

TO: Joe Laughton (MassDEP Central Region)
FROM: Stephen Vetere, PE, LSP, LEP (Mabbett & Associates)
CC: Tom DiPlacido, Jr. (Abbyville Development, LLC/Abbyville Residential, LLC)
DATE: May 14, 2018
SUBJECT: Tier Classification Extension Submittal
Former Buckley & Mann Site
17 Lawrence Street
Norfolk, Massachusetts
RTN 2-3000173

Mabbett & Associates, Inc. (Mabbett®) is pleased to submit this Tier Classification Extension Submittal to the Massachusetts Department of Environmental Protection (MassDEP) for the release associated with Release Tracking Number (RTN) 2-3000173 located at 17 Lawrence Street in Norfolk, Massachusetts. This release is a result of the historical use of on-site wastewater lagoons to treat process water effluent from a former textile manufacturing facility. The primary contaminants-of-concern identified during the human health risk assessment included polycyclic aromatic hydrocarbons (PAHs) and heavy metals.

A Class A-3 Response Action Outcome (RAO) was achieved in 2001 and a Notice of Activity and Use Limitation (AUL) was recorded on August 20, 2001. In September 2017, MassDEP issued a Notice of Noncompliance (NON) from MassDEP on related to a Notice of Audit Findings (NOAF) that identified administrative deficiencies in the recording of the AUL and limitations in the environmental risk assessment that was used to support the RAO. This request for Tier Classification Extension is being made to allow for the correction of administrative deficiencies with the Notice of AUL, and further evaluation of potential environmental risks, so that a revised Permanent Solution with Conditions and Notice of AUL can be recorded.

STATUS OF RESPONSE ACTIONS

The former Buckley & Mann Property consists of three parcels of land totaling approximately 140 acres in size that are presently vacant and unoccupied. The vast majority of the property (+/- 120 acres) consists of undeveloped, wooded land, however an approximately 20-acre portion of the property is the location of a former textile manufacturing facility that is a regulated disposal site under the MCP due to a historical release of PAHs and heavy metals.

Remedial response actions were undertaken in 1998 and 1999 to address this release. The remedial response included excavation and off-site disposal of 315 cubic yards of soil containing high concentrations of lead and chromium, removal and off-site disposal of a small volume of drum waste, removal and off-site disposal of 4 cubic yards of potential asbestos-containing material, and consolidation of approximately 4,550 cubic yards of contaminated soil into an on-site consolidation cell which was covered with a geotextile fabric and 3 feet of clean soil. An AUL was implemented to prevent exposure to contaminants in soil beneath the soil cover. Site closure documentation was provided in a Class A-3 RAO statement dated August 1, 2001.

In September 2017, MassDEP performed an audit of the Class A-3 RAO. The audit identified two violations warranting corrective actions by Buckley & Mann. A copy of the MassDEP NOAF/NON Letter is provided in Appendix A of this letter report. Buckley & Mann is currently in the process of correcting administrative

deficiencies with the Notice of AUL and performing a Stage 1 Environmental Risk Screening to evaluate potential environmental risks. Future response actions will include the correction of the administrative deficiencies identified in the Notice of AUL and performance of a Stage 1 Environmental Risk Screening to evaluate potential ecological risks associated with residual site contamination.

PLAN AND SCHEDULE TO ACHIEVE A PERMANENT SOLUTION

Since receipt of the NOAF/NON letter, additional sampling has been performed in key areas of the site to facilitate the evaluation of environmental risk. Buckley & Mann intends to use this data to verify the conclusions of the 2001 Class A-3 RAO and maintain the current remedy, including an AUL with revised language to address the deficiencies identified during the MassDEP audit. The retraction of the RAO and termination of the AUL, and this subsequent Tier Classification Extension request, are being made to comply with the 180-day deadline provided in MassDEP's November 17, 2017 NOAF/NON letter, since there is not adequate time to complete these corrective actions without temporarily taking the site out of compliance with the MCP.

