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## Compliance/Practice Tips of the Month

*Most of these tips were written before the 2024 MCP took effect;  
a handful of them are impacted by changes in the 2024 MCP regulations.*

**Dates Posted:** March 20, 2025 through April 14, 2025

**Practice Tip:**

**Spring is a good time to document the condition of monitoring wells, especially after a busy snowplow season. Well covers that are damaged over the winter may no longer meet the requirements of 310 CMR 40.0028, which specifies:**

Responsible Parties, Potentially Responsible Parties, and Other Persons undertaking response actions shall ensure that any well installed or constructed for the purposes of sampling, monitoring or remediating environmental media or environmental conditions as part of response actions conducted under the MCP:

- a) is documented as to its location (latitude and longitude) in a form\* provided by the Department for such purposes; and
- b) is maintained and secured throughout its period of service and until it is properly decommissioned to prevent the introduction of contaminants to the subsurface environment or the exacerbation of groundwater contamination by the vertical movement of water within the borehole or annular space.

*\*Form is under development at MassDEP.*

**Dates Posted:** February 12, 2025 through March 19, 2025

**Practice Tip:**

When an MCP submittal form is required, you should download the form directly from the MassDEP website. That way you will have the most current version of the form rather than a possibly outdated version saved to your desktop or laptop.

**Dates Posted:** January 9, 2025 through February 11, 2025

**Practice Tip:**

Do you need help tracking and accessing your CEU certificates? All credits earned through the LSPA come with an electronic CEU certificate! Once you have downloaded your CEU certificate in the Learning Management System (LMS), a PDF copy is saved in your account for future reference. Consider the LMS to be an archive of your certificates! Click [here](#) to view the steps needed to access your previously downloaded CEU certificates in the LMS.



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**Dates Posted:** December 18, 2024 through January 8, 2025

**Compliance Tip:**

While the MCP requires an assessment of “reasonably foreseeable future changes in site conditions” related to climate change, it does not indicate a specific assessment timeframe.

In addition to professional judgement and site-specific information, MassDEP's 2024 MCP Amendments Q&A recommends LSPs use climate change impact forecasts for this task. Most current statewide forecasts use timelines between the years 2050 and 2100. MassDEP suggests that target dates that fall 30, 50 and 80-years out will allow for assessment of a Permanent Solution while taking into account specific climate change scenarios.

**Dates Posted:** November 19, 2024 through December 18, 2024

**Compliance Tip:**

According to [MassDEP's 2024 MCP Amendments Q&A](#), the term “*visible coal tar waste deposits*” is not intended to include sporadic occurrences of limited coal tar wastes that are entirely interspersed in and comprise a small part of the soil matrix. These limited coal tar wastes, if they meet the characteristics listed in the Q&A document, “*can be (must be) adequately characterized through analysis of representative soil samples.*” These occurrences of limited coal tar wastes may be considered to be part of soil and not a “*visible coal tar waste deposit,*” and can be evaluated as soil in a Risk Characterization.

**Dates Posted:** September 12, 2024 through November 18, 2024

**Practice Tip:**

The LSP or PRP can now identify a site eligible for Brownfields-related support earlier than previously in the MCP process. Item #9 on the [BWSC-107 Tier Classification](#) form offers the opportunity to provide information to facilitate obtaining this support. This data is used by MassDEP for informational purposes only and does not represent or create any legal commitment, obligation, or liability on the part of the party or person providing this data.

**Dates Posted:** June 18, 2024 through September 11, 2024

**Practice Tip:**

**Are you studying for the LSP exam?**

**Need a refresher on tricky practice topics?**

For nearly eight years, the LSPA has been sharing compliance and practice tips for waste site cleanup practitioners.

A compilation of all LSPA published compliance and practice tips since Fall 2016 is available on the LSPA website blog. Click [here](#) to view them.

*\*Most of these tips were written before the revised MCP took effect on March 1, 2024, but only a handful of them are impacted by changes in the 2024 MCP regulations.*

**Dates Posted:** May 15, 2024 through June 17, 2024

**Compliance Tip:**

The **U.S. EPA has promulgated MCLs for PFAS in drinking water:** states are required to establish their own regulations that are no less stringent than the federal standards within two years.

