

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

December 7, 2012

Mr. Vincent Barletta
TLA – Holbrook, LLC
40 Shawmut Road
Canton, Massachusetts 02021

RE: **HOLBROOK**
Release Tracking Number: 4-3024519
3 Phillips Road
ADMINISTRATIVE CONSENT ORDER
ACO-SE-12-3T-016

Dear Mr. Barletta:

Please find enclosed a signed copy of the Administrative Consent Order with Penalty ("Consent Order") that the Department of Environmental Protection (MassDEP) has negotiated with TLA – Holbrook, LLC.

The Consent Order was executed on December 7, 2012, with MassDEP's signature. The terms and conditions of the Consent Order now apply and are binding.

If you have any questions regarding this Consent Order or any of the requirements contained in it, please contact John Handrahan at the letterhead address or by calling (508) 946-2883. MassDEP appreciates your cooperation in this matter.

Sincerely,


Philip Weinberg
Regional Director

GM/JTH/lg

Enclosure: Copy of Administrative Consent Order ACO-SE-12-3T-016

CERTIFIED MAIL # 7012 1640 0001 4831 5229
RETURN RECEIPT REQUESTED

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ec: Board of Health
Board of Selectmen

DEP-SERO

Attn: Millie Garcia-Serrano, Deputy Regional Director

Attn: Gerard Martin, Compliance, Enforcement and Brownfields Redevelopment Section

Attn: Dawn Stolfi Stalenhoef, Chief Regional Counsel

Attn: Deneen Simpson, Regional Enforcement Office.

Attn: Mark Dakers, Solid Waste Section Chief

Attn: Lara Goodine, BWSC – [C&E ACO]

Mr. Craig Blake, LSP

cblake@woodardcurran.com

cc: DEP-SERO
Attn: Lee MacEachern
Attn: Regional Enforcement Office

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:)

TLA – Holbrook, LLC)

40 Shawmut Road)

Canton, Massachusetts 02021)

File No.: ACO-SE-3T-12-014

**ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts 02347.
2. TLA – Holbrook, LLC (“Respondent”) is a Delaware corporation with a principle office located at 40 Shawmut Road, Canton, Massachusetts 02021. Respondent’s mailing address for purposes of this Consent Order is 40 Shawmut Road, Canton, Massachusetts 02021, Attn: Mr. Vincent Barletta.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21E and the Massachusetts Contingency Plan (“MCP”) at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent is the current operator of the Property located at 3 Phillips Road, Holbrook, Massachusetts, at or from which there is or has been a release and/or threat of release of oil and/or hazardous material pursuant to M.G.L. c. 21E (“Property”). For purposes of this Consent Order, “Site” shall mean the Property, and any other place or area where the release of oil and/or hazardous material at or from the Property has come to be located. MassDEP has assigned Release Tracking Number 4-3024519 to this Release.
5. The following facts and allegations have led MassDEP to issue this Consent Order:
 - A. The Site was Tier Classified on July 2, 2009.
 - B. Pursuant to 310 CMR 40.0560(2)(b), a Phase II Comprehensive Site Assessment (“Phase II”), and if applicable, a Phase III Remedial Action Plan (“Phase III”) shall be submitted to MassDEP within two years of effective date of Tier Classification. A Phase II, and if

necessary, a Phase III was due to MassDEP by July 2, 2010. To date, the Respondent has not submitted a Phase II or Phase III.

6. On March 6, 2012, MassDEP issued a Notice of Noncompliance ("NON") to Respondent describing the violation in 5 above, specifying the actions to be taken to return to compliance, and stating the deadlines for performing such actions.

7. The Respondent responded to the NON and requested additional time to conduct comprehensive response actions at the Site.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

8. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

9. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

10. Respondent shall perform the following actions:

A. **By January 20, 2013**, submit to MassDEP a Phase II Comprehensive Site Assessment, prepared in full accordance with the provisions of 310 CMR 0560(7).

B. **By January 20, 2013**, submit to MassDEP a Phase III Remedial Action Plan, prepared in full accordance with the provisions of 310 CMR 40.0850.

11. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Bureau of Waste Site Cleanup
Massachusetts Department of Environmental Protection
20 Riverside Drive
Lakeville, Massachusetts 02347

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

12. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

13. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.

14. Respondent is Permittee, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees pursuant to M.G.L. c. 21A, §18 and M.G.L. c. 21E, §3B.

15. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

16. This Consent Order may be modified only by written agreement of the parties hereto.

17. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

18. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

19. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of MassDEP to recover costs incurred by MassDEP in connection with response actions conducted at the Site.

20. The payment of any penalty in this matter shall not be construed or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of MassDEP to recover damages in any separate action for injury to and for destruction or loss of natural resources, including the costs of assessing and evaluating such injury, destruction or loss, pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.

21. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP's authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.

22. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

23. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's members, managers, employees, agents, contractors or consultants to violate this Consent Order. Until

Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

24. If Respondent violates “any provision” of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent’s obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent’s failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP’s determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP’s calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

23. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

24. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP’s employees, representatives and contractors, access at all reasonable times to 3 Phillips Road, Holbrook, Massachusetts for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

25. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

26. This Consent Order does not relieve Respondent’s obligation to pay Annual Compliance Assurance Fees pursuant to 310 CMR 4.00 et. seq.


27. All applicable transmittal fees shall accompany any submissions(s) required by this Consent Order.

28. The Respondent shall comply with all applicable Public Involvement Activities regarding the Site, as described in 310 CMR 40.1400.

29. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

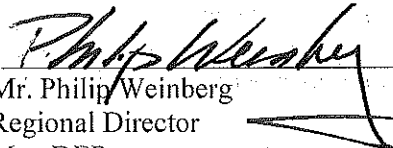
30. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:
TLA – HOLBROOK, LLC

By: 
Mr. Vincent Barletta, Manager
TLA-Holbrook, LLC
40 Shawmut Road
Canton, Massachusetts 02021

Date: 11/26/12

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
Mr. Philip Weinberg
Regional Director
MassDEP
20 Riverside Drive
Lakeville, Massachusetts 02347

Date: 12/3/12