Over the next several months, revised AUL language will be developed and additional sampling data will be collected to support a Stage 1 Environmental Risk Screening. Provided that the additional data supports an opinion that No Significant Risk exists with respect to human health and the environment, a revised Permanent Solution with Conditions Statement will be prepared and a new Notice of AUL will be recorded. If additional risk evaluation is needed to support an opinion of No Significant Risk, then additional time will be required. The anticipated schedule for these corrective measures, even accounting for additional risk evaluation, is within one year of the submittal of this extension request.

COMPLIANCE HISTORY AND PERMITTING

A compliance history is required as part of a Tier Classification Extension Submittal. The site was entered into the MCP in 1992 as a Tier Classified Transition Site. The following is a summary of documents submitted to MassDEP to maintain compliance with the MCP:

- April 1, 1996: Site Assessment and Remediation Status Report and Release Abatement Measure (RAM) Plan Support Document (Camp Dresser & McKee [CDM])
- April 23, 1996: Release Abatement Measure Plan (CDM)
- November 21, 1997: Revised Release Abatement Measure Plan (CDM)
- March 1, 1999: RAM Status Report (CDM)
- September 1, 1999: RAM Status Report (CDM)
- March 1, 2000: RAM Status Report (CDM)
- August 1, 2001: Class A-3 RAO Statement and RAM Completion Report (CDM)
- August 20, 2001: Notice of AUL Recorded (CDM)
- November 17, 2017: NOAF/NON Letter (MassDEP)

There are no current or known historical air, groundwater or surface water discharge permits associated with the site.

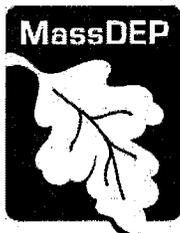
LSP OPINION

A historical release of PAHs and metals to soil was addressed through the excavation and off-site disposal of approximately 315 cubic yards of contaminated soil and on-site consolidation and covering of approximately 4,550 cubic yards of contaminated soil. To ensure the protectiveness of this remedial response action, an AUL was implemented to restrict site activities that might compromise the integrity of the soil cover. The disposal site has been closed with a Class A-3 RAO since 2001, but a recent audit of the RAO identified two violations that require the performance of additional response actions in order to verify that a condition of No Significant Risk exists to human and environmental receptors.

The NOAF provided a 180-day deadline for the completion of corrective actions. Since Buckley & Mann will not be able to complete the required evaluations in sufficient time to allow the immediate re-submittal of a Permanent Solution Statement and Notice of AUL, a termination of the Notice of AUL and retraction of the Permanent Solution are being submitted. This request for Tier Classification Extension is being submitted to allow for the performance of additional response actions so that a Permanent Solution with Conditions can be achieved. Mabbett® believes these milestones can be reached within one year of the submittal of this extension request.

APPENDIX A

MASSDEP NOAF/NON LETTER DATED NOVEMBER 17, 2017



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Central Regional Office • 8 New Bond Street, Worcester MA 01606 • 508-792-7650

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

November 17, 2017

Buckley & Mann, Inc.
205 Linden Ponds Way
Hingham, MA 02043
Attn: Lois Mann, President

RE: **NOTICE OF AUDIT FINDINGS AND
NOTICE OF NONCOMPLIANCE
NORFOLK
17 Lawrence Street
RTN: 2-3000173
Enforcement Document Number: 00003655**

Dear Mrs. Mann:

On September 7, 2017, Buckley & Mann, Inc. (hereafter referred to as you/your) was notified that the Massachusetts Department of Environmental Protection (MassDEP, the Department) began auditing response actions conducted to address the release of oil and/or hazardous material at the above referenced location. This Notice informs you of the results of MassDEP's audit.