While the current Massachusetts PFAS regulations have not yet been amended, practitioners are reminded that the MCP requires (310 CMR 40.0993(3)) the comparison of all current and foreseeable exposure point concentrations in GW-1 areas to applicable or suitably analogous standards (ASASs).

The EPA MCLs must be factored into your site decisions.



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**Dates Posted:** April 11, 2024 through May 14, 2024

**Practice Tip:**

If you are an LSPA member, you can access all slides and many videos of LSPA member meetings from 2007 to today. So, if you missed an LSPA member meeting or want to access the slides for another look, go to the LSPA website:

1. Click on “Member Login” link on top right of homepage
2. Enter your username and password
3. Click on “Member Materials”
4. Scroll down to “Member Meeting Presentations”

17 years worth of slides are there for you.

**Dates Posted:** March 14, 2024 through April 10, 2024

**Practice Tip:**

Per 310 CMR 40.1406 of the Massachusetts Contingency Plan (MCP), an “Informational Notice to Property Owners” [BWSC Form 122](#) must be completed to advise an owner that their property falls within the boundaries of a disposal site. The MCP specifies when such written notices must be provided and what information they must contain. Copies of all written notices required must be submitted to MassDEP with the corresponding Phase II Report or Permanent or Temporary Solution Statement.

We have learned from MassDEP that this last requirement is often overlooked.

The [BWSC Form 122](#) is not submitted through eDEP. Copies of the mailed form are to be included in an appendix to Phase II Report or a Permanent or Temporary Solution Report. The form is available at [Site Cleanup Transmittal Forms](#).

**Dates Posted:** February 13, 2024 through March 13, 2024

**Practice Tip:**

Many municipalities have areas designated for the protection of groundwater quality to ensure its availability for use as a source of potable water supply (e.g., Aquifer Protection Districts). When classifying groundwater, be aware that these areas, which are established by local rule, are not shown on MassGIS or the MCP Phase 1 Site Assessment mapping tools. Being within a local Aquifer Protection District will categorically drive the groundwater classification of a Site to GW-1, even if it lies within a designated Non-potential Drinking Water Source Area (NPDWSA) area as shown on the mapping tools.

**Dates Posted:** January 17, 2024 through February 12, 2024

**Practice Tip:**

Use care whenever eliminating a contaminant of concern (COC) in indoor air as part of a risk characterization. For example, although ethanol is commonly detected at background concentrations in indoor air and may even be present in soil gas, be sure you have supporting soil and/or groundwater data showing it is not present in those media when eliminating it as a COC in indoor air as part of a risk characterization for a gasoline site.



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**Dates Posted:** December 12, 2023 through January 16, 2024

**Compliance Tip:**

The 2024 MCP emphasizes the need to justify the sampling approach (judgmental or systematic) and sample collection methods for soil and sediment to support that the risk characterization conservatively estimates exposures to OHM in soil and sediment at each Exposure Point. 310 CMR 40.0903 requires a description of the spatial distribution of the OHM within the Exposure Point and a discussion of the concentration variability.

See Sampling Approach for Risk Characterization at 310 CMR 40.0904(4) (soil) and 310 CMR 40.0904(5) (sediment).

**Dates Posted:** November 15, 2023 through December 11, 2023

**Compliance Tip:**

The public involvement requirements of the 2024 MCP Amendments provide for electronic delivery of written notices as required under 310 CMR 40.1400. Delivery is allowed *“upon agreement by the intended recipient of such notice, by electronic mail,…”*

The date of receipt for this delivery method will be the date that such electronic mail message was sent and successfully delivered. 310 CMR 40.1403(2)

**Dates Posted:** September 21, 2023 through November 14, 2023

**Practice Tip:**

If you are an LSP, [DON'T WAIT](#) – Sign up now for the LSP Board of Registration’s online portal called ePlace/Accela.

This will allow you to submit your annual fee, renewal application, address information, and other documents electronically. First time users need to register before they can log in/begin.

To register, go to [Accela Citizen Access \(mass.gov\)](#) to create an account.

The online portal has a Help Desk option - [ePLACE\\_helpdesk@state.ma.us](mailto:ePLACE_helpdesk@state.ma.us)

**Dates Posted:** June 20, 2023 through September 20, 2023

**Practice Tip:**

Per 310 CMR 40.0006, Historic Fill cannot contain contaminants that are present as a result of on-site activities. If contaminants at a disposal site could *potentially* have originated from known historical operations or activities at the site, an LSP needs to first determine that contaminants are not from on-site activities before the contaminants can be attributed to Historic Fill.

