



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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August 23, 2018

Terceira Construction
1 Cookie Way
Dartmouth, MA 02748
Attn: Mr. Jorge Verissimo

RE: DARTMOUTH - BWSC
Release Tracking Number: 4-0027363
85 McCabe Street
**NOTICE OF RESPONSIBILITY,
IMMEDIATE RESPONSE ACTION PLAN
REQUEST/NOTICE OF INTERIM DEADLINE**

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

Dear Mr. Verissimo:

The Massachusetts Department of Environmental Protection, Bureau of Waste Site Cleanup (MassDEP) 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. c. 21E). The 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 the protection of harm to health, safety, public welfare and the environment which may result from releases and/or threats of releases of OHM at disposal sites.

REASON FOR THIS NOTICE

On July 30, 2018 at 10:40 AM MassDEP received a call from Michael O'Reilly, Environmental Affairs Coordinator for the Town of Dartmouth, regarding a release and a threat of release of oil and/or hazardous materials at the above referenced location. Mr. O'Reilly reported that several deteriorated metal drums of various sizes containing a black petroleum-based liquid, as well as rusted metal objects, rubber tires, glass, and other discarded debris, were excavated during a foundation demolition project at a single family residential lot. Pursuant to 310 CMR 40.0312(1), this release requires notification to MassDEP within 2 hours of knowledge, and pursuant to 310 CMR 40.0412(1) this release requires that an Immediate Response Action (IRA) be conducted.

Also, information on file with MassDEP indicates the following contaminants were detected in soil samples collected from the soil pile on-site at a concentration which exceeded the Reportable Concentrations for Soil Category 1 per 310 CMR 40.1600.

<u>CHEMICAL</u>	<u>CONCENTRATION</u>	<u>RCS-1</u>
TPH	10800 mg/kg	1000 mg/kg
Napthalene (SVOCs)	87 mg/kg	4 mg/kg
Benzo(a)anthracene	16 mg/kg	7 mg/kg
Benzo(a)pyrene	12 mg/kg	2 mg/kg
Benzo(b)fluoranthene	12 mg/kg	7 mg/kg
Dibenzo(a,h)anthracene	2 mg/kg	0.7 mg/kg
Lead	442 mg/kg	200 mg/kg

M.G.L. c. 21E and the MCP require the performance of response actions to prevent harm to health, safety, public welfare and the environment which may result from this release and/or threat of release and govern the conduct of such actions. The purpose of this notice is to inform you of your legal responsibilities under State law for assessing and/or remediating the release at this property. For purposes of this NOR, the terms and phrases used herein shall have the meaning ascribed to such terms and phrases by the M.G.L. c. 21E and the MCP unless clearly indicated otherwise.

STATUTORY LIABILITY

MassDEP has reason to believe that you (as used in this Notice, "you" and "your" refers to Terceira Construction), as the current owner of the property where a release of oil or hazardous material has occurred, are a Potentially Responsible Party (PRP) with liability under M.G.L. c. 21E §5, for response action costs. Section 5 makes the following parties liable to the Commonwealth of Massachusetts: current owners or operators of a site from or at which there is or has been a release/threat of release of oil or hazardous material; any person who owned or operated a site at the time hazardous material was stored or disposed of; any person who arranged for the transport, disposal, storage or treatment of hazardous material to or at a site; any person who transported hazardous material to a transport, disposal, storage or treatment site from which there is or has been a release/threat of release of such material; and any person who otherwise caused or is legally responsible for a release/threat of release of oil or hazardous material at a site.

This liability is "strict", meaning that it is not based on fault, but solely on your status as owner, operator, generator, transporter, disposer or other person specified in M.G.L. c. 21E §5. This liability is also "joint and several", meaning that you may be liable for all response action costs incurred at a disposal site regardless of the existence of any other liable parties. Pursuant to M.G.L. c. 21E and the MCP the term disposal site means anywhere OHM has come to be located.

MassDEP encourages parties with liability under M.G.L. c. 21E to take prompt and appropriate actions in response to releases and threats of release of oil and/or hazardous materials. By taking prompt action, you

may significantly lower your assessment and cleanup costs and/or avoid liability for costs incurred by MassDEP in taking such actions.

You may be liable for up to three (3) times all Response Action Costs incurred by MassDEP. Response Action Costs include, without limitation, the cost of direct hours spent by MassDEP employees arranging for response actions or overseeing work performed by persons other than MassDEP or its contractors, expenses incurred by MassDEP in support of those direct hours, and payments to MassDEP's contractors. (For more detail on cost liability, see 310 CMR 40.1200.)

MassDEP may also assess interest on costs incurred at the rate of twelve percent (12%), compounded annually. To secure payment of this debt, the Commonwealth may place liens on all of your property in the Commonwealth. To recover the debt, the Commonwealth may foreclose on these liens or the Attorney General may bring legal action against you.

In addition to your liability for up to three (3) times all Response Action Costs incurred by MassDEP, you may also be liable to the Commonwealth for damages to natural resources caused by the release. Civil and criminal liability may also be imposed under M.G.L. c. 21E, § 11, and civil administrative penalties may be imposed under M.G.L. c. 21A, § 16 for each violation of M.G.L. c. 21E, the MCP, or any order, permit or approval issued thereunder.

