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Privatized Haz-Waste Cleanup Program

By Michael J. Pierdinock, LSP

Going from a command and control system involving the State's DEP, Massachusetts has turned to a quasi-privatized system where Licensed Site Professionals oversee the assessment and remediation.

Massachusetts has been at the forefront of privatization of the assessment and remediation of oil and hazardous material (OHM). In 1993, the Massachusetts Waste Site Cleanup Program¹ changed from a command and control system where the Massachusetts Department of Environmental Protection (DEP) was involved in each phase of assessment and cleanup, to a quasi-privatized system where a statutorily created professional, the Licensed Site Professional (LSP) oversees the assessment and remediation at sites, and actually renders professional opinions regarding regulatory closure. This article provides an overview of the privatized system and highlights the success and shortcomings of the program.

Under the prior regulatory scheme in Massachusetts, commercial and residential redevelopment and financing was frustrated by the rigid and fairly ambiguous process to identify a release of OHM at a site, and then to bring that site to regulatory closure. The MCP was amended to provide definite reportable concentrations, which clearly define entry into the regulatory process and mechanisms, overseen by an LSP, which accelerates the assessment and remediation of Massachusetts hazardous waste sites and provides some sort of definite endpoint to the regulatory process. Under the prior system, the DEP simply could not manage the volume of sites in the system. The revised MCP provides mechanisms to assess and remediate in a timely manner to achieve regulatory closure.

Releases of OHM to the environment above DEP reportable concentrations now require future response actions be conducted and overseen by an LSP. A person becomes an LSP based upon education and experience, and must also pass a written exam. An LSP renders opinions concerning response actions conducted at Massachusetts hazardous waste sites. LSP opinions and reports are ultimately sub-

mitted to DEP. The Board of Hazardous Waste Site Cleanup Professionals regulates the LSP profession.

Under the current regulatory scheme, sites that present a serious threat to human health, safety, welfare, and the environment are known as Tier I sites. Those sites are still subject to DEP approval during each phase of an assessment or remediation project. An LSP is still required to oversee response actions conducted at Tier I sites. Sites that present a less significant threat to human health, safety, welfare, and the environment are known as Tier II sites, and are subject to less interaction and approval from DEP. Even though DEP may not provide direct oversight at Tier II sites, DEP is statutorily mandated to audit 20% of all sites to ensure compliance with the MCP. If a potentially responsible party refuses to retain an LSP or conduct a response action under the direction of an LSP the DEP has the ability to conduct appropriate response actions.

The revised MCP is a risk-based program that, depending upon the use of a site for residential or industrial purposes, no longer requires that OHM be remediated to a non-detect level. For instance, MCP site specific cleanup standards are much lower for residential sites as compared to standards for industrial sites. Deed or use restrictions can also be implemented to restrict the use of a site for commercial or industrial purposes. For instance OHM may be present under pavement at an industrial establishment that prevents contact with OHM impacted media. The OHM does not present an unacceptable level of risk to human health, safety, welfare, and the environment as long as the pavement is present preventing contact with impacted media, and the site is utilized for industrial purposes only. Continued use of the site for industrial purposes with the presence of the pavement is a permitted activity, which is noted in the chain of title for the property. Use of the site for residential purposes or as a day care center is not a permitted activity and would likely result in an unacceptable level of risk to human, health, safety welfare, and the environment.

The MCP also provides mechanisms to utilize fairly conservative soil and groundwater cleanup standards set forth in the regulations, or, to modify the cleanup standards based upon the completion of a site specific comprehensive risk characterization. This risk-based approach has resulted in an economic benefit to the Commonwealth by achieving risk-based regulatory closure at sites that can now be redeveloped or improved, where, under the old system refinancing was not feasible since closure could not promptly and economically be achieved.



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Adams Business Media

29100 Aurora Road, Suite 200, Solon, OH 44139
(440) 248-1125, Fax (440) 248-0187
www.environmentcenter.com

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Expanding the private sector's role and responsibilities in the assessment and remediation regulatory process has resulted in more, quicker response actions and closures. The privatized program has increased the number of cleanups and has allowed the DEP to concentrate its resources on more serious threats to public health, safety, and the environment. The DEP, in its Final Generic Environmental Impact Report dated February 16, 1999 provided the public with data on the performance of the privatized program over the past four years. Some major findings are set forth below.

An estimated 10,000 releases exceeding DEP notification thresholds have been reported to DEP.

Greater than 9,500 risk reduction measures or remediation have been implemented at hazardous waste sites.

Greater than 14 times as many sites have been remediated or achieved closure as compared to the old MCP program.

The privatized program has not been free of problems. It has been difficult for some LSPs and DEP staff to change from a command and control environment to a privatized program. LSP judgment, opinions, and performance vary as it does in any profession. The DEP through its audit program and the Board of Hazardous Waste Site Cleanup Professionals (the Board) has developed mechanisms to address substandard performance by LSPs. The Board has a complaint review process that can result in censure or loss of an LSP's license.

There is a private Licensed Site Professional Association that provides LSPs with educational information and serves as a communication resource to promote sound business and technical practice of member LSPs. In addition, the association represents its membership concerning the standards of practice, and the role and responsibilities of an LSP. The association educates and communicates with its members through monthly meetings, newsletters, and technical seminars or training.

The privatized program has provided a mechanism to accelerate the assessment and remediation process, utilizing a risk-based approach. The program has resulted in an economic benefit to the Commonwealth by achieving closure at properties that formerly would not or could not have been financed or redeveloped.

Michael J. Pierdinock, is an LSP and editorial advisor to Environmental Technology. For more information on the Massachusetts contingency planning law, contact the author at Ram Environmental 508-747-7900.

1. The Waste Site Cleanup Program of the Commonwealth of Massachusetts, Department of Environmental Protection functions pursuant to the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, Massachusetts General Laws, Chapter 21E, and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000.

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