

40.0008: continued

- b. the applicant certifies that the application fee has been mailed, or hand-delivered to the Department, concurrent with submittal of the application. If the certification of mailing or hand-delivery is not provided, the application shall be deemed received when the permit application fee is received (*i.e.* the date posted by the receiving bank).
- (c) Interim Deadlines and Notices of Noncompliance. For purposes of determining whether a person has complied with an Interim Deadline or come into compliance with a requirement by the date specified in a Notice of Noncompliance, each document required to be submitted shall be deemed received by the Department as follows:
1. if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;
 2. if given by regular mail, the document shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received);
 3. if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt; or
 4. if given by electronic transmission, the document shall be deemed to be received on the date the transmission is delivered to the Department.
- (d) Presumptive Approval of IRAs. Each written request for approval of an IRA shall be given to the Department by electronic transmittal, certified mail, return receipt requested, or served in hand. Each such submittal shall be deemed received by the Department as follows:
1. if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;
 2. if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt; or
 3. if given by electronic transmission, the document shall be deemed to be received on the date the transmission is delivered to the Department.
- (e) Notification of Releases, Threats of Release and Imminent Hazards. Each notification required by 310 CMR 40.0300 shall be given to the Department (*i.e.* received) as follows:
1. if given orally, the notification shall be deemed to be received on the date and at the time when communicated in person or by telephone;
 2. if given in writing and served in hand, the notification shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;
 3. if given in writing by regular mail, the notification shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received);
 4. if given in writing by certified mail, return receipt requested, the notification shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt; or
 5. if given by electronic transmission, the notification shall be deemed to be received on the date the transmission is delivered to the Department.

40.0009: Certification of Submittals

- (1) Any person undertaking a response action shall include the following written declaration when expressly required by 310 CMR 40.0000, including, but not limited to, with any Release Notification Form, Status Report, Completion Statement, Phase V Report, Response Action Outcome Statement, Tier I Permit Application, Tier Classification Submittal, LSP Evaluation Opinion, Tier II Extension Submittal, Tier II Transfer Submittal, Periodic Review Opinion, Final Inspection Report, Construction Plan and Specifications, Operation, Maintenance and/or Monitoring Plan, Bill of Lading, Downgradient Property Status Submittal, Modification of Downgradient Property Status Submittal, or other LSP Opinion submitted to the Department pursuant to the MCP:

