

MCP Revisions/Regulatory Setting

On September 16, 2016, Governor Charlie Baker issued Executive Order 569, establishing an Integrated Climate Change Strategy for the Commonwealth. The Executive Order included, in part, requirements for development of the Massachusetts State Hazard Mitigation and Climate Adaptation Plan (the SHMCAP) and supporting frameworks that state agencies, cities, and towns can use to assess and adapt to climate change. The proposed MCP Amendments¹ incorporated language to apply the goals of Executive Order 569 to the waste site cleanup process. The proposed MCP language¹ directs persons conducting cleanups to identify and assess foreseeable climate impacts that may affect the permanency and protectiveness of the cleanup at vulnerable sites and take reasonable measures to reduce vulnerabilities.

The climate change-related revisions to the MCP are reflected by the **blue** text in the following sections:

- The definition of Conceptual Site Model (CSM) in 310 CMR 40.0006 is revised as follows: “Conceptual Site Model or CSM means a site-specific description of how contaminants entered the environment, how contaminants have been and may be transported within the environment, and routes of exposure to human and environmental receptors that provides a dynamic framework for assessing **current and foreseeable future** site characteristics and risk, identifying and addressing data gaps and managing uncertainty, eliminating or controlling contaminant sources, developing and conducting response action strategies, and evaluating whether those strategies have been effective in achieving desired endpoints. At sites at which NAPL is or may be present, this includes the body of fundamental scientific principles describing the behavior of fluid flow in porous media necessary to assess NAPL in subsurface strata.”
- The Response Action Performance Standard (RAPS) in 310 CMR 40.0119 is revised as follows:

“(1) The Response Action Performance Standard (RAPS) is the level of diligence reasonably necessary to obtain the quantity and quality of information adequate to assess a site and evaluate remedial action alternatives, and to design and implement specific remedial actions at a disposal site to achieve a level of No Significant Risk for any foreseeable period of time, **as defined at 310 CMR 40.1005**, and, where feasible, to reduce to the extent possible the level of oil and/or hazardous materials in the environment to background levels.

(2) RAPS shall be employed during the performance of all response actions conducted pursuant to 310 CMR 40.0000, and shall include, without limitation, the following:

consideration of relevant policies and guidelines issued by the Department, **EOEEA** and EPA;

use of accurate and up-to-date methods, **models**, standards and practices, equipment and technologies which are appropriate, available and generally accepted by the professional and trade communities conducting response actions in accordance with M.G.L. c. 21E and 310 CMR 40.0000 under similar circumstances.”
- The “Foreseeable Period of Time” for a Permanent Solution at 301 CMR 40.1005 is further defined as follows: “(1) A Permanent Solution shall ensure a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time, **considering existing site conditions and reasonably foreseeable future changes in site conditions, including anticipated impacts associated with climate change.**”

¹ This assumes that when published, the MCP amendments will be substantially similar to the draft amendments released on April 19, 2019, but that revision to this toolkit may be warranted depending on the promulgated regulations.