



Compliance Tip of the Month

Dates Posted: March 15, 2018 through April 16, 2018

Compliance Tip:

When making the case for Downgradient Property Status (DPS, 310 CMR 40.0180), an LSP must demonstrate that the DPS property has not contributed to the release in question (see 310 CMR 40.0183(2)(b)(c)).

MassDEP Notices of Audit Findings indicate that typical DPS issues involve inadequate assessment of potential on-site sources and failure to adequately demonstrate groundwater flow direction and contaminant concentration gradients supportive of DPS.

Dates Posted: February 13, 2018 through March 14, 2018

Compliance Tip:

A feasibility evaluation is required to close any site at which NAPL with Micro-scale Mobility is present.

310 CMR 40.1003(7)(a)2 states that a Permanent Solution shall not be achieved until "all NAPL with Micro-scale Mobility is removed if and to the extent feasible based upon consideration of CSM principles."

This feasibility evaluation must be conducted in accordance with the requirements of 310 CMR 0860.

Dates Posted: January 11, 2018 through February 12, 2018

Compliance Tip:

A feasibility evaluation is required to close any site at which NAPL with Micro-scale Mobility is present.

310 CMR 40.1003(7)(a)2 states that a Permanent Solution shall not be achieved until "all NAPL with Micro-scale Mobility is removed if and to the extent feasible based upon consideration of CSM principles."

This feasibility evaluation must be conducted in accordance with the requirements of 310 CMR 0860.

Dates Posted: November 14, 2017 through January 10, 2018

Compliance Tip:

If a "Potentially Responsible Party" is asked to undertake additional work as a result of a Notice of Audit Findings or any audit followup plan under the MCP, a BWSC111 form (also called Form 111) is required to be filed.

310 CMR 40.1170: Post-audit Completion Statements

(1) Upon completion of the activities required by the Department in a Notice of Audit Findings or any approved Audit Follow-up Plan, the RP, PRP or Other Person undertaking such activities shall submit a Post-audit Completion Statement to the Department using a form established by the Department for such purpose.

Dates Posted: September 26, 2017 through November 13, 2017

Compliance Tip:

When a property with a Notice of Activity and Use Limitation (AUL) has been sold, the Responsible Party must submit to MassDEP a Form BWSC 113 with a copy of the recorded deed conveying the record title. Remember it is essential that subsequent property owners be given notice of the AUL.

310 CMR 40.1074 (5) states “.....*Within 30 days of recording or registering a deed conveying record title for a property which is subject in whole or in part to a Notice of Activity and Use Limitation, a copy of such deed containing said reference shall be submitted to the Department. This obligation shall attach both to the grantor and the grantee on such deed, provided that submission of such copy to the Department by either the grantor or the grantee shall satisfy this obligation for both of them.*”

Dates Posted: August 1, 2017 through September 25, 2017

Compliance Tip:

Exposure Point Concentrations (EPCs)

As you develop your EPCs for a site, remember to evaluate your data to see if there are hotspots present in any of your media. A hotspot is a location which has a Contaminant of Concern concentration > 100x higher than surrounding locations. Hotspots are considered distinct EPCs and must be separately evaluated in the risk characterization. Typically, at least five sampling points are necessary to have insight into the variability of a data set.

Consistent with the Guidance for Disposal Site Characterization (MassDEP, July 1995) and 310 CMR 40.0926, an EPC should be a “conservative estimate of the average concentration” to which a receptor may be exposed over the applicable exposure period and at the exposure point. Caveats or exceptions to the use of the average concentration as the EPC include:

- o Acute exposure evaluations – typically the maximum concentration is recommended;
- o Screening/streamlined assessments - typically maximum or other upper bound concentrations are recommended; and
- o When data are limited/insufficient to characterize the “temporal variability or the spatial distribution of Site concentrations.”

Dates Posted: June 8, 2017 through July 31, 2017

Compliance Tip:

Every three years following issuance of her/his license, an LSP must demonstrate that s/he has earned a minimum of 48 continuing education credits. Of these, at least 12 of the 48 credits must be earned at LSP Board-approved “DEP Course(s)”.