An audit site inspection was conducted on September 13, 2017, by Joe Laughton of MassDEP's Central Regional Office with Tom DiPlacido of DiPlacido Development Corporation in attendance. In particular, the audit focused on the Class A-3 Response Action Outcome, now referred to as a Permanent Solution with Conditions (PS), prepared for the site. Response actions conducted at the site included soil excavation with off-site disposal, on-site soil consolidation with construction of an impermeable cap, implementation of a Notice of Activity and Use Limitation (AUL), and soil, groundwater and surface water sampling.

VIOLATIONS IDENTIFIED

MassDEP has determined that response actions were not performed in compliance with requirements of the Massachusetts Contingency Plan (MCP). The enclosed Notice of Audit Findings and Notice of Noncompliance lists the violation(s) and those action(s) that are required to achieve compliance. Specifically, the Notice of Audit Findings and Notice of Noncompliance contains: (1) the requirement violated, (2) the date and place that MassDEP asserts the requirement was violated, (3) either the specific actions that must be taken in order to return to compliance or direction to submit a written proposal to describing how and when you plan to return to compliance and (4) the deadline for taking such actions or submitting such a proposal.

LIMITATIONS

MassDEP's findings were based on the accuracy of the information reviewed during the audit. These findings do not: (1) apply to actions or other aspects of the site that were not reviewed in the audit, (2) preclude future audits of past, current, or future actions at the site, (3) in any way constitute a release from any liability, obligation, action or penalty under M.G.L. c. 21E, 310 CMR 40.0000, or any other law, regulation, or requirement, or (4) limit MassDEP's authority to take or arrange, or to require any Responsible Party or Potentially Responsible Party to perform, any response action authorized by M.G.L. c. 21E that MassDEP deems necessary to protect health, safety, public welfare, or the environment.

If you have any questions regarding this Notice, please contact Joe Laughton at (508) 849-4018. Please reference the Release Tracking Number, RTN 2-3000173, and Enforcement Document Number, 00003655, in any future correspondence to MassDEP regarding the site.

Sincerely,



Rebecca Woolley
Audits Section Chief
Bureau of Waste Site Cleanup

RW/EJL

Enc. Notice of Audit Findings and Notice of Noncompliance Summary
MassDEP Compliance Fee Schedule

cc/ec: Norfolk Board of Health/Zoning
Tom DiPlacido, Jr. – DiPlacido Development Corporation
CERO: file, database [PS/ACTAUD AUDCOM/NAFNON]
Audit Coordinator, DEP-Boston
Regional Enforcement Coordinator, DEP-CERO
Enforcement Tracking, BWSC, DEP-CERO

310 CMR 40.1074: Notice of Activity and Use Limitation

“(2) Contents of a Notice of Activity and Use Limitation. A Notice of Activity and Use Limitation shall be documented on Form 1075 or, in the case of CERCLA sites, on a form developed and approved by the Department, and shall contain the following information:

(c) if a person(s) signing the Notice of Activity and Use Limitation is not an individual signing on his/her own behalf, but rather on behalf of an entity (LLC, LLP, limited partnership, etc.), or as trustee, executor, or attorney in fact, documentation consistent with conveyancing standards and practices verifying that the person(s) signing the Notice of Activity and Use Limitation has the authority to sign such document shall be attached as an exhibit to the Notice of Activity and Use Limitation. If the property owner is a corporation, such documentation shall consist of:

1. a Clerk's Certificate of Incumbency from the clerk of the corporation certifying that the person(s) signing the Notice of Activity and Use Limitation on behalf of the corporation held his or her position as of the date of the Notice of Activity and Use Limitation;

(i) a description of the Site Activities and Uses that are inconsistent with maintaining a Permanent Solution and condition of No Significant Risk or maintaining a Temporary Solution and condition of No Substantial Hazard with respect to exposures to oil and/or hazardous material;”

A Notice of Activity and Use Limitation (AUL) was recorded for this site at the Norfolk Registry of Deeds Land Court on August 20, 2001, Certificate Number 154753, Book 774, Page 153. The AUL was signed by Richard Mann as President and Treasurer of Buckley & Mann, Inc. However, the AUL did not contain documentation verifying the signatory authority as required by 310 CMR 40.1074(2)(c).

