

# AGENDA

PART 201 DISCUSSION GROUP  
Administration Subgroup  
Public Sector Consultants, Lansing, Michigan  
Friday, November 3, 2006

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9:00–9:15	Welcome and Introductions/Meeting Protocol	Julie Bennett <i>Public Sector Consultants</i>
9:15–9:30	Points Raised by Part 201 Discussion Group	Julie Bennett <i>Public Sector Consultants</i>
9:30–9:45	Part 201 “Customers”* and “Customer Service Areas”**	Brenda Brouillet/Carrie Olmsted <i>MDEQ</i>
9:45–11:00	Goals/Desired Results by Area	All
11:00–11:30	Indicators of Progress by Area	All
11:30–11:45	Public Comment	Guests
11:45–12:00	Next Steps, Next Meeting Date, and Adjourn	All

## **\*Part 201 “Customers”**

- Developers
- Liable Parties
- Purchasers of Property
- Businesses
- General public

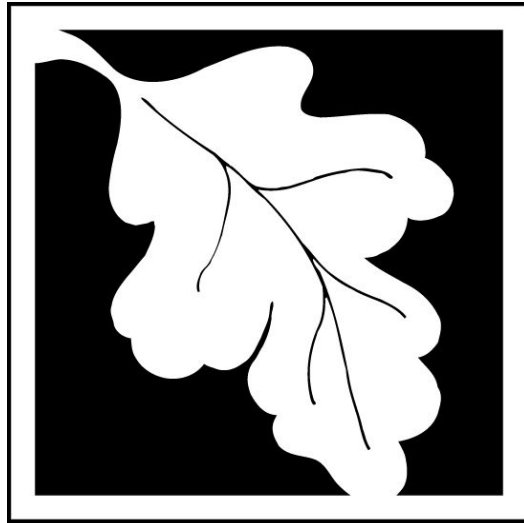
## **\*\*Part 201 “Customer Service Areas”**

- Clean Up
  - Liable Party
  - Non-liable Party
  - Compliance and Enforcement
- Redevelopment
  - Grant and Loans
  - BEA/Due Care
  - Private Party Redevelopment
  - Compliance and Enforcement
- State Funded Clean Up of Orphaned Sites
  - Redevelopment
  - Protection of Public Health and the Environment
- Public Outreach
- Site Listing/Scoring
- Complaint and Emergency Response
- Part 213 Audit Clean Up Program

The Massachusetts Waste Site Cleanup Program

Appendices: Measures of Program Performance

1993-2001



M a s s a c h u s e t t s  
D e p a r t m e n t  
— *of* —  
E N V I R O N M E N T A L  
P R O T E C T I O N

Prepared by:

Massachusetts Department of Environmental Protection, Bureau of Waste Site Cleanup

# APPENDIX A

## Program History

The effort to address contaminated sites in Massachusetts has gone through many stages. The current set of laws and regulations is the culmination of a series of reforms that took place in the 1970s, 1980s and 1990s, with significant changes occurring as recently as 1998. Understanding the basic elements of this history provides important context for the information presented in this report.

### Early efforts to address historic contamination

From the industrial revolution through the start of the environmental movement in the 1960s, Massachusetts' industrial economy operated with virtually no environmental regulation. During that time, hundreds of properties became contaminated with oil and hazardous materials. In the 1960s and 1970s, the Massachusetts legislature took its first steps to address that legacy. Initial legislation was less than comprehensive, consisting of a limited program to address oil spills that threatened water bodies, and specific state budget line items to fund the cleanup of certain historic waste sites.

### 1983-1991: Evolution of a Comprehensive Cleanup Program

In 1983, recognizing the importance of a comprehensive approach to site cleanup, the legislature passed the law that serves as the foundation for the today's cleanup program: Massachusetts General Laws, Chapter 21E: the Massachusetts Oil and Hazardous Material Release Prevention and Response Act. The law established DEP's authority to conduct cleanups and recover costs from the parties responsible for the contamination, provided \$25 million to fund cleanups, and established fees on the transportation of hazardous waste in order to provide a continuous stream of revenue to pay for cleanups.

While the enactment of Chapter 21E was a big step forward, shortcomings of the law soon became apparent. Citizen groups were concerned that not enough sites were being cleaned up, that cleanups were happening at a slow pace, and that resources were not being prioritized to address the most difficult sites. To address these concerns, Referendum Question 4 was put on the ballot in 1986 and approved by nearly seventy-five percent of voters. The referendum made significant changes to Chapter 21E, including new requirements that sites be prioritized for cleanup and that immediate steps be taken to address any imminent hazards.