No fewer than 8 credits must be from LSP Board-approved courses classified as “Regulatory.” The balance of the 48 required credits may be earned by attending any LSP Board-approved course, conference, or conference workshop. 309 CMR 3.09(3)(a) and (b)

Three things to remember:

1. Some “DEP Courses” are also “Regulatory.”
2. But not all “Regulatory” courses are also “DEP Course(s).”
3. If a course is classified as a “DEP Course” and a “Regulatory” course (listed as “*DEP Course*” *Regulatory* or *DEP/Regulatory*), it can be applied toward both the 12-credit “DEP Course” requirement and the 8-credit “Regulatory” requirement.

Dates Posted: May 11, 2017 through June 7, 2017

Compliance Tip:

Remediation waste contaminated with waste oil that isn’t otherwise a hazardous waste, including [remedial wastewater](#), [soil](#), debris, and sediment that contains used or unused waste oil, does not need to be managed as MA-01 hazardous waste if managed under the MCP’s remediation waste requirements at 310 CMR



40.0030, and shipped to a facility permitted to receive these materials. (See [310 CMR 30.252](#))

For [petroleum contaminated soils](#), the MassDEP policy goal is to avoid disposal. Note that asphalt batching facilities operate under Class A recycling permits and are technically recycling rather than disposal facilities.

Dates Posted: April 6, 2017 through May 10, 2017

Compliance Tip:

How does one apply Reportable Concentrations and Method 1 Standards when they are equal to the site Oil and Hazardous Materials (OHM) concentrations?

If the concentration of OHM is equal to the Reportable Concentration it is deemed a reportable condition. (310 CMR 40.0360(1): "A release indicated by the measurement of oil and/or hazardous material in soil and/or groundwater requires notification to the Department...if the measured concentration of one or more listed substances in 310 CMR 40.1600 in any soil or groundwater sample is **equal to or greater than** the media and category-specific Reportable Concentration value....")

If the concentration of OHM is equal to the Method 1 Standard it is considered to represent a condition of no significant risk. (310 CMR 40.0973(7): A condition of no significant risk of harm to health, public welfare and the environment exists if no Exposure Point Concentration is **greater than** the applicable MCP Method 1 Soil or Groundwater Standard.")

Dates Posted: March 14, 2017 through April 5, 2017

Compliance Tip:

"Greener Cleanup evaluations" or considerations are not only called out in the MCP under Phase III (Detailed Evaluation Criteria for selecting a comprehensive remedy at 310 CMR 40.0858[4][c]), but also under Response Action Performance Standard (RAPS) at 310 CMR 40.0191(3)(e).

Therefore, Greener Cleanup practices should be considered in all MCP Phases, except during time critical responses (e.g., "2-hour" and "72-hour" reportable conditions). MassDEP provides assistance in the [Greener Cleanups Guidance, WSC #14 – 150](#) (October 2014).

Dates Posted: February 9, 2017 through March 13, 2017

Compliance Tip:

When to check the "orders, permits, and approvals" box in the "Required Attachment and Submittals Section" of a BWSC transmittal form?

LSPs should check this box only if the response actions covered by the transmittal are based on a sitespecific Administrative Consent Order, Notice of Audit Findings, Interim Deadline, MassDEP-approved Order of Conditions, or similar written order issued by MassDEP or EPA to the PRP. Refer to "Form Questions" section [here](#).

Dates Posted: January 12, 2017 through February 8, 2017

Compliance Tip:

An LSP can sign a MassDEP Materials Shipping Record (MSR), and if the LSP has another credential such as a P.E. or P.G., the LSP can stamp the form with that other credential subject to its rules. However, an LSP cannot use the LSP seal on an MSR form. According to LSP Board [Advisory Ruling](#)



9801, an LSP "must not use his or her seal when signing other documents," meaning documents other than formal waste site cleanup activity opinions.

Dates Posted: November 16, 2016 through January 11, 2017

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An LSP can sign a MassDEP Materials Shipping Record (MSR), and if the LSP has another credential such as a P.E. or P.G., the LSP can stamp the form with that other credential subject to its rules. However, an LSP cannot use the LSP seal on an MSR form. According to LSP Board Advisory Ruling 9801, an LSP "must not use his or her seal when signing other documents," meaning documents other than formal waste site cleanup activity opinions.

Dates Posted: September 15, 2016 through November 15 ,2016

Compliance Tip:

MassDEP audits often flag a particular problem at Temporary Solution sites: a failure to include an updated Substantial Hazard Evaluation in the 5-year Periodic Review. This re-evaluation is necessary because the Substantial Hazard Evaluation, by definition, has a 5-year shelf life (see 310 CMR 40.0956(1)(b)).