The AUL consists of a portion of the property and prohibits the excavation of soils at a depth greater than three feet below ground surface without the involvement of a Licensed Site Professional, and any activity that may cause physical, chemical or structural damage to the protective barrier layer in AUL subarea “A”. The Method 1 human health risk assessment that was included within the September 2001 Class A-3 Response Action Outcome Statement (now referred to as a Permanent Solution with Conditions) concluded that concentrations of site contaminants in AUL sub-area “A” were above S-1 soil standards (established to be protective of unrestricted site use). Therefore, the Permanent Solution is predicated on restricting residential use of sub-area “A” with an AUL. The Inconsistent Activity and Uses section of the AUL does not explicitly prohibit residential use, in violation of 310 CMR 40.1074(2)(i).

Prior to recording the AUL, current holders of any record interests in the area subject to the proposed AUL must be notified by certified mail of the existence of the AUL. Documentation regarding record interest holders was not provided to MassDEP, in violation of 310 CMR 40.1074(1)(d).

VIOLATION #2

310 CMR 40.0995: Method 3 Environmental Risk Characterization

“The characterization of risk of harm to the environment shall be conducted for all current and reasonably foreseeable Site Activities and Uses identified in 310 CMR 40.0923. Characterization of the risk of harm to the environment shall include an assessment of chemical data, potential contaminant migration pathways, and an evaluation of biota and habitats at and in the vicinity of the disposal site, as described in 310 CMR 40.0995(2), as well as through the application of Upper Concentration Limits, as described in 310 CMR 40.0995(5).

(1) A Method 3 characterization of the risk of harm to the environment shall be based on the site, receptor and exposure information identified in 310 CMR 40.0901 through 40.0920, as well as any relevant data collected during the response action being performed.

(2) The risk of harm to the site biota and habitats shall be characterized by evaluating ecological parameters using a two-stage approach. In Stage I, the objective is to identify and document conditions which do not warrant a Stage II Risk Characterization, either because of the absence of a potentially significant exposure pathway or because environmental harm is readily apparent and therefore additional assessment would be redundant. If a potentially significant exposure pathway is indicated by the available information per 310 CMR 40.0995(3)(a) and (c), then a Stage II Environmental Risk Characterization is required to characterize the risks posed by those exposures.

(a) A Stage I Environmental Screening shall be performed as described in 310 CMR 40.0995(3) for all disposal sites evaluated using Risk Characterization Method 3, and for those disposal sites evaluated using a Method 3 Environmental Risk Characterization in combination with Method 1 or Method 2 as described in 310 CMR 40.0942.”

“(3) Stage I Environmental Screening. Exposures of site biota and habitats shall be characterized by the Stage I Environmental Screening as follows:

(a) Available evidence shall be evaluated to determine whether there is current or potential future exposure of Environmental Receptors to contamination at or from the disposal site. Sources of such evidence shall include historical records, site data, field observations, statements by present and past residents or employees, and any other relevant source.

1. Evidence of current or potential exposure shall include, but is not limited to:

c. Analytical data indicating the presence of oil and/or hazardous material attributable to the site in question in surface water or sediment (including wetlands);

e. The presence of oil and/or hazardous material at the disposal site within two feet of the ground surface and the potential for such contamination to result in exposure to wildlife.”

