

Massachusetts
Department
of
ENVIRONMENTAL
PROTECTION

f a c t s h e e t

The Massachusetts waste site cleanup program - the basics

Introduction

This brochure highlights the major components of the Massachusetts Department of Environmental Protection's (DEP) waste site cleanup program. The program, under the jurisdiction of the 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.

Massachusetts General Law, Chapter 21E, the state Superfund law, was originally enacted in 1983 (and amended in 1992, 1995, and 1998), and created the waste site cleanup program.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 privatized the program, meaning that 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 resources on key stages of assessment and cleanup at specific sites as conditions warrant.

Major program components

Major program components include:

- **requiring that DEP be notified** about contamination that exceeds specific levels. DEP maintains a searchable database (<http://www.mass.gov/dep/cleanup/sites/report.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 6 years, the site no longer poses an unacceptable health or environmental risk. The graphic on page 4 depicts the cleanup timeline.
- **responding to emergencies** when oil and/or hazardous material is no longer contained 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.

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- **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 (serious, with Tier 1A the most serious) or Tier II (less serious.)
- **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. All 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 audits and has the authority to reopen cases not complying with the MCP.

- **providing direct oversight** during key stages of assessment and cleanup at specific sites, as conditions warrant, thereby limiting DEP staff involvement at most sites. Direct oversight is reserved for time-critical situations, sudden releases, and other serious conditions when a PRP cannot or will not perform required work. When a PRP cannot or will not perform required work, DEP may hire 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.

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For more information

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

Visit our Website: <http://mass.gov/dep/cleanup/>

Contact the LSP Board: 617-556-1091 or <http://www.mass.gov/lsp>

MCP CLEANUP TIMELINE

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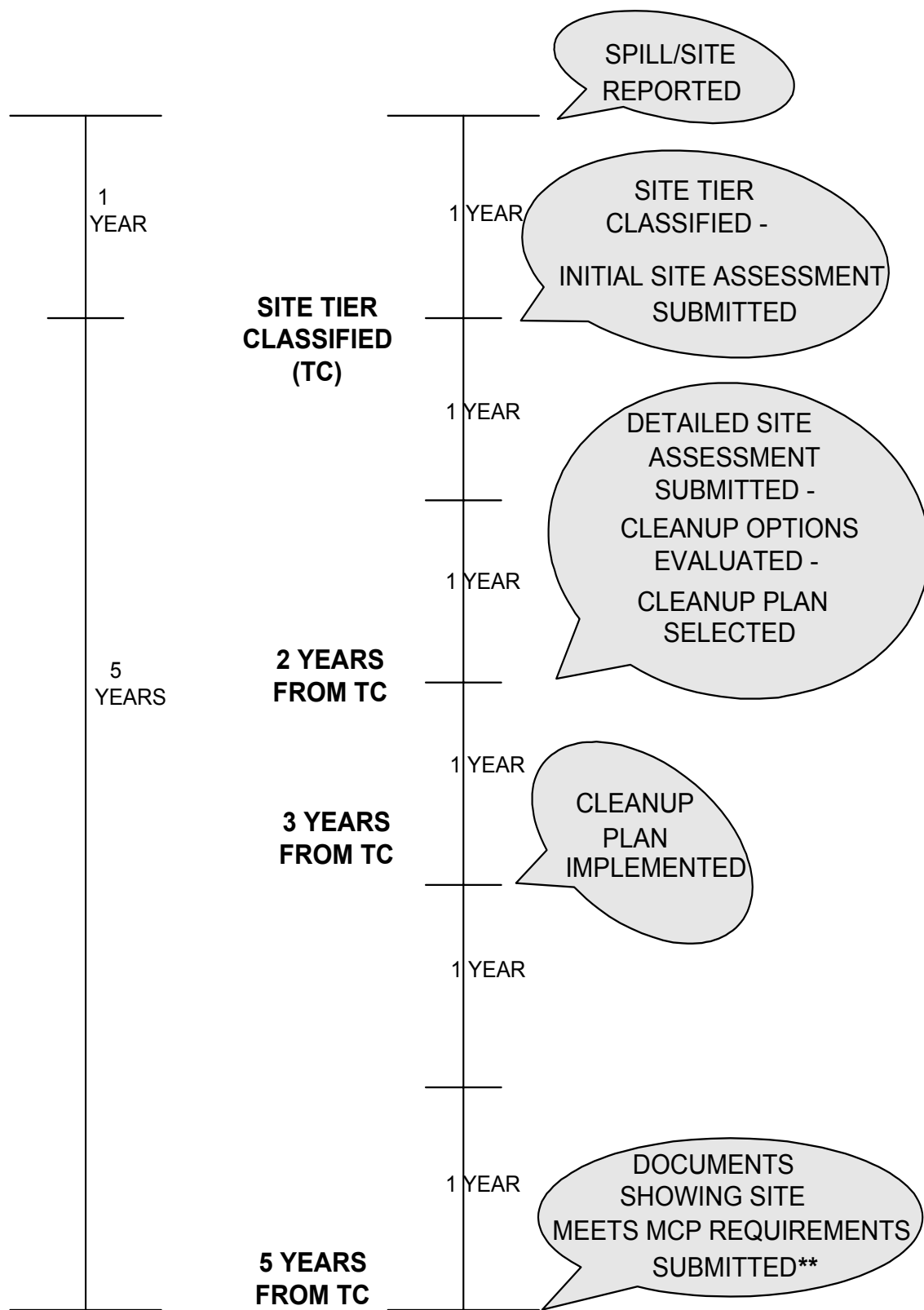
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