The process of re-thinking and refining the program continued through the 1980s, and in 1990, a study committee was formed to recommend comprehensive changes based on lessons learned to date. The committee identified a variety of concerns, including: too few cleanups occurring; unclear rules for parties performing cleanups; delays in obtaining DEP approvals needed for site cleanup activities; and insufficient resources for DEP to perform and oversee cleanups.

To address these concerns, the committee recommended changes to the cleanup program that would: create a larger role for the private sector in performing cleanups; focus DEP resources on the sites in greatest need of state involvement; allow voluntary cleanup actions to proceed with minimal DEP involvement at most sites; and provide greater clarity and predictability in the rules governing the reporting and cleanup of sites.

### 1992-2001: The “Privatized” Program

In 1992, Chapter 21E was amended to incorporate the recommendations of the study committee. On October 1, 1993, new cleanup regulations implementing the law took effect. The new program established clear thresholds for when releases must be reported and when sites are considered closed. It set clear, predictable rules for each stage of the cleanup process. And, most significantly, it created a new profession of “Licensed Site Professionals” (LSPs) to oversee the cleanup and closure of all but the most complex sites, subject to DEP audit. This “privatization” was designed to meet two goals: first, to eliminate the DEP “bottleneck” and allow parties to proceed with cleanup without waiting long periods for DEP approvals; and second, to allow DEP to focus its resources on the sites in greatest need of its attention.

The changes to the cleanup program yielded immediate results. Within the first two years of the new program, there were more than 3,200 permanent site cleanups – including 700 at sites that had languished under the old rules with no clear way out of the cleanup process.

In 1998, DEP performed a comprehensive evaluation of the new cleanup program. The evaluation, conducted with significant public input, found that the new program has significantly increased the number of cleanups and has enabled DEP to focus its resources more effectively on the most complex sites.

That same year, the Brownfields Act was enacted, amending Chapter 21E to create even greater incentives for the cleanup and redevelopment of sites. The Brownfields Act provides an end to future liability for parties who purchase and clean up contaminated properties, provided certain criteria are met. Lenders are protected from most liability in the event they obtain a property through foreclosure, as long as they work with DEP to ensure that any imminent hazards are addressed. Redevelopment authorities and municipalities are similarly protected. These liability incentives, together with a package of financial incentives implemented by the state’s economic development agencies, are designed to minimize the unforeseeable risks, such as third-party lawsuits and future changes to cleanup regulations, that discourage investment in the cleanup and redevelopment of sites.

### **Looking forward**

DEP is committed to continuous improvement of the waste site cleanup program. Through targeted revisions of the cleanup regulations, development of policies and guidance, and training of Licensed Site Professionals, DEP has made significant improvements to the privatized cleanup program since 1993. Attachment F is a list of the policy and regulation changes and LSP training sessions that have occurred since 1993.

DEP continues to work on program improvements. As of the date of this report, DEP is preparing to issue further revisions to the cleanup regulations, conducting two professional training courses for LSPs, and working actively on many significant policy and guidance documents. DEP is also implementing improved audit and enforcement tools to ensure that cleanups meet existing standards.



## APPENDIX B

### fact sheet

## The Massachusetts waste site cleanup program - the basics

### Introduction

This brochure highlights the major components of the Massachusetts waste site cleanup program. The program, under the jurisdiction of the Department of Environmental Protection's (DEP) Bureau of Waste Site Cleanup (BWSC), administers oil and/or hazardous material cleanups, ranging from tanker truck spills, to contaminated groundwater, to sites with acres of polluted soil. DEP is located in Boston, with regional offices in Wilmington, Lakeville, Worcester, and Springfield.

Massachusetts General Law, Chapter 21E, the state Superfund law, was originally enacted in 1983 (and amended in 1992, 1995, and 1998), and created the waste site cleanup program. Contaminated properties regulated under this law are often called "21E sites". The regulations adopted to implement c. 21E are called the Massachusetts Contingency Plan (MCP).

Soon after the waste site cleanup program started, it became clear that DEP could not oversee cleanup of thousands of sites and do it at an expeditious pace. As a result, 1992 amendments to c. 21E added a privatized component to the program. Those responsible for cleaning up contamination (potentially responsible parties or PRPs) hire licensed site professionals (LSPs) to oversee most cleanups (with limited DEP oversight) to ensure compliance with the MCP. This allows DEP to focus its own resources on those sites that pose the greatest complexity or risk.

