



nerej

Mass. Dept. of Environmental Protection proposes changes to environmental cleanup regulations

May 16, 2013 - Construction Design & Engineering

The Massachusetts Department of Environmental Protection (MassDEP) is proposing changes to the state's environmental cleanup regulations. These regulations, known as the Massachusetts Contingency Plan (MCP), govern the identification, reporting, assessment and cleanup of hazardous waste releases.

Real estate transactions routinely involve environmental due diligence. Further, a certain percentage of real properties are impacted by hazardous waste releases. If implemented, these changes will affect the findings of future real estate due diligence efforts as well as the closure costs of properties impacted by hazardous waste spills and other releases. The public comment period for the draft regulations ended on May 17th.

The MassDEP hopes the proposed amendments will "enhance, regulatory efficiency in a manner that benefits both parties conducting the response actions and MassDEP, while maintaining a high level of environmental protection."

Proposed key changes include:

New Name for Site Closures

"RAO", the cryptic acronym for hazardous waste site closure, will disappear. The new terms for site closures will be "Permanent Solution", "Permanent Solutions with Conditions" and "Temporary Solutions." The MassDEP hopes this plainer language will help the public more easily understand the type of closure involved with a particular site.

Vapor Intrusion

Vapor intrusion refers to the migration of volatile organic compounds (VOCs) from contaminated groundwater or soil into the indoor air of a nearby building. Recently, this has become a major concern of regulatory agencies. Like mold, vapor intrusion was not considered a major health hazard many years ago when the MCP was first written. However, since the emergence of data and research demonstrating the seriousness of vapor intrusion, MassDEP has worked hard to address this health threat.

The proposed regulations set clearer standards regarding the evaluation and mitigation of vapor intrusion. Perhaps the biggest change will be the ability to close sites with active sub slab depressurization systems (SSDSs). Under the existing regulations, a site with an active SSDS cannot be permanently closed. SSDSs, which are DEP's preferred mitigation tools for vapor intrusion, look and act a lot like radon systems on steroids. The ability to close a site with an SSDS is good news for the real estate community since the legal liability will end with the state and the stigma of having a listed site will disappear. The bad news is that sites with active systems (i.e. electric fans), which likely include the majority of SSDSs, will require exposure pathway elimination permits, payment of annual compliance fees, and financial assurance mechanisms under

40.0752(5) to address system repairs and replacements.

Overall, the proposed regulations relative to vapor intrusion are a step in the right direction as they provide clearer reporting requirements and certainty of closure.

The proposed regulations include other potentially significant changes, including a new definition for historic fill, changes to MCP cleanup standards for several common contaminants and a reduction of paperwork for activity and use limitations. The MassDEP's webpage detailing the proposed new regulations is <http://mcpregreform.wordpress.com/category/announcement/>. We recommend you visit this page and/or contact a qualified environmental professional to discuss how these regulations may impact your specific business and/or property.

Ronald Burns, PE, LSP, LEED-AP, is principal engineer at CHA Consulting Inc., Lexington, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540