



Department of Environmental Protection

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BWSC Financial Inability Program Factsheet

The Financial Inability (FI) program evaluates claims by Potentially Responsible Parties (PRPs) asserting financial inability to conduct cleanup activities at 21E disposal sites. A Bureau of Waste Site Cleanup workgroup created an application and evaluation program which is fair and consistent for the regulated community, and direct and expedient for the Department of Environmental Protection to administer. The workgroup conducted surveys of financial institutions, attended EPA-sponsored training, and met with members of the Licensed Site Professional Association and regulated community to obtain feedback regarding design, development, and implementation. The resulting Financial Inability Program seeks to balance the need for full financial disclosure with concerns regarding intrusiveness and confidentiality.

There have been outreach efforts to Licensed Site Professionals (LSPs), environmental attorneys, and trade organizations to educate them about the FI program. Information about the availability of financial inability applications is currently being incorporated into BWSC's compliance assistance information (e.g., deadline reminder letters).

The following bullets are intended to summarize program highlights:

- **Regulatory Requirement:** Section 310 CMR 40.0172 of the Massachusetts Contingency Plan (MCP) instructs RPs and PRPs to notify MassDEP when the performance of site cleanup activities is beyond their financial ability. A Notice of Financial Inability is different than a claim of *Financial Hardship*, which is made only for the purpose of requesting a payment plan for outstanding debt to the Commonwealth, and does not provide any defense for non-compliance under the MCP.
- **Protection Afforded by Financial Inability Status:** If MassDEP agrees with an assertion of financial inability, the applicant (1) is shielded from enforcement activities and penalties associated with non-compliance with the MCP while the FI status is in effect; and, (2) may have all outstanding response action costs, fees, and penalties deferred or extended (not waived) while the status is active.
- **Application Process:** Interested parties may obtain information and an application package by contacting BWSC's Cost Recovery and Fee Unit at the address or telephone number listed below. To apply, a completed application package, including three (3) years of federal and state tax returns (plus all schedules) and two (2) LSP estimates for the costs of the "next required action" at the site, should be mailed to same.
- **Definition of the "next required action":** A determination of financial inability applies to the "next required action" at a site, not the entire cost of assessment and cleanup. The "next required action"

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

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is the work necessary to complete the next step in the incremental Massachusetts Contingency Plan process (e.g., Tier Classification), and not to complete the final site cleanup. LSP estimates should therefore focus on the next required action which must be completed to maintain compliance.

Thus defined, applicants are encouraged to view the cleanup process in potentially more manageable steps.

- **Evaluation Process:** An applicant's financial resources are compared to the cost to conduct the "next required action" of cleanup work using financial analysis methods developed by EPA. An applicant will be deemed to **have** the ability to pay if the costs of conducting the next step of work can be met through available cash/assets or by qualifying for a loan using lending industry debt-to-income qualification standards. Living expenses are factored into the evaluation of individual's ability to pay. BWSC anticipates an average 30-day turnaround time for application review.
- **Notice, Status Duration and Responsibilities:** Upon completion of the evaluation, applicants will be notified of the determination results in writing.
- If MassDEP agrees with the assertion, the applicant will be issued formal *Financial Inability Status*, an **explanation** of rights and responsibilities, a status expiration date, and information on the re-application process. Financial Inability Status is valid for one (1) year or the date specified on the letter of application, it must be renewed annually, and may not be transferred between parties.
- A Financial Inability Status holder is required to notify MassDEP of any changes in their financial circumstance that would allow resumption of cleanup work. In addition, Status holders must give notification of any new releases and/or imminent hazards at the site, and must acknowledge MassDEP's right to access the property to conduct response actions if necessary.
- If MassDEP disagrees with the assertion, the applicant will be issued a formal denial notice, will be expected to meet all responsibilities under the MCP, and remains subject to potential enforcement and penalties. This determination is not subject to appeal of adjudicatory hearing before MassDEP. Denied applicants (or other parties) may still seek relief from outstanding compliance fees through a claim of *Financial Hardship* (per 310 CMR 4.03), which is distinct from a claim of financial inability as described above. In such instances, MassDEP may accommodate financial difficulties through the establishment of a payment plan. Requests for additional time to satisfy outstanding response action costs owed to the Commonwealth may also be subject to the establishment of a payment plan at MassDEP's discretion.
- All **payment** plan requests should be made to the Cost Recovery and Fee Unit in Boston.

Please direct questions and requests for application materials to:

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