

**Previously Non-participating and Newly Identified  
Potentially Responsible Parties (PRP)s Who Wish  
to Assume Responsibility for Response Actions**

**Policy #WSC-601-90**

This policy describes the circumstances under which the Department will allow a PRP to assume responsibility for response actions at a publicly-funded site. The PRP may be newly identified or one who previously declined responsibility, or who was unable or was not allowed to take responsibility and now would like to do so. The policy identifies assurances the Department needs from a PRP and conditions under which the Department will allow a PRP to take over the responsibility for performing response actions.

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Date

WSC-601-90

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**Previously Non-participating and Newly Identified  
Potentially Responsible Parties (PRP)s Who Wish  
to Assume Responsibility for Response Actions**

1. Purpose and Applicability:

This policy describes the circumstances under which the Department will allow a previously non-participating PRP or a newly identified PRP to assume responsibility for response actions.

A previously non-participating Potentially Responsible Party (PRP) is a PRP who originally either declined, was unable, or was not allowed to assume responsibility for the response action, but now wishes to do so. Therefore for the purposes of this policy, a participating PRP is a PRP who has assumed responsibility for at least some part of the response action at a site. A newly identified PRP is a PRP that has been identified after the start of the response action.

2. Notification of Newly Identified PRPs:

The Department should notify a PRP of his/her potential liability as soon as possible after identification via a Notice of Responsibility (NOR). Any PRP may request the identities of other PRPs from the Department. Therefore, once the newly identified PRPs have been notified of their liability, the Department will provide their identity, upon request, to any previously identified PRP. The Department may elect to notify PRPs of each other's identity even if the PRPs have not specifically requested the information. For example, this might be done to encourage the organization of a PRP committee. Newly identified PRPs also should be made aware of files and/or reports concerning the site that are available for their inspection.

3. Assurances Required from the PRP

Before allowing either a newly identified PRP or a non-participating PRP to assume responsibility for a response action, the Department may require the PRP to provide the following assurances, pursuant to 310 CMR 40.170:

A. That he/she will be able to either pay, or provide a financial assurance mechanism for the payment of, all past costs the Department has incurred prior to allowing the PRP to conduct the remainder of the response action.

B. That he/she has sufficient financial resources (may include such financial assurances as trust funds, escrow deposits, surety bonds and letters of credit) to complete the response action or a specific phase thereof. This requirement may be imposed by the Department at any time during the performance of a response action.

C. Sufficient information to persuade the Department that:

- (1) The deadlines set forth in the Massachusetts Contingency Plan (MCP) will be met.
- (2) Assumption of responsibility for the response action will not result in a delay which would cause or exacerbate an existing hazard to health, safety, public welfare or the environment.
- (3) The response action will be conducted in accordance with M.G.L. c. 21E and the MCP.
- (4) He/she has a satisfactory record of compliance with statutes and requirements enforced by the Department.

If the Department is persuaded that the PRP has provided these assurances, the Department may decide to allow the PRP to perform the work.

4. Assuming Responsibility for a Publicly-Funded Response Action:

When the Department is persuaded that a PRP can and will meet the conditions listed in Section 3, he/she should be allowed to assume responsibility for a publicly-funded response action. However, the Department retains the right to refuse to allow any PRP to participate. A PRP may assume responsibility at any stage in the response action as long as this will not jeopardize the work being performed. For example, if an imminent hazard exists at a site, the Department has the option to not allow a PRP to assume responsibility until a Short Term Measure (STM) is completed. The Department, also, may decide not to allow a PRP to assume responsibility for a publicly-funded response action until the Commonwealth has completed all activities specified in

the Notice of Response Action (NORA) letter and/or Notice of Commencement of Work (NOCOW) letter(s).

Regardless of when or whether a PRP is allowed to take responsibility for a response action, he/she is liable to the Department for all response action costs incurred.

If a PRP who has accepted responsibility for a response action under the conditions of this policy decides to hire a contractor that is employed by the Commonwealth, the contractor should receive the Department's approval before accepting any work from the PRP. This is necessary to avoid any conflict of interest on the part of the contractor.