### Major program components

Major program components include:

- **requiring that DEP be notified** about contamination that exceeds specific levels. Chapter 21E and the MCP require that PRPs notify DEP of contamination within specific deadlines. Failure to do so may result in significant penalties. To report a site or spill day or night, call 888-304-1133 (toll free) or 617-556-1133.
- **responding to emergencies** when oil and/or hazardous material is released and presents a risk to people and the environment. These situations trigger immediate response actions. If the person responsible for the contamination cannot or will not clean it up, then DEP brings in its own cleanup contractors to carry out rapid responses at the PRP's expense.

- **maintaining a searchable database** (<http://www.state.ma.us/dep/bwsc/sitelist.htm>) to track the cleanup progress of reported sites. Once a site is reported to DEP, regulatory deadlines are triggered for submitting site information and conducting the cleanup so that, within 5 years, the site no longer poses an unacceptable health or environmental risk. The graphic on page 4 depicts the cleanup process.
- **encouraging early risk reduction** cleanup actions. For serious problems, such as sudden releases, imminent hazards, and other time-critical conditions, early actions are required to reduce risks. When the situation poses a lesser threat, limited cleanup actions may be performed voluntarily to reduce risks or lower the cost of future comprehensive cleanups. Sites may not have to tier classify (see the next bullet and the graphic) or be subject to cleanup deadlines if early actions performed before the one-year tier classification deadline are sufficient to meet cleanup standards.
- **classifying sites** that are not cleaned up within one year of being reported. Sites are ranked by complexity, the number of sources, and how serious a potential threat the contamination poses: Tier I (complex, with Tier 1A the most complex) or Tier II (less complex.)
- **allowing varying levels of cleanup** based on land use. The MCP requires contamination to be cleaned up to a level that protects people and the environment based on how the site is being or will be used, such as for housing or commercial purposes. The regulations also allow land use controls, called activity and use limitations (AULs), to be used as cleanup strategy components.
- **assessing fees** for sites that have not completed and documented a cleanup within a year of being reported. Tier IA sites are charged DEP's actual oversight costs. All other sites are assessed a fixed annual compliance fee while work continues. These fees are assessed each year the site is being addressed until DEP receives documentation that the site has been cleaned up consistent with MCP standards.
- **facilitating redevelopment** and reuse of contaminated sites. State and federal "Superfund" laws place the burden of cleanups on owners and anyone else who caused or contributed to the contamination. To encourage these sites to be reused, the Brownfields Act, which amended c. 21E in 1998, created protections for people who did not own or operate the site at the time of the release and did not cause or contribute to the contamination and who complete the cleanup. This relief ends liability for third party costs, property damage claims, and state reimbursement actions. People not qualifying for this protection may apply to the Attorney General for a negotiated "covenant not to sue" for cleanup costs.

The Brownfields Act also created exemptions and defenses for other entities such as tenants, banks, community development agencies, and downgradient property owners.

- **ensuring compliance** through use of several mechanisms created so the program works correctly without direct DEP involvement. PRPs/LSPs send reports to DEP that they develop while working to clean up sites. They must also submit a wide range of information about cleanup process activities. DEP conducts site audits and has the authority to require additional work to comply with the MCP.
- **enforcing against noncompliers** who fail to notify DEP about sites or spills, fail to perform required cleanup actions, or fail to make required submittals and demonstrate acceptable progress at sites. Enforcement activities range from sending reminder letters, to issuing legal orders with escalating penalty levels, to referring non performing LSPs to the LSP Board for action against their licenses.
- **overseeing the most complex sites and releases** thereby limiting DEP staff involvement in most cleanups. Direct oversight is reserved for time-critical situations, sudden releases, Tier 1A sites, and when a PRP cannot or will not conform to the privatized cleanup process. In those cases, DEP hires its own contractor to conduct the cleanup and bills the PRP for the costs.
- **involving the public** throughout the site cleanup process. People responsible for cleaning up sites must publish notices in local newspapers at major milestones (see graphic), informing the public about their activities and providing an opportunity for public involvement. People with a high level of interest in a site can petition to make it a “public involvement plan” site. Plans are developed by conducting interviews to identify public concerns and include opportunities for the public to comment on the cleanup process. The person conducting the cleanup is responsible for providing these public involvement opportunities.