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- (a) a completed Transmittal Form for Permit Application and Payment using the form established by the Department for such purposes;
- (b) the applicable completed Permit Application using the form established by the Department for such purposes;
- (c) the applicable permit application fee payable pursuant to 310 CMR 4.00;
- (d) certification by the applicant that the application fee has been mailed, or hand-delivered to the Department, concurrent with submittal of the application;
- (e) an indication of the specific deadline(s) to be extended under the Special Project Determination pursuant to either 310 CMR 40.0061(1)(a) or 40.0061(1)(b);
- (f) a description of the project that includes:
 - 1. its expected duration;
 - 2. an explanation of why a Special Project Designation Permit is necessary to successfully implement the project,
 - 3. a map of the parcels within and the boundaries of the area for which the Special Project Designation Permit is sought;
 - 4. a description of any planned redevelopment of the parcels within the boundaries of the Special Project Designation area, that includes the location, size and use of buildings and infrastructure and open space, to the extent known;
 - 5. the Release Tracking Numbers for any known releases of oil and/or hazardous material at or from the subject properties that have been reported to the Department, a description of the source(s), nature and extent of such releases, to the extent identified and characterized, including any known or probable Exposure Pathways; and
 - 6. a description of how the project meets the criteria in 310 CMR 40.0061(3);
- (g) a list of any Status Reports, Phase Reports, or Completion Statements for any response actions that are in progress or have been completed at the time of Special Project Designation Permit Application is made that provides a description of the current status and projected schedule for completion of response actions in progress and the dates on which any completed Reports or Statements were submitted to the Department;
- (h) a description of response actions to be conducted under the Special Project Designation Permit, including a proposed schedule, to the extent such actions have been planned;
- (i) the name, business address, and telephone number of the person who will be conducting response actions under the Special Project Designation Permit;
- (j) when the application is made pursuant to 310 CMR 40.0061(1)(b) and a Tier Classification submittal has not been previously submitted to the Department, a Tier Classification submittal pursuant to 310 CMR 40.0500, and if applicable, a Tier I Permit; notwithstanding 310 CMR 40.0501(6), a single Tier Classification may be provided for multiple parcels and multiple disposal sites within the boundaries of the Special Project Designation area;
- (k) justification that an extension of the specific deadline(s) sought under the Special Project Designation Permit will not compromise the protection of health, safety, public welfare, or the environment, based on known and potential risks from releases at or from the property(ies) proposed for inclusion in the Special Project Designation and the ability to manage known and potential risks throughout the duration of the Special Project Designation Permit;
- (l) when the applicant is an Eligible Person or Eligible Tenant as described in 310 CMR 40.0061(2)(b), a letter of community support that describes the public benefit(s) of the project pursuant to 310 CMR 40.0061(3)(f);
- (m) when the applicant is a person as described in 310 CMR 40.0061(2)(b), a certification that he/she is an Eligible Person or Eligible Tenant as defined in M.G.L. c. 21E and 310 CMR 40.0006;
- (n) the tearsheet(s) from the newspaper(s) containing the public notice pursuant to 310 CMR 40.1403(2)(b) required by 310 CMR 40.0062(5);
- (o) when the applicant is not the Chief Municipal Officer of the community(ies) where the proposed project is located, a copy of the written notices sent to the Chief Municipal Officer(s) and Board(s) of Health as required by 310 CMR 40.0062(5);
- (p) a certification by the applicant and the person described in 310 CMR 40.0062(1)(i) (if different from the applicant) that, except as fully disclosed in the application, he or she is not subject to any outstanding administrative or judicial environmental enforcement action under any federal, state or local law;

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- (c) a feasibility evaluation;
 - (d) if the Exposure Point Concentrations of contaminants under such structure exceed applicable soil Upper Concentration Limits (UCLs) specified in 310 CMR 40.0996(7), the reduction of concentrations to levels at or below UCLs to the extent feasible pursuant to 310 CMR 40.0860(4);
 - (e) elimination or control of any source of oil and/or hazardous material as specified in 310 CMR 40.1003(5); and
 - (f) any remedial actions deemed necessary to ensure the eventual achievement of a level of No Significant Risk for the entire disposal site.
- (4) A cap or engineered barrier, as defined in 310 CMR 40.0996(4), that is constructed as a Release Abatement Measure will not be considered part of a Permanent Solution at a disposal site, unless and until a Phase III performed pursuant to the provisions of 310 CMR 40.0850 demonstrates the lack of a feasible alternative.
- (5) Release Abatement Measures shall not involve the excavation of greater than 1500 cubic yards (cumulative, for the disposal site in question) of soil contaminated by oil and/or hazardous material at concentrations equal to or greater than applicable Reportable Concentrations, unless a statement is provided in the Release Abatement Measure Plan by the RP, PRP, or Other Person conducting response actions certifying that, based upon information and opinions provided by an LSP, such persons have sufficient financial resources to manage excavated materials in the manner and time frames specified at 310 CMR 40.0030.