**Dates Posted:** May 18, 2023 through June 19, 2023

**Compliance Tip:**

When completing an AUL package, be sure to check Appendix D of the [AUL Guidance](#) to confirm that you have the right documentation for signature authority. This varies by the type of legal entity (corporation, trust, LLC, Limited Partnership, condominium or Limited Liability Partnership) submitting the AUL, with additional requirements for registered land. 310 CMR 40.1074(2)(c)



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**Dates Posted:** April 4, 2023 through May 17, 2023

**Practice Tip:**

Each state agency has responsibility for trouble-shooting its own eDEP forms. While MassDEP suggests contacting [edep-Support@mass.gov](mailto:edep-Support@mass.gov) for help with a BWSC form, doing so will only result in a referral to [bwsc.edep@mass.gov](mailto:bwsc.edep@mass.gov). For more immediate assistance with BWSC forms on eDEP, LSPs should contact [bwsc.edep@mass.gov](mailto:bwsc.edep@mass.gov) directly. For time-sensitive filings you can call the online filing help desk at 617-626-1111.

**Dates Posted:** March 15, 2023 through April 3, 2023

**Practice Tip:**

Among other provisions, the health/safety requirements for MCP response actions set forth at 310 CMR 40.0018 specify that a worker health/safety plan must be implemented to the extent required by OSHA under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, and any other applicable federal, state, or local law.

Other OSHA requirements may also be applicable at MCP Disposal Sites.

For example, OSHA Construction Industry Standards (29 CFR 1926) address trenching/excavation hazards. Construction industry trenching/excavation regulations and guidance may be found here: <https://www.osha.gov/trenching-excavation/construction>

**Dates Posted:** February 15, 2023 through March 14, 2023

**Compliance Tip:**

Administrative issues with Activity and Use Limitations (AULs) commonly result in the issuance of Notices of Noncompliance. One helpful tool for reviewing an AUL and its exhibits, and assessing whether all requirements for submitting an AUL have been met, is the [AUL Compliance Assistance Checklist available in Appendix I of MassDEP's 2014 Draft Guidance on Implementing AULs](#). Appendix I is intended to assist parties in preparing AUL submittals, including confirmatory AULs, using Form 1075. In addition to the AUL instrument, the checklist addresses the public notice requirements (e.g., interest holder letters), the BWSC113 transmittal form, and the submittal of AUL documentation to MassDEP.

**Dates Posted:** January 26, 2023 through February 14, 2023

**Compliance Tip:**

Pursuant to 310 CMR 40.1403(3)(a), notification to the Chief Municipal Officer and Board of Health of a community in which a Disposal Site is located is required when respirators or other protective clothing (Level A, B, or C Personal Protective Equipment) is used at a Disposal Site. This notification is required at least three days prior to the commencement of such field work or, if the level of protection is upgraded to Level C or above during the course of the work, as soon as practicable.

**Dates Posted:** December 14, 2022 through January 25, 2023

**Practice Tip:**

The LSPA has developed a Climate Change MCP Toolkit to assist practitioners as they consider the potential effects of climate change on site assessment and response actions. This is anticipated to be required by the [pending amendments](#) to the MCP. The toolkit includes a flowchart, checklist, two case studies, glossary, and list of resources.

The above tools and reference are available in one file [here](#), and also on the [LSPA website](#).



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**Dates Posted:** November 15, 2022 through December 13, 2022

**Practice Tip:**

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The above tools and reference are available in one file [here](#), and also on the [LSPA website](#).

**Dates Posted:** October 27, 2022 through November 14, 2022

**Practice Tip:**

Did you know MassDEP's position is that discarded carbon canisters, as a generated waste, are a sludge and subject to 310 CMR 30.302: Determination of Whether a Waste is Hazardous? Accordingly, per [policy HW94-007](#), a spent carbon canister that contains hazardous waste constituents from a listed hazardous waste source must be managed as a hazardous waste, regardless of whether the carbon canisters were used to treat groundwater or vapors from groundwater or soils.

**Dates Posted:** September 14, 2022 through October 26, 2022

**Practice Tip:**

Did you know that you can access MassDEP Level 1 audit results through the MassDEP Site File Viewer?

