



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

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Commissioner

October 27, 2017

Barnstable Municipal Airport  
480 Barnstable Road  
Hyannis, MA 02601  
Attn: Mr. Roland Breault, Manager

**RE: BARNSTABLE - BWSC**  
Release Tracking Number **4-0026347**  
Barnstable Municipal Airport  
**REQUEST FOR INFORMATION/  
INTERIM DEADLINE  
0003462**

**THIS IS AN IMPORTANT NOTICE.  
FAILURE TO TAKE APPROPRIATE ACTION IN RESPONSE  
TO THIS NOTICE COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.**

Dear Mr. Breault:

The Massachusetts Department of Environmental Protection (MassDEP or the Department), Bureau of Waste Site Cleanup is tasked with ensuring the cleanup of oil and hazardous material (OHM) releases pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act (M.G.L. Chapter 21E). This law is implemented through regulations known as the Massachusetts Contingency Plan (310 CMR 40.0000 et seq. – the MCP). Both M.G.L. c. 21E and the MCP require the performance of response actions to provide for protection against harm to health, safety, public welfare and the environment which may result from release and/or threats of releases of OHM.

### **REASON FOR THIS REQUEST**

On October 3, 2017, MassDEP was contacted by officials from the Town of Barnstable who indicated that thousands of cubic yard of excavated soil from the Barnstable Municipal Airport runway construction activities are being reused around the Town of Barnstable, including in a public recreational area. MassDEP is seeking additional information pertaining to the excavated soil. The specific information requested is outlined in the attached REQUEST FOR INFORMATION (Attachment A).

Pursuant to the Department's authority under M.G.L. c.21E, sections 2, 4, and 8, and the MCP at 310 CMR 40.0165, and 310 CMR 40.1120(1), any employee(s), attorney(s), agent(s), assign(s), representative(s), and/or any other person or entity acting on behalf of you (as used in this letter, "you" and "your" refer to Barnstable Municipal Airport), however designated, are asked to provide the Department with the information requested in the enclosed and incorporated REQUEST FOR INFORMATION (Attachment A).

This information is available in alternate format. Call the MassDEP Diversity Office at 617-556-1139. TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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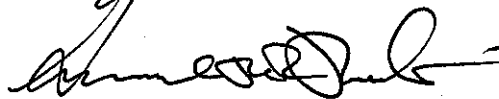
**INTERIM DEADLINE**

All requested information should be provided to the Department on or before the close of business on **November 10, 2017**. This date constitutes an enforceable Interim Deadline established by the Department pursuant to 310 CMR 40.0167. Failure to comply with an Interim Deadline may result in enforcement actions by MassDEP, including, but not limited to, the issuances of a Notice of Noncompliance, an Administrative Penalty, and/or Enforcement Orders, or, referral to the Massachusetts Attorney General's Office.

Enclosed and incorporated with this Letter and REQUEST FOR INFORMATION (Attachment A) is an INSTRUCTION SUMMARY (Attachment B) providing the information necessary to submit an accurate and complete response, and a Certification of Submittal (Attachment C).

If you anticipate, or have reason to know, that any of the conditions, requirements, or obligations attendant to submitting an appropriate response to this REQUEST FOR INFORMATION (Attachment A) may not be complied with, or if there is any ambiguity, confusion, or question concerning this REQUEST FOR INFORMATION, please contact Angela Gallagher at the letterhead address, or by telephone at (508) 946-2790 within seven days of your receipt of this letter. Thank you for your anticipated cooperation in this effort.

Sincerely,



Gerard M.R. Martin  
Deputy Regional Director  
Bureau of Waste Site Cleanup

GM/JH/AG/lg

Attachments: A. Request for Information  
B. Instruction Summary  
C. Certification of Submittal

CERTIFIED MAIL # 7013 1090 0000 9295 9616  
RETURN RECEIPT REQUESTED

ec: DEP-SERO  
Attn: John Handrahan, Chief, Brownfields, C&E, and Risk Reduction Section  
Attn: Shawn Walsh, Chief Regional Counsel  
Attn: Lisa Ramos, Regional Enforcement Office

DEP-SERO  
Attn: Regional Enforcement Office

**Attachment A**

**REQUEST FOR INFORMATION PURSUANT TO  
M.G.L. c. 21E AND 310 CMR 40.0000 et seq.**

Consistent with the instructions set forth in the incorporated INSTRUCTION SUMMARY (Attachment B), please respond to the following request:

