a common type. The standard approach identifies four broad categories of aquatic habitat that could be impacted by an oil spill: 1. Salt marshes, estuaries, freshwater wetlands, and vernal pools; 2. Intertidal zones, tidal flats, rocky intertidal shores, coastal beaches, barrier beaches, coastal dunes, and inland beaches; 3. Open fresh and marine waters and the land under such waters; and 4. Seagrass For purposes of the standard method only, seagrass and salt marsh habitats are considered more sensitive than other coastal or tidal habitats and open water areas. For spills that impact multiple habitats, the most sensitive habitat is assumed to be the impacted habitat. The standard method converts open fresh and marine water habitat (river/stream, pond/lake and ocean) and beach/shoreline habitat to wetland habitat using a 3:1 ratio based on the rate of primary productivity. That is, a unit of wetlands provides three times the level of ecological services as a unit of open fresh and marine water or beach/shoreline habitat. Further, for the purposes of this method only, it is assumed that riparian habitats provide a similar level of services as wetland habitats and, thus, wetland restoration can compensate for riparian losses at a 1:1 ratio.
27.	Will the Habitat Restoration Cost Factor be $603,000 per acre? Is it the correct standard to apply?	New England Convenience Store & Energy Marketers Association	Yes, the proposed Habitat Restoration Cost Factor is $603,000/acre. This cost has been approved in the Massachusetts In-Lieu Fee Instrument. It reflects the cost of implementing restoration projects completed in Massachusetts and was subject to public review and comment. See http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Mitigation/MA/MAILFInstrument.pdf for more detail.
28.	The Habitat Restoration Cost Factor assumes the damage to the resource is permanent. Yet, in many cases it will be temporary – years perhaps – but nonetheless temporary.	New England Convenience Store & Energy Marketers Association	The Habitat Restoration Cost Factor does not assume that the injury to the resource is permanent. The injury to the resource is considered temporary and limited to one, three, or five years based on the conditions of a specific spill. The Habitat Restoration Cost Factor does assume that the *benefits* of the compensatory restoration are permanent. This assumption results in *lower* monetary damages.

	Comment	Commenter(s)	MassDEP Response
29.	We understand that NRD would be assessed under the proposed standardized groundwater approach for any release of oil or hazardous material affecting an area classified as GW-1, if that area is a certain minimum acreage. The GW-1 designation is overbroad for this application. GW-1 is assigned to both "current" sources and "potential" sources of drinking water, including potential sources that in fact may never be used as a drinking water resource.	LSP Association	MassDEP intends to conduct NRD assessments for groundwater and calculate damages on a case-by-case basis. A GW-1 designation will be one criterion.
30.	MassDEP has not demonstrated how to tie-in NRD damages with municipal aquifer protection districts.	New England Convenience Store & Energy Marketers Association	Aquifer Protection Districts are by definition Potential Drinking Water Source Areas and therefore GW-1 areas. On a case-by-case basis, they could be applicable to a damage assessment under the standard groundwater method.
31.	We are concerned that standardizing the approach might not allow appropriate compensation for loss of water supply sources depending on the circumstances. For example, if you have a water system with just one groundwater well serving the entire system, the loss of that supply from contamination might be much more expensive for that system than say a system who has multiple sources and can potentially still provide water service through the other wells.	Massachusetts Water Works Association	The proposed approach to assessing impacts to groundwater from contamination, which quantifies losses using a Resource Equivalency Analysis, reflects the cost of replacing the *in situ* value of groundwater and the services it provides. However, on a case-by-case basis, should the remedial process not provide an alternative drinking water source or funding for installation of an alternative drinking water source, the MassDEP may assess damages associated with added costs, including treatment costs, to provide an alternative drinking water source. Added costs, including treatment costs, are in addition to compensatory restoration costs for restoring, rehabilitating, replacing and/or acquiring the equivalent of an actual natural resource.
32.	We would like clarification on what "standards" are applied when determining if groundwater is contaminated. Is it anything above a GW-1 standard, a drinking water MCL, or any ORSG?	Massachusetts Water Works Association	Consistent with federal NRD regulations, MassDEP considers a groundwater resource to be injured if validated contaminant concentrations observed in the groundwater exceed the Massachusetts Maximum Contaminant Levels for that contaminant (as published at 310 CMR 22.00) or another standard or advisory level (for example, a GW-1 standard or ORSG) established for the protection of human health.