After an audit is completed, MassDEP uploads the results using the BWSC128 Recording Receipt/Issuance Form; however, MassDEP doesn't necessarily notify a PRP if a Level 1 audit has been conducted.

Looking at the Level 1 audit results may be helpful to the LSP and/or PRP.

**Dates Posted:** June 21, 2022 through September 13, 2022

**Compliance Tip:**

Pursuant to 310 CMR 40.1074(5), in addition to the requirement to incorporate a Notice of Activity and Use Limitation (AUL) into deeds or other instruments of property transfer, a copy of the deed or other instrument (with the incorporated AUL) must be submitted to MassDEP within 30 days of recording. This must be done using Section B, item 11, of the BWSC113 form (note that an LSP signature/stamp is not required for this submittal). Both the former and new property owners have this obligation; however, a submittal provided by either of those parties meets the requirements for both of them.

**Dates Posted:** May 17, 2022 through June 20, 2022

**Practice Tip:**

When conducting MCP emergency response actions at disposal sites with multi-agency involvement (e.g., FEMA, USCG, etc.), the LSP should understand the chain of command with respect to decision making, safety considerations, and site access.

FEMA offers free training on the Incident Command System (ICS).

Those LSPs who may encounter such situations are encouraged to pursue this [training](#).



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**Dates Posted:** April 15, 2022 through May 17, 2022

**Compliance Tip:**

Any time environmental samples are taken at a listed disposal site on behalf of someone other than the owner of the property, the person(s) conducting the response action shall provide the owner of the property with a written notice using BWSC-123 prior to the sampling, or no more than seven days after the sampling if it was conducted as part of an IRA to address a 2-hour notification.

Within 30 days of the date the sample results are issued by the laboratory, the results of the sampling and a statement of public involvement opportunities must be provided to the owner of the property. Copies of these notices must be provided to MassDEP with the next required MCP submittal.

Refer to 310 CMR 40.1403(10) for additional pertinent details.

**Dates Posted:** March 15, 2022 through April 14, 2022

**Compliance Tip:**

An LSP may request an advisory ruling from the LSP Board of Registration for an interpretation of one or more of the LSP Rules of Professional Conduct. Advisory rulings will be issued at the Board's discretion and only upon written request. The regulation at 309 CMR 5.00 provides rules for such requests.

All advisory rulings are public documents and can be accessed [here](#).

**Dates Posted:** February 16, 2022 through March 14, 2022

**Compliance Tip:**

If sampling results are excluded from the derivation of an Exposure Point Concentration (EPC) in a risk assessment, supporting information and a clearly explained rationale must be provided to technically justify that decision, (e.g., the data are inconsistent, uncertain, or unrepresentative). [See 310 CMR 40.0926](#).

**Dates Posted:** January 27, 2022 through February 15, 2022

**Compliance Tip:**

All LSPs should have recently received an invoice from the LSP Board of Registration indicating that their annual renewal fee of \$225 is due by March 1, 2022. Paying this fee in a timely manner is necessary to maintain your license. If you have not yet received an invoice, you should contact the LSP Board at [lsp.board@mass.gov](mailto:lsp.board@mass.gov). More details about payment can be found at [309 CMR 2.09 Annual Fee](#).

**Dates Posted:** December 14, 2021 through January 26, 2022

**Compliance Tip:**

When using a Method 2 or Method 3 risk characterization to establish a condition of NSR, you must consider reasonably foreseeable, as well as current, site activities and uses. In particular, future vapor intrusion exposures could result from changes in building use or altered building conditions. Potentially problematic activities and uses can be eliminated from consideration in the risk characterization through an appropriate AUL, per 310 CMR 40.0923(3)(b).



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**Dates Posted:** November 17, 2021 through December 13, 2021

**Compliance Tip:**

Once a Notice of Activity and Use Limitation (AUL) has been filed, the Disposal Site should be reviewed periodically to confirm that the conditions and obligations contained in the AUL are being complied with and/or maintained (310 CMR 40.1070, et seq.). MassDEP routinely performs field audits of sites with AULs, often several years after filing. LSPs should remind their clients that compliance with AUL conditions and obligations is required, and should document these reminders.

