



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

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JAN 16 2019

URGENT LEGAL MATTER: PROMPT ACTION NECESSARY

City of Salem
93 Washington Street
Salem, MA 01970

RE: Salem
Gallows Hill Park
50 Proctor Street
RTN 3-35355

Attention: Thomas Devine

NOTICE OF RESPONSIBILITY; MGL c. 21E & 310 CMR 40.0000

Dear Mr. Devine:

On December 19, 2018, at 10:30 am, the Massachusetts Department of Environmental Protection (MassDEP) received oral notification of a release/threat of release of Oil/Hazardous Material at the subject location, which requires one or more Response Actions. Based on this information, MassDEP has reason to believe that the subject property or portion(s) thereof is a disposal site as defined in the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000. M.G.L. c.21E and the MCP govern the assessment and cleanup of Disposal Sites.

The purpose of this notice is to inform you of your legal responsibilities under state law for assessing and/or remediating the subject release. For purposes of this notice, the terms and phrases used herein shall have the meaning ascribed to them by the MCP unless the text clearly indicates otherwise.

STATUTORY LIABILITIES

MassDEP also has reason to believe that you (as used in this letter "you" refers to City of Salem) are a Potentially Responsible Party (PRP) with liability under M.G.L. c. 21E, Section 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 or disposer. It is also "joint and several", meaning that you may be liable for all response action costs incurred at the site, regardless of the existence of any other liable parties.

The MCP requires responsible parties to take necessary Response Actions at properties where there is or has been a release or threat of release of oil and/or hazardous material. If you do not take the necessary Response Actions, or fail to perform them in an appropriate and timely manner, MassDEP is authorized by M.G.L. c. 21E to have the work performed by its contractors. By taking such actions, you can avoid liability for Response Action Costs incurred by MassDEP and its contractors in performing these actions, and any sanctions, which may be imposed, for failure to perform Response Actions under the MCP.

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 hereunder.

NECESSARY RESPONSE ACTIONS

The subject site shall not be deemed to have all the necessary and required Response Actions taken unless and until all Substantial Hazards presented by the site 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. In addition, the MCP requires persons undertaking Response Actions at Disposal Sites perform Immediate Response Actions (IRAs) in response to "sudden releases", Imminent Hazards and Substantial Release Migration. Such persons must continue to evaluate the need for IRAs and notify MassDEP immediately if such a need exists.

MassDEP has determined that an IRA is necessary to respond to a release of Oil and/or Hazardous Material at the subject site.

You are authorized to conduct only the specific response actions for which you received oral approval from MassDEP at the time oral notification was provided to MassDEP of the release of Oil and/or Hazardous Materials. All additional Immediate Response Actions require MassDEP approval in accordance with 310 CMR 40.0420.

MassDEP reminds you that IRAs must include site assessment activities necessary to evaluate potential Imminent Hazard (IH), Substantial Release Migration (SRM), and Critical Exposure Pathway (CEP) conditions. Additional Immediate Response Actions will be required in the event that one or more of these conditions are observed.

You must employ or engage a Licensed Site Professional (LSP) to manage, supervise or actually perform the necessary response actions at the subject site. In addition, the MCP requires persons undertaking response actions at a disposal site 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 a disposal site or portion thereof. [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 at <http://www.mass.gov/eea/agencies/lsp/> or (617) 556-1091.]

There are several other submittals required by the MCP which are related to release notification and/or Response Actions that may be conducted at the subject site in addition to a Permanent Solution Statement that, unless otherwise specified by MassDEP, must be provided to MassDEP within specific regulatory timeframes. The submittals are as follows:

- (1) If information is obtained after making an oral or written notification to indicate that the release or threat of release didn't occur, failed to meet the reporting criteria at 310 CMR 40.0311 through 40.0315, or is exempt from notification pursuant to 310 CMR 40.0317, a Notification Retraction may be submitted within 60 days of initial notification pursuant to 310 CMR 40.0335;

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- (2) If a Notification Retraction has not been submitted, a Release Notification Form (RNF) must be submitted to MassDEP pursuant to section 310 CMR 40.0333 within 60 calendar days of the initial date of oral notification to MassDEP of a release pursuant to 310 CMR 40.0300 or from the date MassDEP issues a Notice of Responsibility (NOR), whichever occurs earlier. The RNF can either be submitted electronically or using the PDF Form at <http://www.mass.gov/eea/docs/dep/cleanup/approvals/bwsc-103.pdf> ;
- (3) Unless a Permanent Solution Statement or Downgradient Property Status Submittal is provided to MassDEP earlier, an Immediate Response Action (IRA) Plan prepared in accordance with 310 CMR 40.0420, or an IRA Completion Statement (310 CMR 40.0427) must be submitted to MassDEP within 60 calendar days of the initial date of oral notification to MassDEP of a release pursuant to 310 CMR 40.0300 or from the date MassDEP issues an NOR, whichever occurs earlier; and
- (4) Unless a Permanent Solution Statement or Downgradient Property Status Submittal is provided to MassDEP earlier, a completed Tier Classification Submittal pursuant to 310 CMR 40.0510 must be submitted within one year of the initial date of notification of a release pursuant to 310 CMR 40.0300 or from the date MassDEP issues an NOR, whichever occurs earlier or as otherwise specified by the Department in an Interim Deadline or order issued pursuant to 310 CMR 40.0501 (2).
- (5) Pursuant to MassDEP's "Timely Action Schedule and Fee Provisions", 310 CMR 4.00, the appropriate fee must be included with a Permanent Solution Statement that is submitted to MassDEP more than 120 calendar days after the initial date of oral notification to MassDEP of a release pursuant to 310 CMR 40.0300, or more than 120 calendar days after the date MassDEP issues an NOR, whichever occurs earlier, and before Tier Classification. A fee is not required for a Permanent Solution Statement submitted to MassDEP within 120 days of the date of oral notification to MassDEP, or within 120 days of the date MassDEP issues an NOR, whichever date occurs earlier, or after Tier Classification.

It is important to note that you must dispose of any Remediation Waste generated at the subject location in accordance with 310 CMR 40.0030 including, without limitation, contaminated soil and/or debris. Any Bill of Lading accompanying such waste must bear the seal and signature of an LSP or, if the response action is performed under the direct supervision of MassDEP, the signature of an authorized representative of MassDEP.

MassDEP encourages parties with liability under M.G.L. c. 21E to take prompt action in response to releases and threats of release of oil and/or hazardous material. By taking prompt action, you may significantly lower your assessment and cleanup costs and avoid the imposition of, or reduce the amount of, certain annual compliance fees for response actions payable under 310 CMR 4.00.

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If you have any questions relative to this notice, you should contact the undersigned at the letterhead address or (978) 694-3386. All future communications regarding this release must reference the Release Tracking Number **RTN 3-35355** contained in the subject block of this letter.

Sincerely,

A handwritten signature in black ink that reads "Ida Babroudi". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ida Babroudi
Environmental Engineer
Bureau of Waste Site Cleanup
MassDEP, Northeast Regional Office

cc: Board of Health, City of **Salem**
"via electronic submittal", health@salem.com

MassDEP data entry/file (NOR / Issued)