

July 19, 2019

Elizabeth J. Callahan, Acting Division Director, Policy and Program Planning
Bureau of Waste Site Cleanup, MassDEP
1 Winter Street
Boston, MA 02108

SUBJECT: 2019 Proposed MCP Revisions

Dear Ms. Callahan:

The LSP Association (LSPA) is pleased to offer MassDEP our comments on the 2019 Proposed Amendments to the Massachusetts Contingency Plan (MCP; 310 CMR 40.0000). We solicited and developed these comments from our membership in response to the proposed revisions and changes, and our Regulations Committee and the LSPA Board vetted them.

The LSPA's comments are presented in the attached table and organized by subpart. In addition to these specific comments, we offer the following general positions on three of the more broad-based proposals to amend the MCP:

PFAS. With regard to per- and poly-fluorinated compounds (PFAS), we note that there is significant uncertainty regarding the toxicity of these compounds, and that toxicity information is continuously evolving. The MCP will establish a *de facto* maximum contaminant level (MCL) by promulgation of a GW-1 standard, without incorporating the technical feasibility and/or cost considerations of the MCL process. We also note that PFAS is seemingly ubiquitous in groundwater, and that "background" levels of these compounds will need to be established. A better understanding of background conditions for PFAS would also inform a reasonable lower limit for development of Method 1 standards. As the science of these compounds continues to evolve, we expect that MassDEP policy will reflect sound technical and scientific principles, and that the standards will continue to evolve with the science.

Risk Characterization. MassDEP has proposed to amend its risk characterization requirements related to deriving exposure point concentrations (EPCs), addressing hot spots, and characterizing waste deposits. While well-intentioned, these changes appear to run counter to certain established elements of the risk assessment process. In particular, the "Historic Fill" guidance and the definition of "Anthropogenic Background" allow for the presence of certain waste materials commingled with soil, as would the Non-Aqueous Phase Liquid (NAPL) revisions passed in 2014. The proposed revisions would seem to require discrete testing and evaluation of those materials, rather than a risk characterization based on the overall

properties of a disposal site.

The explicit references to manufactured gas waste ignore other types of waste materials with diverse fate and transport properties, and seemingly eliminate elements of LSP judgment typically employed in these types of evaluations. The work of LSPs will address these topics, as always, by documenting the nature and extents of these affected media and their potential exposure and migration pathways.

There appears to be significant discrepancy in the proposed approaches for EPC development for various media, and the technical justification for the media-specific approaches is not always apparent. In some cases, the proposed approach contradicts existing MassDEP guidance. For example, the proposed changes for indoor air EPC development require either the derivation of an upper confidence limit (UCL) or maximum concentrations, but the recently finalized 2016 MassDEP Vapor Intrusion guidance (#WSC-16-435: “Vapor Intrusion Guidance”) allows arithmetic averaging.

Furthermore, the explicit requirement to employ UCL statistical methods will in many instances require additional data to achieve similar risk outcomes. MassDEP has referred to the statistical evaluation as being appropriate for “complex” sites, but that term raises additional questions as to what constitutes a “simple” or “complex” site in MassDEP’s review and judgment. Simply setting an area threshold of 2,000 square feet undermines the LSP’s ability to investigate a site in consideration of previous investigations and historical site information, prevents the LSP from applying many of the nature-and-extent investigation techniques that have been applied and proven effective at sites since the inception of the MCP, and could potentially result in “sterile” Conceptual Site Models for the sake of a systematic sampling approach. Updated guidance and continuing education, rather than regulatory reform, may be a more effective means of addressing perceived deficiencies in the existing state of the practice.

Transition Provisions. The transition provisions provide for only a limited time to achieve compliance on a wide variety of topics. For sites nearing completion under the existing regulations, significant changes to risk assessment requirements could require a substantial amount of otherwise appropriate (under the current regulations) work to be redone, at a significant cost in terms of both time and money to achieve site closure. We ask that MassDEP re-evaluate the proposed timelines and consider allowing certain transitional provisions to phase in for sites currently past Phase I in the cleanup program.

As you are aware, the LSPA represents a majority of the approximately 500 Licensed Site Professionals practicing in the Commonwealth, as well as a range of affiliated professionals including attorneys, remediation and laboratory contractors, and a broad range of non-LSP engineers and scientists. Our members rely on good regulation as a basis for sound, protective cleanups which provide significant benefits to the Commonwealth. We look forward to working with MassDEP to continue to clean up the

Commonwealth and manage environmental and public health risks in a proactive manner. Please feel free to contact us with any questions or comments.

Thank you for your consideration.

Sincerely,
THE LSP ASSOCIATION



Michele Paul, LSP
President



Wendy Rundle
Executive Director