A Method 1 risk characterization included in the August 2001 Class A-3 RAO determined that concentrations of site contaminants do not pose a significant risk to human health. However, the evaluation of potential risk to environmental receptors (terrestrial and wetland habitats) was not presented with any detail. Generic statements regarding contaminant concentrations in sediment samples collected from the carbonizer lagoon and trench were made in the RAO, concluding that "...the contaminant concentrations are low, no waste discharged to the area for over 35 years, and the areas are visually normal vegetated wetlands." Sediment samples were collected from the carbonizer lagoon and trench and analyzed for metals and Total Petroleum Hydrocarbons (TPH). Elevated concentrations of chromium, lead, zinc and TPH were detected. In 2001, sediment screening criteria were based on the Lowest Effects Level from the Ontario Ministry of the Environment (1993). The table below compares sediment data to the sediment screening criteria.

Contaminant	Range	Average	Lowest Effects Level
Chromium	< 2 – 450	146	26
Lead	74 – 670	241	31
Zinc	260 – 920	590	120
TPH	860 – 1,300	1,080	not established

Notes: concentrations reported as parts per million (ppm)

As indicated in the above table, concentrations of chromium, lead and zinc exceeded their respective sediment benchmarks. Concentrations above the Lowest Effects Level do not mean that adverse effects to aquatic organisms will occur but suggests that further testing may be necessary.

The undeveloped portion of the disposal site is approximately 12 acres in size. As such, a Stage I Environmental Screening of the terrestrial environment is needed. This should involve an evaluation of habitat quality, as described in Chapter 9 of the Guidance for Disposal Site Risk Characterization (WSC/ORS-95-141).

Failure to include a Stage I Environmental Screening in the August 2001 RAO is a violation of 310 CMR 40.0995.

ACTIONS TO BE TAKEN AND THE DEADLINES FOR TAKING SUCH ACTIONS:

Within **one hundred eighty (180)** days of the date of this Notice you must complete the following:

1. Terminate the Notice of AUL at the Norfolk County Registry of Deeds pursuant to 310 CMR 40.1083 and immediately thereafter submit a new Notice of AUL prepared in accordance with 310 CMR 40.1074 that corrects the violations present above; **and**
2. Submit a revised Permanent Solution Statement prepared in accordance with 310 CMR 40.1000, that corrects violations presented above;

OR

3. Terminate the Notice of AUL, retract the Permanent Solution, submit a Tier Classification Extension request in accordance with 310 CMR 40.0560(7), and submit a Notice of Delay in accordance with 310 CMR 40.0560, using form BWSC-121, explaining the reason for the delay, steps taken to minimize the delay and a schedule detailing the dates proposed for returning the site to regulatory compliance.

Complete the actions specified above and submit a Post-Audit Completion Statement (BWSC-111) prepared in accordance with 310 CMR 40.1170. Please be advised that submissions to MassDEP should be made via electronic submissions through the eDEP program: <https://edep.dep.mass.gov/DEPLogin.aspx>.

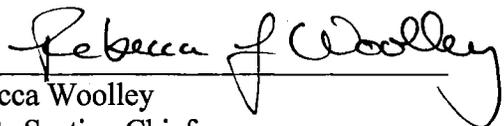
If you fail to revise the Permanent Solution Statement within the specified deadline, MassDEP may continue to treat this site as a Tier II disposal site and require you to pay compliance fees until a Permanent or Temporary Solution in compliance with the MCP has been achieved. Should you fail to comply with the requirements contained in this notice, MassDEP will invalidate the Permanent Solution submittal and will amend its records to indicate that an invalid Permanent Solution has been filed.

Please be advised that all requests for applications for Financial Inability to perform response actions should be directed to Ms. Wanda Kopczyk of the MassDEP Boston Office at (617)348-4055

If the required actions are not completed by the deadlines specified, an administrative penalty may be assessed for every day after the date of this Notice that the noncompliance occurs or continues. MassDEP reserves its rights to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including, but not limited to, criminal prosecution, civil action including court-imposed civil penalties, or administrative action, including administrative penalties imposed by MassDEP.

For the Department of Environmental Protection:

Date: Nov. 17, 2017

By: 
Rebecca Woolley
Audits Section Chief
Bureau of Waste Site Cleanup