**Dates Posted:** October 28, 2021 through November 16, 2021

**Compliance Tip:**

Even if you have demonstrated that no Imminent Hazard exists and there is a condition of No Significant Risk at your site, you still need to address a Critical Exposure Pathway (CEP) if one has been identified. As required by 310 CMR 40.0414(3)&(4), you must conduct response actions to eliminate, prevent, and/or mitigate the CEP, or submit documentation that it is not feasible to do so.

**Dates Posted:** September 14, 2021 through October 27, 2021

**Practice Tip:**

**MassDEP's Private Well PFAS Testing**

MassDEP is conducting free PFAS testing for a limited number of private wells, focusing on 84 Massachusetts towns where 60% or more of residents are served by private wells. Practitioners should know about MassDEP's [Story Map](#) which is regularly updated to present the results of this private well sampling to date.

**Dates Posted:** June 17, 2021 through September 13, 2021

**Practice Tip:**

MassDEP staff in all regions have asked the LSPA to remind practitioners to include the email addresses for the RP and LSP on all eDEP forms. This is particularly helpful as another avenue for contacting people, especially during times when people may not have access to their office phones.

**Dates Posted:** May 18, 2021 through June 16, 2021

**Practice Tip:**

For excavation work at sites with sensitive receptors and with contaminants that could sorb to soils, consider including a real-time dust monitoring program as well as a risk-based evaluation of the impact of dust particulates in the RAM Plan.

A [1997 MassDEP paper](#) on dust action levels goes into more detail.

**Dates Posted:** April 15, 2021 through May 17, 2021

**Compliance Tip:**

Remember to review and evaluate data from your ROS Phase V Reports to confirm that the Phase V General Provisions and RAPS are being met. 310 CMR 40.0891(5) requires that "*Operation, maintenance and/or monitoring activities shall be performed at a frequency which is sufficient to ensure the effective performance and the integrity of the remedial action, consistent with the Response Action Performance Standard as described in 310 CMR 40.0191, and in conformance with the terms of applicable permits, approvals, licenses or provisions in 310 CMR 40.0000.*"





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**Dates Posted:** March 16, 2021 through April 14, 2021

**Compliance Tip:**

The four criteria for a Tier I site are related to IRA conditions, and a Tier I site cannot be initially classified or reclassified as Tier II until the IRA condition has been resolved and an IRA Completion Statement has been filed. If a site meets at least one of these criteria it must be classified as Tier I: evidence of groundwater contamination with OHM at concentrations equal to or exceeding the applicable RCGW-1 Reportable Concentration at a location within an Interim Wellhead Protection Area or Zone II, or within 500 feet of a Private Water Supply Well; 2) an Imminent Hazard is present; 3) one or more remedial actions are required as part of an IRA pursuant to 310 CMR 40.0414(2); or 4) an IRA is necessary to eliminate or mitigate a Critical Exposure Pathway pursuant to 310 CMR 40.0414(3).

310 CMR 40.0520(2) and (3)

**Dates Posted:** February 9, 2021 through March 15, 2021

**Compliance Tip:**

Not all LSP Board-approved “Regulatory” continuing education credits are also “DEP Course” credits. To qualify as a “DEP Course,” an otherwise qualifying course must also be “taught in whole or in substantial part by Department of Environmental Protection personnel.” Only those credits specifically listed as “DEP Regulatory” can be applied toward both the 12-credit DEP Course requirement and the eight-credit Regulatory requirement.

309 CMR 3.09(1) and (3)(b)

**Dates Posted:** January 13, 2021 through February 8, 2021

**Compliance Tip:**

[ResilientMA.org](https://resilientma.org) is the MA [Climate Change Clearinghouse](https://climatechange.mass.gov), which provides resources and tools for evaluating climate change and community resiliency. The site also includes multi-model climate forecasts and maps developed by the Northeast Climate Adaptation Science Center at UMass Amherst (NECASC); these forecasts are one focus of the LSPA’s Climate Change Subcommittee’s on-going work. A video tutorial for using these forecasts is here: [Tutorial](#)

**Dates Posted:** December 15, 2020 through January 12, 2021

**Compliance Tip:**

During the COVID-19 State of Emergency declared by the Governor, MassDEP will apply its enforcement discretion with respect to the use of email to send notices to local officials provided that the sender employs some way of confirming that the intended recipient has received the email (e.g., using the read receipt function or requesting an email response confirming receipt).