1. Using a site plan, please identify the areas from which soil was removed from the airport during the storm water construction activities. Please provide the following with respect to the soil removal:
  - a. The name of the person(s) and his/her/their affiliation who is/was managing the excavation, stockpiling, and removal of the soil;
  - b. The date range for which all soil removal activities occurred. If the soil removal activities are on-going at the time of receipt of this Request for Information, please state such and indicate an estimated date of completion;
  - c. The locations where soil was removed (depicted on a site plan);
  - d. The volumes of soil that were removed from each location at the site;
  - e. The storage locations (depicted on a site plan) for the soil piles, if applicable, prior to removal off-site, and the dates that the soil was stockpiled and then removed from the site. If soil was immediately loaded onto vehicles, please state such;
  - f. The manner in which the stockpiled soil was stored (on poly, under poly, etc.);
  - g. The dates and locations (specific addresses and depicted on a site plan) to where the soil was transported; and
  - h. The volume of soil that was transported to each location.
2. Please provide copies of any Bills of Lading and/or Manifests used for the soil transport and disposal.
3. Please provide any analytical data that was generated as part of this soil removal project, including soil samples collected prior to any excavation, soil samples collected in excavated areas, soil sample collected from soil stockpiles and soil samples collected from the soil used as fill throughout the town
4. Please provide any information pertaining to any other current and/or future soil excavation/remediation activities at BMA. Specifically, provide information pertaining to any soil analytical data, at what portion of BMA the soil is/will be removed, and how the soil will be disposed/reused.

5. MassDEP was provided with a copy of an April 25, 2017 letter from Green Seal Environmental to Lawrence Lynch Corporation which described soil stockpile sampling. The second paragraph of the letter states "...GSE divided the soil stockpiles into eight smaller areas identified as Area-1 through Area-8." MassDEP is requesting clarification of this statement and of the remainder of the letter.
  - a. Does the information in this letter represent all the soil that has been or will be removed as part of the storm water construction activities along the runway systems or does the information in the letter represent a smaller subset of the soil that will be removed? If this letter represents a subset of the soil, please provide any subsequent soil analytical data generated for the soil removal activities.
  - b. Please provide a site plan labeling the area from where the soil referenced in this letter was removed. If these locations are the same locations as requested above, please reference such in your response.

**The Department hereby requests your responses to this REQUEST FOR INFORMATION by November 10, 2017. This date constitutes an enforceable Interim Deadline, pursuant to 310 CMR 40.0167. Failure to comply with an Interim Deadline may result in enforcement actions by the MassDEP, including, but not limited to, the issuances of a Notice of Noncompliance, an Administrative Penalty, and/or Enforcement Orders, or, referral to the Massachusetts Attorney General's Office.**

The Department strongly encourages you to give this matter your immediate attention. Your response must be sent to Angela Gallagher, Bureau of Waste Site Cleanup, Department of Environmental Protection, 20 Riverside Drive, Lakeville, Massachusetts 02347. If you have any questions regarding the information requested herein, please contact Ms. Gallagher at the letterhead address, or by telephone at (508) 946-2790.

Thank you for your anticipated cooperation.

## Attachment B

### **INSTRUCTION SUMMARY FOR SUBMITTING RESPONSE TO REQUEST FOR INFORMATION PURSUANT TO M.G.L. c.21E, SECTIONS 2, 4, AND 8**

#### **I. General Instructions**

Pursuant to M.G.L. c.21E and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000, you are required to complete and submit the enclosed REQUEST FOR INFORMATION ("REQUEST") in the manner and form described below. Failure to comply with the requirements for an accurate and complete response may result in the commencement of legal action against you by the Department.

The fact that an investigation is or may be ongoing shall not excuse failure to respond to each REQUEST as completely as possible. There also exists a continuing obligation to supplement and/or update responses provided upon obtaining new information material to any such REQUEST.

#### **II. Form of Responses**

A separate and complete response must be made to each REQUEST and subpart thereof. Please precede each response with the number of the REQUEST to which it corresponds. Include a dated cover letter with your response indicating that you are responding to this REQUEST.

Where specific information has not been memorialized in any form of external information storage, but is nonetheless responsive to the REQUEST, a response must be included that sets forth that information. You have an obligation to provide the best information available. Accordingly, you should seek out responsive information from all relevant sources. Submission of cursory responses when other responsive information is available will be considered noncompliance with this Request.