40.0443: Approvals Required to Conduct Release Abatement Measures

- (1) A Release Abatement Measure shall not be conducted at any disposal site until a complete Release Abatement Measure Plan, as described in 310 CMR 40.0444, has been received by the Department. A Release Abatement Measure Plan shall not be considered complete until all information described in 310 CMR 40.0444 is received in the appropriate DEP regional office, accompanied by a certification of payment, in cases where a fee is specified pursuant to 310 CMR 4.00.
- (2) Subsequent to the receipt by the Department of a complete RAM Plan, unless otherwise specified by the Department in writing, approval shall not be required from the Department to conduct the Release Abatement Measure. Exemption from the need to obtain approval from the Department in these cases shall not relieve RPs, PRPs, or Other Persons of their obligation to submit to the Department all required Release Abatement Measure Plans, Status Reports and Completion Reports.
- (3) Any person implementing a Release Abatement Measure shall conform to all proposals and specifications contained in the Release Abatement Measure Plan, and any conditions specified by the Department.
- (4) A modified Release Abatement Measure Plan shall be submitted to the Department prior to implementing a modification of a Release Abatement Measure if:
- (a) contaminants or conditions are discovered that significantly increase the degree or change the type of exposure to nearby receptors; or
 - (b) a significant change is proposed to on-site treatment processes.
- All other modifications may be implemented immediately and shall be documented with the next required response action submittal pursuant to 310 CMR 40.0440.
- (5) Remedial actions specified in a Release Abatement Measure Plan shall be initiated by the RP, PRP, or Other Person conducting response actions at a disposal site within one year from the date of the Department's receipt of a complete Release Abatement Measure Plan. Release Abatement Measure Plans not initiated in this manner shall be considered invalid and unapproved.

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1. the name and address of the disposal site;
2. the DEP Release Tracking Number(s), and the permit number, if one has been assigned;
3. the name, address, and telephone number of the permit applicant(s);
4. the proposed Tier I Permit category of the disposal site, as determined in accordance with 310 CMR 40.0500;
5. the date on or about which the applicant(s) intends to file the application with the Department;
6. a description of the procedures by which interested persons may review and comment on the permit application; and
7. a statement that public involvement opportunities are available under 310 CMR 40.1403(9) and under 310 CMR 40.1404.

(c) Interested persons may submit written comments related to a Permit Application within 20 days of the publication of the public notice required by 310 CMR 40.0703(8)(a)1. Such written comments shall be submitted to the Department by mail or by hand delivery during normal Department business hours and to the Permit applicant.

(d) The Department shall consider and respond as it deems appropriate to public comments submitted in accordance with 310 CMR 40.0703(8)(c).

(e) On its own initiative, the Department may extend the period for submission of public comments.

(9) Demonstration of Ability and Willingness.

(a) Each applicant shall include the following written declaration with a Tier I Permit application:

"I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the/those Licensed Site Professional(s) employed or engaged to render Professional Services for the disposal site which is the subject of this permit application and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made am/is(are) unable to proceed with the necessary response actions."

(b) Each applicant shall include a statement as part of the Tier I Permit application detailing such applicant's history of compliance with the Department's requirements, including, but not limited to, M.G.L. c. 21E, 310 CMR 40.0000, and other laws for the protection of health, safety, public welfare and the environment administered or enforced by the Department and other federal, state and local government agencies, that are material to the disposal site.

(10) Certification of Remittance of Permit Application Fee. Each applicant shall include the following written declaration with a Tier I Permit application:

"I attest under the pains and penalties of perjury that, on or before the date of submittal of this permit application to the Department, I remitted, or caused to be remitted, the applicable permit fee payable in accordance with 310 CMR 4.00."

(11) Information Requests. Each applicant shall submit all additional information requested by the Department subsequent to filing an application, within the time specified by the Department in the Department's request.

40.0704: Additional Application Submittal Requirements for Initial Tier I Permit Applications.

(1) Content of Application. In addition to the requirements in 310 CMR 40.0703, each Initial Tier I Permit application filed with the Department shall include the following:

- (a) the Tier Classification Submittal required by 310 CMR 40.0500, including, without limitation, an LSP Tier Classification Opinion; and
- (b) the Phase II Scope of Work or conceptual scope of work required by 310 CMR 40.0500.