By taking prompt actions you may also avoid the imposition of, the amount of or reduce certain annual compliance assurance fees payable under 310 CMR 4.00.

You should be aware that you may have claims against third parties for damages, including claims for contribution or reimbursement for the costs of cleanup. Such claims do not exist indefinitely but are governed by laws which establish the time allowed for bringing litigation. MassDEP encourages you to take any action necessary to protect any such claims you may have against third parties.

If you are a responsible party and you have reason to believe that your performance of the necessary response actions is beyond your technical, financial or legal ability, you should promptly notify the Department in writing of your inability in accordance with MGL c. 21E, subsection 5(e), and 310 CMR 40.0172. If you assert or demonstrate in compliance therewith that performing or paying for such response action is beyond your ability, subsection 5(e) provides you with a limited defense to an action by the Commonwealth for recovery of two to three times the Department's response action costs and 310 CMR 40.0172 provides you with a limited defense to the Department's assessment of civil administrative penalties.

Please refer to M.G.L. c. 21E for a complete description of potential liability.

ORALLY APPROVED IMMEDIATE RESPONSE ACTION

As outlined above, pursuant to 310 CMR 40.0412(1), this release requires that an IRA be conducted. At the time of oral notification to MassDEP, the following response actions were approved as an IRA:

- Continued assessment for additional buried containers or other sources of oil or hazardous materials.

- Installation of temporary covers/caps.

ADDITIONAL ACTIONS REQUIRED

Additional submittals are necessary with regard to this notification including, but not limited to, a written IRA Plan, IRA Completion Statement and/or a Permanent or Temporary Solution Statement. **The MCP requires that a fee of \$1,470.00 be submitted to MassDEP when a Permanent Solution Statement is filed greater than 120 days from the date of initial notification.**

Specific approval is required from MassDEP for the implementation of most Immediate Response Actions (IRAs) pursuant to 310 CMR 40.0420. Release Abatement Measures (RAMs) may not be conducted until a RAM Plan is submitted pursuant to 310 CMR 40.0443. Assessment activities, the construction of a fence and/or the posting of signs are actions that are exempt from this approval requirement.

In addition to verbal notification, 310 CMR 40.0333 requires that a completed Release Notification Form (BWSC-103, attached) be submitted to MassDEP within sixty (60) calendar days of **July 30, 2018**.

You must employ or engage a Licensed Site Professional (LSP) to manage, supervise or actually perform the necessary response actions at this site. You may obtain a list of the names and addresses of these licensed professionals from the Board of Registration of Hazardous Waste Site Cleanup Professionals by calling (617) 556-1091 or visiting <http://www.state.ma.us/lsp>. MassDEP has Geoffrey Souza of SITEC Environmental, Inc. listed as the LSP of Record.

In addition, MassDEP requires that you submit a written IRA Plan to this office which addresses remedial actions to be taken at this location within ten (10) days from receipt of this Notice. **This deadline constitutes an enforceable interim deadline established pursuant to 310 CMR 40.0167.** The written IRA Plan must include, but is not limited to, the following:

- Representative sampling of the black tar-like product for the purpose of properly characterizing the material, including PCB analysis;
- An assessment to determine the extent of the tar-like product within the property bounds;
- Due to numerous recent odor complaints, a plan to secure and maintain coverage of all exposed tar-like product and impacted soil until it is removed from the site.

Unless otherwise provided by MassDEP, potentially responsible parties (PRP's) have one year from the initial date of notification to MassDEP of a release or threat of a release, pursuant to 310 CMR 40.0300, or from the date MassDEP issues a Notice of Responsibility, whichever occurs earlier, to file with MassDEP one of the following submittals: (1) a completed Tier Classification Submittal; (2) a Permanent or Temporary Solution Statement or, if applicable, (3) a Downgradient Property Status. The deadline for either of the first two submittals for this disposal site is **July 30, 2019**.

This site shall not be deemed to have had all the necessary and required response actions taken unless and until all substantial hazards presented by the release and/or threat of release have been eliminated and a level of No Significant Risk exists or has been achieved in compliance with M.G.L. c. 21E and the MCP. The MCP requires persons undertaking response actions at a Disposal Site to submit to MassDEP a Permanent

Solution Statement prepared by an LSP in accordance with 310 CMR 40.1000 upon determining that a level of No Significant Risk already exists or has been achieved at the site.

If you have any questions relative to this Notice, please contact Andrew Cooney at the letterhead address or at (508) 946-2844. All future communications regarding this release must reference the following Release Tracking Number: **4-0027363**.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Crafton', is written over a horizontal line.

Dan Crafton, Chief
Emergency Response / Release
Notification Section
Bureau of Waste Site Cleanup

C/AWC

Enclosures: MassDEP's Guide to Hiring a Licensed Site Professional

cc: Board of Health
Board of Selectmen
Fire Department

DEP-SERO
John Handrahan, Data Entry