In addition, each year, DEP offers technical assistance grants of up to \$10,000 to groups to hire experts to help them better understand the technical information documenting cleanup milestones, so they can participate more fully in cleanup decisions.

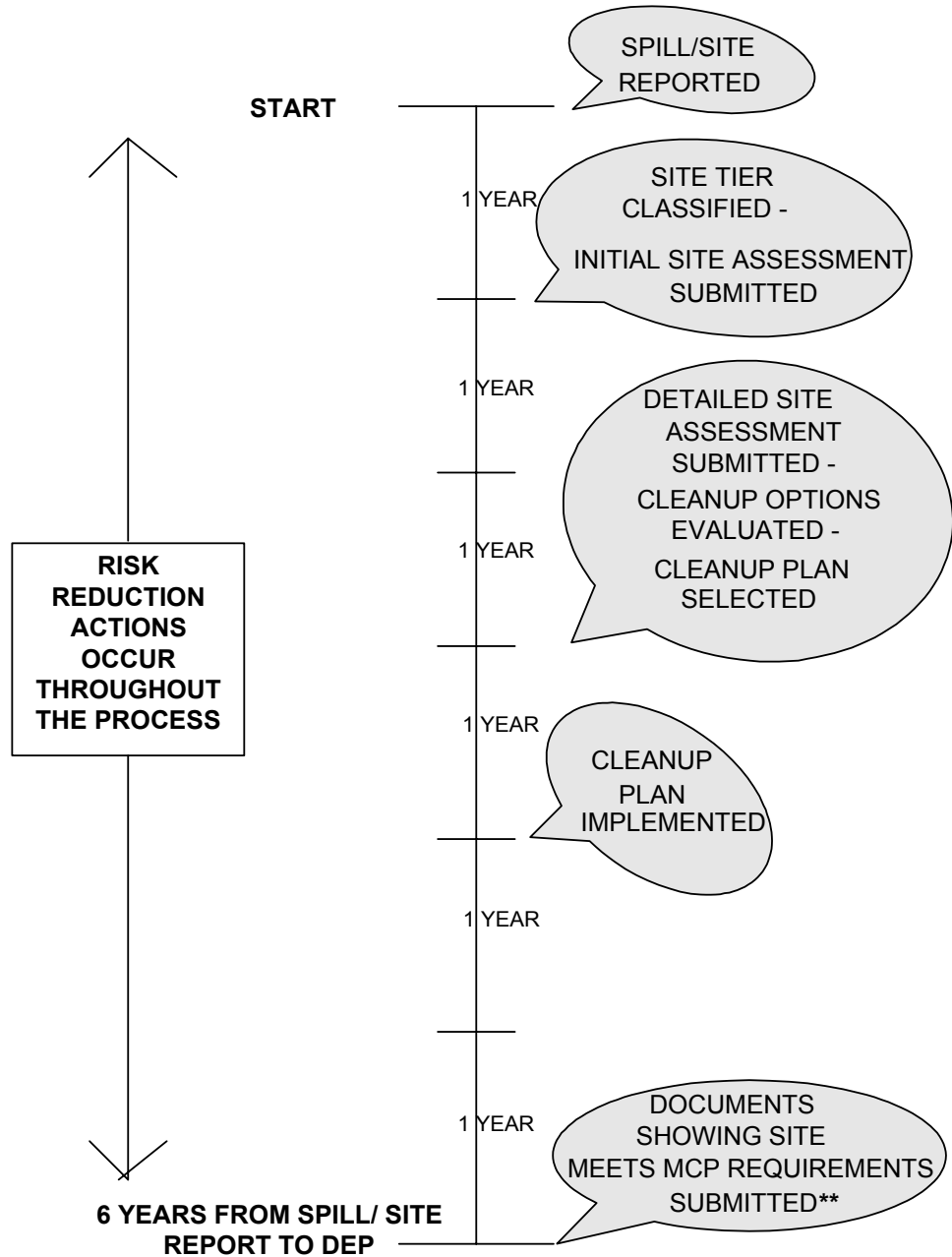
### **For more information**

Report a site or spill 24/7: 888-304-1133 (toll free) or 617-556-1133

Our Website: <http://www.state.ma.us/dep/bwsc>

The DEP InfoLine: 617-338-2255 or, (outside area code 617), 800-462-0444 (press 2)

# MCP CLEANUP PROCESS



\*\* CAN OCCUR AT ANY TIME

Massachusetts Department of  
Environmental Protection  
One Winter Street  
Boston, MA 02108-4746

Commonwealth of  
Massachusetts  
Jane Swift, Governor

Executive Office of  
Environmental Affairs  
Bob Durand, Secretary

Department of  
Environmental Protection  
Lauren A. Liss, Commissioner

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This information is available in  
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ADA Coordinator at  
(617) 574-6872.