For each REQUEST and subpart set forth herein, if the information responsive to the REQUEST is not in your possession, custody, or control, please (1) include a statement that you do not have the information requested, (2) undertake reasonable efforts to obtain the information, and (3) if known, identify the person(s) and/or entity(ies) who have or maintain such custody or control over the information.

Unless otherwise specified, a legible photocopy of each and every document identified in your response, labeled with the number of the specific REQUEST to which it responds, must accompany the response, unless the information is maintained or stored in such a manner so as to render submission of a photocopy impossible. For any information that does not exist in such a reproducible format, please identify the information and the manner and format in which it is stored or maintained.

#### **III. Confidentiality**

310 CMR 40.4011: Confidentiality of Information, states as follows:

- (1) Any information, document, or particular part thereof obtained by the Department or its Contractors pursuant to M.G.L. c.21E upon request shall be confidential, and shall not be considered to be a public record, when it is determined by the Commissioner in accordance

with 310 CMR 3.00 that such information, record, or particular part thereof, relates to secret processes, methods of manufacture or production, or that such information, record, or particular part thereof, if made public, would divulge a trade secret.

- (2) The Department shall be under no obligation to act upon any such request for confidentiality that is not made and substantiated in accordance with 310 CMR 3.24.
- (3) 310 CMR 40.0011 shall not prevent disclosure of information necessary for an enforcement or cost recovery action to comply with CERCLA or FWPCA or as otherwise provided by 310 CMR 3.00.

For each and every document or part thereof which you claim is protected from disclosure, you must separate the portions of the document(s) for which such protection is not claimed, and state the nature of the protected information and the basis for your claim of protection from disclosure.

#### **IV. Personal Privacy Information**

Personnel, medical, and similar files, the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from your responses, included on separate sheets, and marked as "Personal Privacy Information." However, unless prohibited by law, the Department may disclose this information to the general public without further notice to you.

#### **V. Deadlines**

310 CMR 40.0167: Interim Deadlines, states as follows:

- (1) The Department may establish and enforce reasonable Interim Deadlines consistent with M.G.L. c.21E and 310 CMR 40.0000 for the performance of response actions, including, but not limited to, deadlines for compliance with applicable orders, permits, and other requirements, and for the termination of settlement discussions.
- (2) Any person who is required to comply with an Interim Deadline may request, in writing, an extension thereof prior to the running of any such deadline. The Department may modify an Interim Deadline if it deems such action appropriate. Any such modification shall be made in writing.
- (3) The Department may establish one or more Interim Deadlines by means of (a) an approval of an application (b) the issuance of a permit, Request for Information, Notice of Responsibility, or Notice of Response Action, or (c) the issuance of an order pursuant to M.G.L. c.21E Sections 9 or 10.
- (4) The Department's decision to establish one or more Interim Deadlines in accordance with 310 CMR 40.1067 shall not be subject to M.G.L. c.30A or any other law governing adjudicatory proceedings.

If you know or anticipate that an extension of time for the submission of a response to this REQUEST FOR INFORMATION will be necessary, it is recommended that a written request for extension be made as soon

as possible. Please submit any written request for an extension of time to the letterhead address and Department employee named in this letter.

## VI. Certification

310 CMR 40.0009: Certification of Submittal, states as follows:

- (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 Classification Extension and/or, Change in Person Undertaking Response Actions at Tier II Disposal Sites, Periodic Evaluation Opinion, Final Inspection Report, Construction Plan and Specifications, Operation, Maintenance and/or Monitoring Plan, Bill of Lading, or other LSP Opinion submitted to the Department pursuant to the MCP:

"I certify under the penalties of law that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying the certification, and that, based upon my inquiry of those individuals immediately responsible for obtaining the information, the material information contained herein is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties, including but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate, or incomplete information."

- (2) The written declaration required by 310 CMR 40.0009(1) shall be made by the highest ranking individual having day-to-day responsibility for the performance of the response action which is the subject of the submittal. The written declaration shall not be made by the Licensed Site Professional engaged or employed by the RP, PRP, or Other Person to render Professional Services with respect to the site, unless the Licensed Site Professional's client or employer has authorized him or her in writing to act as his or her agent for the purpose of making the written declaration.
- (3) The written declaration required by 310 CMR 40.0009(1) shall include the signature of each person making the certification, the date of each person's written declaration and the position or office of each such person.
- (4) Each submittal filed with the Department pursuant to these regulations shall be accompanied by a transmittal form established by the Department for such purposes.