*It is expected that the proposed MCP amendments in the 2019 public hearing draft would allow email notification of local officials.* <https://www.mass.gov/info-details/mcp-qa-covid-19-edition>

**Dates Posted:** November 19, 2020 through December 14, 2020

**Compliance Tip:**

A Comprehensive Remedial Alternative that would achieve a Permanent Solution is considered feasible unless: (a) the alternative is not technologically feasible; or (b) the costs of conducting, or the risks resulting from, the alternative would not be justified as determined by a benefit-cost analysis; or three other considerations as outlined in 310 CMR 40.0860 (5).



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**Dates Posted:** October 28, 2020 through November 18, 2020

**Compliance Tip:**

If you have not earned all of the LSP credits needed for your license renewal, then you may apply to the LSP Board of Registration for a 90-day extension of your renewal date. To apply, you must have already earned at least 36 credits toward the required 48 total credits AND you must remit the license renewal processing fee. Use this [form](#).

Once you have earned your needed credits, you must submit this [form](#) and pay another processing fee.

309 CMR 3.06 (5)

**Dates Posted:** September 24, 2020 through October 28, 2020

**Compliance Tip:**

The MCP requires that a sketch plan be attached as an exhibit to an AUL. Don't be fooled by the informality of the term "sketch;" specific information must be included in the plan including:

- the disposal site boundaries,
- the area subject to the AUL, and
- an accurate delineation of areas where barriers are necessary to prevent exposure to underlying contamination, if required.

MassDEP guidance advises that the plan be to scale, and that the scale and a north arrow be shown. Lay people and contractors need to know how to identify where AUL limits and any barriers to exposure are located. The plan and AUL will be scanned to become a permanent record; because the Registry of Deeds and Land Court can only scan documents in black and white, sketch plans should not include color-coding for describing property details. *310 CMR 40.1074(2), and Guidance on Implementing Activity and Use Limitations, DRAFT Policy #WSC14-300, including Form 1075*

**Dates Posted:** June 18, 2020 through September 24, 2020

**Compliance Tip:**

**LSPA Resource Tip for More Resilient and Sustainable Remediation Solutions**

**SURF, the Sustainable Remediation Forum** has collaborated with MassDEP, **EcoAdapt**, and Boston University to evaluate the potential vulnerability of 6,001 MCP sites. Site-specific factors included climate change-related flooding and inundation, as well as community and environmental sensitivity parameters.

A webinar entitled **Vulnerability of Hazardous Waste Sites to Climate Change** includes a description of the project as well as how it ties in with the proposed 2019 MCP Amendments.

Read [here](#) about how the Massachusetts Climate Change and Hazardous Waste Site Screening was conducted



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**Dates Posted:** April 28, 2020 through June 18, 2020

**Compliance Tip:**

### **LSPA Tip for eDEP Submittals During the Time of COVID-19**

To support communication during this time, some LSPs have found it helpful to provide email addresses, in addition to regular mailing addresses, on BWSC transmittal forms for the "Person Required to Notify" section of Release Notification Forms.

Similarly, the LSPA suggests that email addresses be provided on other BWSC transmittal forms for both the "Person Undertaking Response Actions" and the LSP; if this information was not previously provided then it may be necessary to check "change of address" in eDEP to update the contact information.

**Dates Posted:** February 12, 2020 through April 28, 2020

**Compliance Tip:**

The MCP includes specific requirements for the application of Remedial Additives at Disposal Sites near *Sensitive Receptors* (310 CMR 40.0046), which are defined along with the key distances to them at 40.0046(3)(a). These include:

- 40.0046(3)(a)3. within 800 feet of any surface water supply used in a public water system or any tributary of such surface water supply
- 40.0046(3)(a)4. within 50 feet of any other surface water body or any tributary of such surface water

A potential remedial application site should be carefully evaluated for these criteria.

**Dates Posted:** January 15, 2020 through February 11, 2020

**Compliance Tip:**

If a new site owner qualifies as an "eligible person/tenant/other person" (310 CMR 40.0570), s/he can file to reset the clock on response action deadlines. This requires filing a Miscellaneous Document BWSC Form 126 which should include a completed BWSC Form 107D: *ELIGIBLE PERSON, ELIGIBLE TENANT OR OTHER-PERSON CERTIFICATION TRANSMITTAL FORM*, as well as a letter of request from the new site owner to establish the new deadlines. The Form 107D does not get filed separately and an LSP should not file the form.

