

Summary Evaluation of Proposed MA DEP Regulation Changes 2003-2

310 CMR 4.00 – Timelines and Fees 310 CMR 40.0000 – MCP

The Massachusetts Department of Environmental Protection (MA DEP) is proposing changes to a number of its regulations, including 310 CMR 4.00 – Timely Action Schedule and Fee Provisions and 310 CMR 40.0000 – the Massachusetts Contingency Plan. These changes are scheduled to take effect June 27, 2003. MA DEP will accept written public comments on these proposed changes until 5:00 p.m. on June 2, 2003 at the following address:

Office of Budgetary and Legislative Affairs
Massachusetts Department of Environmental Protection
One Winter Street
2nd Floor
Boston, MA 02108

A few highlights of the proposed changes include the creation of a new tier of disposal sites for default sites, Tier ID, instead of Default Tier IB. In addition, a separate designation will be created for each Tier level for homeowners (i.e. Tier IB Homeowner, Tier II Homeowner). Homeowners are defined as an owner occupant of a one to four family residential structure, used exclusively as a residential structure throughout the ownership, where the owner's unit is the owner's principal residence for 6 or more months of a year and the owner is conducting actions at the residence in response to a release of oil.

The following is a summary of some of the proposed changes to 310 CMR 40.0000:

- The 21-day presumptive approval process for RAM Plans submitted prior to Tier Classification is being modified. RAM Plans can be implemented immediately upon submission of the plan and the fee to the MA DEP. The MA DEP reserves the right to deny a RAM Plan if it deems necessary.
- RAM Plan modifications will be handled in the same manner as the initial RAM Plan for significant changes to the plan. Minor modifications can be documented in the RAM Status or Completion Reports.
- Limited Removal Actions can continue as RAMs immediately upon submission of the RAM Plan and fee.
- Initial Tier I Permit Applications, Tier I Major Permit Modifications and Tier I Permit Extensions and Transfers will be presumptively approved 45 days from submission date, unless the MA DEP approves the permit with conditions, extends the review time or denies the permit within the 45 days.
- The Tier I Permit presumptive approval shall not be construed as approval of the adequacy or scope of the response actions or forgiveness of non-compliance with any provisions of the MCP.
- Response Actions conducted at a Tier IA disposal site will no longer require direct MA DEP approval unless otherwise indicated by the MA DEP.
- MA DEP clarified their ability to reclassify any Tier I or Tier II disposal site it deems necessary.
- The MA DEP will accept electronically submitted documents, although there is no indication yet as to which documents would be accepted electronically. The date of submission of the electronic transmission would be the date it is delivered to the MA DEP. A printed copy of the document must also be submitted to the appropriate MA DEP Office within 7 days of the electronic transmission.
- MA DEP has given itself the authority, upon Tier Classification, to require the approval of certain MCP submittals it deems necessary for Tier I or Tier II disposal sites.

- Upon Tier Classification for Tier I and Tier II disposal sites, the MA DEP requires notification at least 7 days prior to implementation of initial Comprehensive Response Actions (i.e. drilling, sampling, excavation, etc.). The MA DEP may impose conditions on the work or may arrange to observe the work.
- MA DEP has added a public involvement process to the Tier I Permit Application process that allows interested persons to submit written comments to the MA DEP related to the permit application within 21 days of the publication date of the legal notice required for the permit application. MA DEP will respond to these public comments, as it deems necessary.
- Tier I permit extensions shall be good for one year instead of two years.
- MA DEP has clarified presumptive approval of Immediate Response Action (IRA) Plans shall not be construed as approval of the adequacy or scope of the response actions or as forgiveness of non-compliance with the MCP.
- MA DEP will assess Post RAO Class C annual compliance fees for all Class C RAO sites, not just those with active remedial systems.

The following is a summary breakdown of the changes to 310 CMR 4.00:

- Initial Tier I Permit Applications, Tier I Major Permit Modifications, and Tier I Permit Extensions and Transfers will be presumptively approved 45 days from submission date, unless the MA DEP approves the permit with conditions, extends the review time or denies the permit within the 45 days.
- Certain fees will change/increase as follows:

Fee	Current Cost	Proposed Cost
Tier IA Annual Compliance Fee	Actual Cost	\$5,000
Tier IB Annual Compliance Fee	\$2,600	\$4,000
Tier IC Annual Compliance Fee	\$1,950	\$3,000
Tier ID Annual Compliance Fee	-	\$4,000
Tier II Annual Compliance Fee	\$1,300	\$2,000
Homeowner Tier IA, IB, IC or II Annual Compliance Fee	-	\$1,000
Homeowner Tier ID Annual Compliance Fee	-	\$2,000
Homeowner Tier I Permit Application Fees	-	\$250-\$500
Phase IV Fee	\$500	\$800
Post RAO Class C Fee	\$500	\$800
Response Action Outcome Fee	\$500	\$800
Release Abatement Measure Fee	\$500	\$800

A number of other minor changes, including clarification and wording changes, have also been incorporated into this round of revisions. The increase in fees will obviously have an impact on Responsible Parties (RPs) and Potentially Responsible Parties (PRPs). The streamlining of the Tier I Permit Application process and the deletion of the presumptive process for RAM Plans prior to Tier Classification should be helpful for most RPs and PRPs.

The proposed regulatory changes outlined in this document are in addition to the proposed Wave 2 regulatory changes MA DEP issued in December 2001 and have yet to promulgate. A follow up on the status of the proposed Wave 2 regulatory changes will be forwarded shortly.

You can find a full copy of both proposed regulatory changes in the Environmental News section of our website at <http://www.WilliamsonEnv.com>. If you have any questions or comments on the proposed changes you can contact us directly at the letterhead address.