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Greener pastures for some brownfields projects

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In April, the Mass. Department of Environmental Protection (MADEP) issued the latest version of its regulatory update to the Mass. Hazardous Material Release Prevention and Response Act, known as Chapter 21E. The regulations comprise the handbook for addressing the identification, reporting, cleanup, and ongoing monitoring of oil and hazardous materials at properties.

Among the highlights are the following summarized items. A change in terms will delete the tier classification as well as the term response action outcome, to be replaced with the term permanent solutions, including: Permanent solutions with conditions, and temporary solutions. The new regulations will modify the amount of non-aqueous phase liquid product allowed to remain in place, provided it is stable, not migrating, and an activity and use limitation (AUL) is filed. There is a new definition of historic fill, which will allow greater levels of soil, even with contaminants, to remain on-site, provided certain provisions are met. There are several changes in reportable concentration limits of contaminants including: a reduction in the allowable levels of lead and arsenic in soil at a depth of 15 feet; and an increase in the allowable levels of lead and certain other contaminants at the surface.

The revised regulations call for greater emphasis on potential volatile organic compounds and resulting vapor intrusion. These regulations will allow for an operating subsurface depressurization system to be closed out and to obtain a permanent solution, provided an abatement level is reached and ongoing monitoring remains in place. There are new sustainability provisions that will allow for additional green remediation techniques to be used. Finally, there will be expanded use of AULs, including the requirement that any transfer of an interest in land with an AUL provide notification to MADEP within 30-days of the recording of the transfer.

In some cases, these revisions, which are due to be effective as of June 20, will allow projects to move through the cleanup process more quickly and less expensively; in some cases there will be increased costs and activities required.

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