**Dates Posted:** November 21, 2019 through January 14, 2020

**Compliance Tip:**

Applying for a National Pollutant Discharge Elimination System (NPDES) Remediation General Permit (RGP) for discharge to an Outstanding Resource Water (ORW) requires a 30-day public comment period (314 CMR 4.04 (5) (c)) and must be demonstrated "to be for the express purpose and intent of maintaining or enhancing the resource for its designated use..." (314 CMR 4.04 (3) (b)).

This could catch you by surprise as it is a higher bar to meet and requires more time to obtain than a "typical" NPDES RGP.

**Dates Posted:** September 18, 2019 through November 20, 2019

**Compliance Tip:**

309 CMR 3.09(3)(a) states that "...at least 12 of the 48 [continuing education] credits must be earned at a Board-approved DEP Course or Courses." The LSPA urges LSPs to secure as many DEP credits as possible in the first two years of their licensing period. Waiting until the last year to secure even half of the required DEP credits is risky - setting LSPs up, at best, to having to request a 90-day extension from the LSP Board of Registration.



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**Dates Posted:** June 13, 2019 through September 17, 2019

**Compliance Tip:**

Do not ship any hazardous waste, either listed or characteristic, on a 21E Bill of Lading.

The determination that a waste is not a listed hazardous waste cannot be made on the basis of laboratory data alone, nor is it enough to assume that due diligence has been conducted. The BOL requires an LSP Opinion that the waste has been adequately and properly characterized, which may require research into site history and process operations. Documentation of research to back up the determination that a waste is not a hazardous waste must meet the requirements of 310 CMR 30.007 (Accurate and Complete Record Keeping). See Interim Policy [HW93-01](#).

**Dates Posted:** May 16, 2019 through June 12, 2019

**Compliance Tip:**

MassDEP reports receiving IRA, RAM, and OMM Plans that do not provide detailed objectives, sample locations, sampling frequencies and analyses, and/or schedules as required by the MCP (cf. 310 CMR 40.0424, 40.0444, and 40.0874(3)(d)). LSPs should confirm that their work plans meet the MCP requirements for content.

Don't submit a Non-Plan Plan!

**Dates Posted:** April 23, 2019 through May 15, 2019

**Compliance Tip:**

When assessing the extent of release as required for Risk Characterizations, if OHM concentrations (excluding VOCs) in GW are greater than GW-3 within 500 feet of a surface water body, or if OHM are detected in GW within 200 feet of a surface water body, these OHM should be analyzed for in the surface water and/or sediment. *MCP 310 CMR 40.0904(2)(c)(1 and 2)*

The need for such measurements may be obviated by technical justification consistent with 310 CMR 40.0193.

**Dates Posted:** March 19, 2019 through April 22, 2019

**Compliance Tip:**

LSPs must not delete the note at the top of the first page of Form 1075

"[Confirmatory] Notice of Activity and Use Limitation."

The note is part of the document; it is not optional.

*310 CMR 40.1099 Forms for Activity and Use Limitations*

**Dates Posted:** February 12, 2019 through March 18, 2019

**Compliance Tip:**

If a risk characterization supporting a Permanent Solution Statement relies on the exclusion of OHM associated with Anthropogenic Background (e.g. Historic Fill), to arrive at a conclusion of No Significant Risk, then the Permanent Solution must be filed as a Permanent Solution with Conditions. 310 CMR 40.1013



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**Dates Posted:** January 16, 2019 through February 11, 2019

**Compliance Tip:**

If you are denied access to an abutting property to evaluate the nature and extent of a release or to further evaluate sensitive receptors, you can ask MassDEP for assistance:

- You must first make “reasonable efforts” to gain access to the property.
- If you receive no response or are denied access, you can then make a written request for assistance from MassDEP in accordance with 310 CMR 40.0173(1).
- A copy of the request to MassDEP must also be sent by certified mail to each person who owns and operates the site or location to which access is sought in accordance with 310 CMR 40.0173(2).
- While not a regulatory requirement, it is good practice to document all phone conversations, emails, and correspondence with the recalcitrant owner/operator, and mail any requests via certified mail with mail receipt.