Comment		Commenter(s)	MassDEP Response
33.	It is not clear where the 1 acre minimum applies. Is this the land area of the disposal site or the footprint of the plume which may have extended beyond the property boundary?	Massachusetts Water Works Association	MassDEP intends to conduct NRD assessments for groundwater and calculate damages on a case-by-case basis when the data and information necessary to conduct the analysis is available. In conducting a site-specific assessment, the footprint of the plume will be used. Also note that disposal site boundaries under the MCP are by definition where the contamination "has come to be located," and frequently extend beyond property boundaries.
34.	When determining the volume of groundwater impacted by contaminants, at what point in time will that impact be determined?	Massachusetts Water Works Association	MassDEP considers groundwater to be injured (impacted) when validated contaminant concentrations observed in the groundwater exceed the Massachusetts Maximum Contaminant Level (as published at 310 CMR 22.00) or another standard established for the protection of human health. The injured or impacted area can be adjusted annually using the standard groundwater method based on available data that documents a changing plume size over time.
35.	Start date of damages – if a site is suspected to be a source of contamination, would that be accounted for in determining how long the damage has occurred or will it default to when it becomes a listed site?	Massachusetts Water Works Association	A key input to the groundwater method, which has been used to successfully settle several NRD claims, is the beginning date of groundwater injury. Consistent with federal NRD regulations, MassDEP considers a groundwater resource to be injured if validated contaminant concentrations observed in the groundwater exceed the Massachusetts Maximum Contaminant Level for that contaminant (as published at 310 CMR 22.00) or another standard established for the protection of human health. This is not always coincident with when a source of contamination becomes identified as a disposal site (i.e., listed under the CERCLA program or subject to notification under the MCP).
36.	The equation to calculate the NRD is theoretical and uses a theoretical recharge rate for groundwater.	New England Convenience Store & Energy Marketers Association	MassDEP will conduct NRD assessments for groundwater on a case-by-case basis and intends to use the most appropriate actual recharge rate that has been calculated for the area where the site is located.
37.	The DCR Office of Water Resources has a historical precipitation network that they reference and report on in their hydrologic conditions report and when looking at drought indicators and can help determine recharge rate.	Massachusetts Water Works Association	MassDEP has reached out to the DCR Office of Water Resources for assistance in determining whether this information may be used to determine recharge rate.
38.	How is NRD calculated at a site at which it is technically infeasible to achieve a Permanent Solution? The NRD calculation takes into consideration the time to remediate a release and achieve a Permanent Solution resulting in greater NRD for MNA sites.	New England Convenience Store & Energy Marketers Association	If a site-specific groundwater NRD assessment is conducted at a site where it is infeasible to achieve a Permanent Solution, the injury will considered to continue into perpetuity. However, due to discounting, future years of injury are worth less than current or past years and beyond 50 years, the cumulative losses are negligible.

	Comment	Commenter(s)	MassDEP Response
39.	Based on the materials presented to date, it is not clear if actual damages to an existing well would be treated differently than damages to a theoretical well. Could you clarify?	Massachusetts Water Works Association	The "theoretical well" is used to represent the volume of water that was injured over time and lost to use. By using this approach, MassDEP is able to determine the land area that would be necessary to protect recharge to that well and thus monetize the damages ($/acre).
40.	Using Zone 1 as the needed area for acquisition may underestimate the true cost to siting a well to replace the damaged groundwater resource. Although this is a minimum land area to site a well, it obviously draws groundwater form a greater area that may not be reflected in the calculations.	Massachusetts Water Works Association	The groundwater valuation method is not trying to estimate the cost of siting a well, but the cost of replacing the lost volume of water over time; no actual well will be sited. The "theoretical well" is used to ascertain the area of land required to protect the future recharge of the annual volume of lost groundwater. The area of land is calculated using either the Zone 1 equation or the Interim Wellhead Protection Area equation based on the pumping rate of the "theoretical well."
41.	Both of the oil spill and groundwater methods use the monetary value of land as a factor in the methods. Thus, the NRD assessment is tied to the fair market value of land. The natural result of this is that watersheds in poorer, minority areas will receive fewer funds for restoration as compared to wealthier areas. Please consider developing an average land value (perhaps based on region or county) to avoid these inequities.	New England Convenience Store & Energy Marketers Association LSP Association	MassDEP intends to conduct groundwater NRD assessments and calculate damages on a site-specific basis. We have explored many approaches to determining the cost to protect recharge, but have found that relying on assessed values is the most reliable approach. It is possible that in EJ areas, we could use assessed values from several communities, or on a regional basis. For the oil spill NRD standard method, the Habitat Restoration Cost Factor of $603,000/acre is not based solely the monetary value of land. This cost, approved in the Massachusetts In-Lieu Instrument and subject to public review and comment, reflects the cost of implementing actual restoration projects completed in Massachusetts. For more detail see http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Mitigation/MA/MAILFInstrument.pdf . For restoration, MassDEP intends to prioritize restoration expenditures to benefit EJ areas as sees these settlements as an opportunity to improve environmental conditions.
42.	We want to be sure that NRD settlements can be directed back to the water supplier impacted.	Massachusetts Water Works Association	NRD settlement funds are expended in the same or similar location to the area of injury. As MassDEP will be conducting groundwater NRD assessments on a case-by-case basis, restoration funds will be expended within the area of the water supplier impacted. For example, for the Blackburn & Union groundwater NRD settlement, one of the restoration project selection criteria reads, "Proposed restoration projects must be located in or provide groundwater resource benefits to the Head of the Neponset Sole Source Aquifer." Projects that provide benefits in close proximity to the Site will score higher under this criterion.

	Comment	Commenter(s)	MassDEP Response
43.	In terms of use of settlement funds, MassDEP has laid out land purchases, planning studies, and demand management programs as eligible fund recipients. What about connection to alternative supplies, installation of replacement wells, treatment of existing supplies?	Massachusetts Water Works Association	To the extent that these projects are not already required as part of the actions to remediate the site , The proposed approach to assessing impacts to groundwater from contamination, which quantifies losses using a Resource Equivalency Analysis, reflects the cost of replacing the *in situ* value of groundwater and the services it provides. However, on a case-by-case basis, should the remedial process not provide an alternative drinking water source or funding for installation of an alternative drinking water source, the MassDEP may assess damages associated with added costs, including treatment costs, to provide an alternative drinking water source. Added costs, including treatment costs, are in addition to compensatory restoration costs for restoring, rehabilitating, replacing and/or acquiring the equivalent of an actual natural resource.