



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

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Bethany A. Card
Secretary

Martin Suuberg
Commissioner

December 21, 2022

ACV Environmental Services Inc.
Attn: Mr. Ryan Dougherty
8 Shire Drive
Norfolk, MA 02056

RE: **NANTUCKET - BWSC**
Release Tracking Number: **4-0029633**
4 Fairgrounds Road
NOTICE OF RESPONSIBILITY

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

Dear Mr. Dougherty,

The Massachusetts Department of Environmental Protection, Bureau of Waste Site Cleanup (MassDEP or the Department) 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 or Chapter 21E). The law is implemented through regulations known as the Massachusetts Contingency Plan (310 CMR 40.0000 et seq. – the MCP). Both Chapter 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.

REASON FOR THIS NOTICE

On December 19, 2022 at 4:59 PM MassDEP received a call from the Nantucket Fire Department regarding a release at the above referenced location. An unknown amount of firefighting foam, believed to contain Per and Polyfluoroalkyl Substances (PFAS), was released when a vacuum truck overflowed. This release impacted pavement and a catch basin. Pursuant to 310 CMR 40.100(1)(a) MassDEP has determined that a release of hazardous materials has occurred and pursuant to 310 CMR 40.0100(1)(b) this release requires that an Immediate Response Action (IRA) be conducted.

Chapter 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 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 Notice of Responsibility (NOR) the terms

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

and phrases used herein shall have the meaning ascribed to such terms and phrases by the Chapter 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 ACV Environmental Services Inc. as the current owner / operator of the equipment from which the release 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 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, this release requires that an IRA be conducted. MassDEP has approved the following response actions as an IRA:

- Continued assessment.
- Deployment of absorbent/containment materials.
- Removal of contents from impacted catch basin.
- Removal of other contaminated media.

All Remediation Waste generated must be properly stored/handled and disposed as soon as possible and, in all cases, within 120 days from the date of generation per 310 CMR 40.0030.

ADDITIONAL ACTIONS REQUIRED

Additional submittals are necessary relative 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 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 oral notification, 310 CMR 40.0333 requires that a completed Release Notification Form (BWSC-103) be submitted to MassDEP within sixty (60) calendar days of **December 19, 2022**.

You must employ or engage a Licensed Site Professional (LSP) to manage, supervise or perform the necessary response actions to address this release/threat of release. 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 records indicate that Mr. Richard R. LaMothe of NRC East Environmental Services is the LSP of Record.

Unless otherwise provided by MassDEP, potentially responsible parties (PRPs) have one year from the initial date of notification to MassDEP 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 release is **December 23, 2023**.

This release 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 have been eliminated and a level of No Significant Risk exists or has been achieved in compliance with Chapter 21E and the MCP. The MCP requires persons undertaking response actions to address a release 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 relative to the release.

If you have any questions relative to this Notice, please contact Mr. Raymond Reimold at the letterhead address or at (508) 946-2852. All future communications regarding this release must reference the following Release Tracking Number: **4-0029633**.

Sincerely,



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

C/RMR

ec: Board of Health
Town Manager
Fire Department
Water Department

DEP-SERO - Data Entry