**Dates Posted:** November 13, 2018 through January 15, 2019

**Compliance Tip:**

An Activity and Use Limitation (AUL) cannot be used to limit the activities and exposures of utility workers conducting emergency excavation and repair of existing subsurface utilities. If the property has a utility line or easement, then at a minimum that area of the site must be cleaned up to a level that poses No Significant Risk for emergency excavation and repair of existing subsurface utilities by workers without personal protective equipment.

*310 CMR 40.1074(2)(h): Contents of a Notice of an Activity and Use Limitation*

**Dates Posted:** September 26, 2018 through November 12, 2018

**Compliance Tip:**

The LSPA's review of recent Notices of Audit Findings indicates that a common violation of sites in Remedy Operation Status (ROS) is the failure to fulfill reporting obligations.

To maintain compliance with the MCP ROS requirements, Phase V Status and Remedial Monitoring Reports must be submitted on a semi-annual basis (310 CMR 40.0893(2)(g)). Failure to report could result in the termination of ROS (310 CMR 40.0893(6)). Where ROS has been terminated, the PRP has two years from the date of termination to achieve a Permanent or Temporary Solution. Response actions after the ROS termination cannot be conducted without a valid Tier Classification or Tier Classification Extension (310 CMR 40.0893(6)(e)).

**Dates Posted:** June 14, 2018 through September 25, 2018

**Compliance Tip:**

**Conducting Public Involvement at PIP Sites**

A quick check of BWSC126 Forms on eDEP identified about 48 active Public Involvement Plan (PIP) sites in the Commonwealth. This is certainly not a high percentage of total overall sites, but PIP sites require extra attention to public communication about key milestones.

In addition to the requirements outlined in 310 CMR 40.1400, MassDEP's website has a section dedicated to public involvement at PIP sites.

Check out [Tips on PIPs](#) and [MassDEP's Q & As on PIP sites](#).

When in doubt, contact the Public Involvement Coordinator at your MassDEP Regional Office with any questions regarding public involvement plans.



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**Dates Posted:** May 18, 2018 through June 13, 2018

**Compliance Tip:**

MassDEP recommends that at sites relying on a sub slab depressurization system (SSDS) to prevent exposure to contaminants of concern, annual checks be conducted of fan operation status and for potential differential pressure drops. These annual checks should be conducted as part of site maintenance and monitoring activities, and are recommended even after the installation of remote monitoring (telemetry). This applies to SSDS systems at sites in Remedy Operation Status, and sites with a Temporary Solution or a Permanent Solution with Conditions.

This is a reminder that the Responsible Party is advised to continue to verify the operation of the SSDS until such time that it is demonstrated the SSDS is no longer needed.

From VAPOR INTRUSION GUIDANCE: SITE ASSESSMENT, MITIGATION AND CLOSURE Policy #WSC-16-435, Table 3-1.

**Dates Posted:** April 24, 2018 through May 17, 2018

**Compliance Tip:**

Remediation Waste (e.g., contaminated soil or debris excavated from a site or groundwater collected for disposal) should be removed from a site within 120 days of its initial excavation or collection.

If the LSP anticipates the waste remaining on site for more than 120 days, (s)he can submit a RAM or IRA Plan or Phase IV RIP to MassDEP outlining a specific plan and schedule for dealing with the waste beyond the 120-day deadline.

Don't forget that remediation waste does not include hazardous waste, which must be removed within 90 days. 310 CMR 40.0031(7)

**Dates Posted:** March 15, 2018 through April 23, 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 situation that meets one of the Conditions of Substantial Release Migration (CSRM) specified at 40.0006 is not a CSRM and therefore not reportable, unless there is another, separate reportable condition at the site (see 40.0313(4)). This issue arises frequently with the detection of VOCs in indoor air.

If indoor VOC concentrations are not an Imminent Hazard and there is no other reportable condition such as VOCs > RCs in groundwater or soil, the presence of VOCs in indoor air is not a CSRM and is not reportable.

Without a separate reportable condition, there is no guarantee that the source of the VOCs is at the site. Nonetheless, in the absence of an obvious source, the LSP is wise to look further.



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**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 40.0860.

**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:

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



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**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.")





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**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 site-specific 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:** November 16, 2016 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:** 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)).