Your response to this REQUEST FOR INFORMATION is subject to the provisions of 310 CMR 40.0009(6) and must be certified consistent with the above requirements. **Please use Attachment C - Certification of Submittal for this purpose.**

## VII. Definitions

Unless otherwise specified, words and phrases used in this REQUEST FOR INFORMATION shall have the meaning ascribed to such words and phrases by M.G.L. c.21E, section 2 and/or 310 CMR 40.0006, unless the context therein clearly indicates otherwise. In all instances, (1) the use of a singular form includes the use of the plural form as well, and (2) a capital letter designation includes a small type-face designation, if appropriate to the context.

The words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring all responses within the scope of the request.

The following definitions shall apply to the following words and phrases as they appear in this REQUEST FOR INFORMATION:

Communication means any manner or form of information or message transmission, howsoever produced or reproduced, whether by document, orally, electronically, or otherwise, that is made, distributed, and/or circulated between or among persons or data storage or processing units.

Document, documents, documentation, and records and information means any and all memorializations or recordings of any nature whatsoever within your possession, custody, or control (including without limitation, attorneys, advisors, accountants, analysts, consultants or any other person(s) acting or purporting to act for you or on your behalf). This includes, but is not limited to, contracts, agreements, communications, correspondence, telegrams, memoranda, records, reports, books, logs, summaries or records of telephone communications, summaries or records of personal conversation(s) or interviews, diaries, forecasts, statistical statements, work papers, drafts, copies, graphs, charts, accounts, analytical records, minutes or records of meetings or conferences, consultant's reports, appraisals, records, reports, or summaries of negotiations, press releases, drafts, notes, marginalia, bills, invoices, checks, inventory reconciliation records, bills of lading, manifests, photographs, microfilm, microfiche, videotape, journals, and all other written, printed, recorded or photographic matter or sound production or electronically or magnetically stored matter, however produced or reproduced. For any tape, disc, CD-ROM disc, or other type of memory generally associated with computers and data processing, the attendant information must also be produced:

- (1) the programming instructions and other written material necessary to use such punch card, disc, disc pack, tape, or other type of memory; and
- (2) printouts of such punch card, disc, disc pack, tape, or other type of memory.

For purposes of the above definition, "draft(s)" means any earlier, preliminary, preparatory, or tentative version of all or part of a document, whether or not such draft was superseded by another draft and whether or not the terms of the final draft are the same as or different from the terms of the final document.

The term "copies" shall mean each and every copy of any document that is not identical in every respect to the document being produced.



Identify means to state:

- (1) with respect to a natural person,
  - (a) the person's full name, present or last-known business and home address, business and home telephone number; and
  - (b) present or last-known job title, position or business and responsibilities in that position, his/her supervisor's title or position, and his/her supervisor's responsibilities and supervisor.
- (2) with respect to persons other than natural persons,
  - (a) the proper name or designation, the address of the principal office, legal form (i.e. corporation, partnership, etc.), and a brief description of its business.
- (3) with respect to a document,
  - (a) whether the document is currently in existence, the date the document bears (or bore) or if undated, the date it was written;
  - (b) the name and address of each person who wrote it or participated in the writing of it;
  - (c) the name and address of each person to whom it was addressed and each person to whom a copy was identified as being directed;
  - (d) the name and address of each person who received or may have received a copy of the document (including recipients designated as blind copies or "bcc");
  - (e) a description of the type of document, a summary of the contents of the document, its present location or custodian, or if unknown, its last known location or custodian; and
  - (f) if the copy is no longer in your possession, custody, or control, the disposition made of it, the reason(s) for such disposition, and the date of disposition thereof.

Person means any agency or political subdivision of the federal, state or local government; any state, public or private corporation or authority; any individual, trust, firm, joint stock company, factor, partnership, association, or entity; any officer, employee, or agent of such person, and/or group of persons.

**ATTACHMENT C**

**CERTIFICATION OF SUBMITTAL (310 CMR 40.0009)**

This certification must be included with your response to the Request for Information.

I, \_\_\_\_\_ attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this submittal, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the person or entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate or incomplete information.

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

For:

\_\_\_\_\_  
Name of person or entity

RTN 4-0026347