# APPENDIX C

## MASSACHUSETTS' APPROACH TO WASTE SITE CLEANUP: CHAPTER 21E AND THE MASSACHUSETTS CONTINGENCY PLAN

Assessing and cleaning up contamination are important components of Massachusetts' strategy to provide its citizens with a clean and safe environment. The Department of Environmental Protection's (DEP's) Waste Site Cleanup Program was established to ensure that contamination is dealt with appropriately and in a timely fashion.

### *Who regulates the cleanup of contaminated properties?*

Massachusetts General Law Chapter 21E tasks DEP with ensuring the permanent cleanup of contamination. DEP implements this law through a set of regulations known as the Massachusetts Contingency Plan (MCP). The MCP lays out the state's rules for cleaning up contaminated properties.

### *Who is responsible for the cleanup?*

Chapter 21E describes the legal obligations of property owners and other potentially responsible parties (PRPs) when contamination is found. These responsibilities include notifying DEP of the contamination and then ensuring that the contamination is assessed and cleaned up. In addition to current and past property owners, PRPs may include those who generate or transport contaminated materials, and anyone else who may have caused or contributed to the problem.

Recent changes in the law created an "end to liability" for eligible PRPs once a cleanup is complete. To be eligible, the PRP must be an "innocent owner or operator" (which means that he or she did not own or operate the property when the contamination came to be located there). Once the contamination on the property is cleaned up, an eligible person will not be subject to state claims for reimbursement for cleanup costs and natural resource damages, or to third party claims for costs and property damage. This liability protection extends to future property owners who maintain the property's clean status or any on-going cleanup remedy.

If the PRP does not qualify for the "end to liability" status, he or she may still qualify for liability relief under a "Brownfields Covenant Not To Sue." This is an agreement between the PRP and the state that the PRP will have liability relief from state and third party claims. To be eligible, the project

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must contribute to the economic or physical revitalization of the community in which the property is located.

### ***Who performs the cleanup?***

DEP relies on Licensed Site Professionals (LSPs) to oversee the cleanup of most contaminated properties. An LSP is an environmental scientist or engineer experienced in cleaning up oil and hazardous material contamination. LSPs are licensed by the state Board of Registration of Hazardous Waste Site Cleanup Professionals (usually referred to as the LSP Board), based on education, experience, and passing an examination on applicable regulations and technical issues. To remain licensed, LSPs must meet professional standards established by the LSP Board. The LSP Board disciplines LSPs whose work does not meet the appropriate standards of care.

LSPs are hired by property owners and other PRPs to oversee assessment and cleanup of contamination, and to ensure that these actions are performed in compliance with the MCP. An LSP gathers and evaluates information about the contamination. He or she then recommends a course of action for meeting state cleanup requirements. These recommendations are presented in the form of written Opinions, and are signed by both the PRP and the LSP before they are sent to DEP. Opinions usually do not require DEP approval, so work can begin promptly. Once the cleanup is complete, the LSP submits a final Opinion to DEP stating that the property has been cleaned up to DEP standards. Since LSPs oversee most of the State's contaminated properties, DEP can focus its limited resources where they are needed most: responding to emergencies, overseeing cleanups of the worst contamination, and ensuring compliance through audit activities.

### ***What does the MCP require once contamination is found?***

First, it must be determined whether DEP must be notified. The MCP clearly identifies specific thresholds and time frames for **notification** for sudden spills, historical releases, imminent hazards, and threats of release. If one of these thresholds is exceeded, then DEP must be informed of the contamination.

Next, the MCP encourages, and in some situations requires, that **early risk reduction measures** be performed. These actions may involve a complete, accelerated cleanup of a small release, or a cleanup of a portion of a larger contaminated area where a longer-term cleanup is required. Risk reduction measures are intended to reduce risks, and to lower clean up costs.

There are three types of early risk reduction measures. **Immediate Response Actions** are *required* when certain time-critical conditions are present, such as a sudden spill or an imminent hazard. **Release Abatement Measures** are optional and may be performed only if the contamination is not time-critical. **Releases Abatement Measures** may be performed at any time during the

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