

Audits and Enforcement at BWSC

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This issue starts with highlights from our Compliance and Enforcement files, followed by a Helpful Hint regarding Signatory Authority on Notices of Activity and Use Limitations and a summary of results of two Downgradient Property Status Opinion audits.

Remember to watch for announcements about the 2009 MassDEP Audit Case Study Training sessions starting in April. This year, the sessions will be scheduled about one per month in different regions. We have also adopted a suggestion made at past training sessions: to feature one comprehensive case, Phase II through V with a Phase III – V focus.

Compliance and Enforcement – Selected Highlights

1/12/2009 – Lynn – NERO/BWSC – Hidden cameras located on a public street in Lynn detected the license plate of a landscaping company's truck disposing of several bags of soil and catch basin debris cleaned out from a foreclosed property in Beverly. The combined MCP and solid waste violations resulted in an administrative penalty of \$11,000 (\$7,000 suspended) and full reimbursement to the City of Lynn for proper disposal of the soil, which contained trace levels of lead.

1/26/2009 – Holden – CERO/BWSC, with the Attorney General's Office, reached a settlement with a realty trust and their excavation company for illegally dumping septage waste containing chlorinated solvents at a property owned by the realty trust. The solvents were the same as those detected in a nearby private well adjacent to the property, and also in the town's public water supply wells. The realty trust agreed to clean up the site and pay a \$120,000 penalty, a portion of which was suspended contingent upon completion of the site cleanup.

2/3/2009 – Acton – CERO/BWSC – An Administrative Consent Order with Penalty was negotiated with a realty management company for failure to notify of a sudden release to pavement and soil of 2000 gallons of fuel oil when a high-level cutoff switch failed. The company also failed to provide the required submittals within one year. The realty management company agreed to pay \$16,000 in penalties and review its spill management plan. An additional \$3,975 penalty was suspended, provided no additional violations occur within one year.

2/11/2009 – Pittsfield – WERO/BWSC – A gasoline station owner was fined \$26,800 for failure to undertake response actions and comply with several Notices of Noncompliance and a Unilateral Order regarding the release and cleanup of gasoline in soil. The site had been first identified in 2003 following the removal of three underground storage tanks (2 gasoline, 1 diesel fuel). In 2007, a waste oil tank was also discovered. For several years, the owner claimed, but did not demonstrate, Financial Inability and had previously been fined for asbestos violations.

3/20/2009 – Weymouth – SERO/BWSC, with the Attorney General’s Office, filed a complaint against an environmental services company that had originally failed to pay a \$108,000 penalty for abandoning asbestos-containing waste at a Middleboro property and hazardous waste at a property in Wareham.

The company “exhibited bad faith and refused to accept responsibility for either the proper disposal of the hazardous materials or the costs incurred for the proper disposal of hazardous materials” according to a statement from the Attorney General’s office. The complaint seeks up to three times the amount of the original fine.

While the asbestos-containing materials and hazardous wastes have since been cleaned up, Attorney General Martha Coakley said, “Our office will hold accountable individuals and companies who fail to comply with environmental regulations and who in bad faith fail to pay administrative fines lawfully assessed by MassDEP.”

http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2009_03_20_clements_enterprises&csid=Cago

3/20/2009 – Ayer – CERO/BWSC, with Environmental Crime Strike Force (ECSF), investigated a spill of diesel fuel to the ground at a railroad yard that was not reported within the required MCP 2-hour notification requirement. The spill was finally reported by an anonymous caller who indicated that the railroad appeared to be trying to hide the spill and avoid detection by covering the area with fresh ballast.

Inspectors from MassDEP/CERO, the Federal Railroad Administration and the Ayer Fire Department responded to the scene and initiated an investigation, ultimately revealing that more than 900 gallons of fuel oil had been released without notification. The ECSF investigation revealed numerous ways the combined railroad companies (and their subsidiaries) involved in the incident learned of the spill and the extent of the spill, but failed to report what it knew to MassDEP.

A Middlesex Grand Jury returned indictments against the primary New Hampshire railway company and three of its subsidiaries on April 1, 2008. On May 27, 2008, the parties were arraigned in Middlesex Superior Court, at which time each corporate entity entered individual pleas of not guilty. The jury trial began on March 13, 2009 and lasted seven days. The jury deliberated for one and a half hours before reaching a guilty verdict.

http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2009_03_23_pan_am_conviction&csid=Cago

Audit Helpful Hint – Signatory Authority – AULs

By Gail Eckert – WERO/Audits

When filling out a Notice of Activity and Use Limitation (AUL), it is critical that you provide the correct documentation to prove that the person or person(s) signing the AUL have the legal authority to sign the document on behalf of the corporation, trust, partnership, etc. This documentation of “signatory authority” must be attached to the AUL when it is filed at the appropriate Registry of Deeds. [310 CMR 40.1071(2)(c) and 310 CMR 40.1074(2)(c).]

If the owner of the parcel subject to the AUL is an entity, rather than an individual, then documentation of the signatory authority of the individual signing the AUL must be attached as an exhibit to the AUL. Entities include, but are not limited to:

- Corporations,
- Limited Liability Corporations,
- Limited Liability Companies,
- Limited Partnerships,
- Towns (municipalities), and
- States.

Signatory authority documentation must also be attached as an exhibit to the AUL if the individual signing the AUL is signing as a trustee, executor, or attorney in fact.

Additional AUL Guidance may be found on the DEP website at:
www.mass.gov/dep/cleanup/laws/99-300.

2 NOAF(s) - Downgradient Property Status (DPS) Opinion

NOAF/NON/DPS Termination for Site with Fuel Oil Release

BACKGROUND

In July 2006, MassDEP received notification of petroleum products in soil and groundwater at the subject property. Approximately one year later, MassDEP received a DPS Opinion for the parcel (“the downgradient property”). The DPS Opinion identified an abutting upgradient property to the north/northeast as the likely source of petroleum products since a Class A-3 Response Action Outcome Statement for a #4 fuel oil release had been submitted for the abutting property (“the upgradient property”).

FINDINGS

Following an audit of the DPS submittal, MassDEP terminated the DPS Opinion for failure to support it on several counts, all pertaining to **310 CMR 40.0183(4)**, filing a DPS without investigative and/or assessment actions of sufficient scope and level of effort to conclude that the criteria in **310 CMR 40.0183(2)(b)** had been met.

Specifically, the NOAF/NON/Termination noted the inadequacy of the investigation to prove that the upgradient property was the source of the petroleum on the downgradient site. The specific reasons for Termination of the DPS Opinion were listed in the NOAF/NON as follows:

- Underground Storage Tanks containing petroleum had previously been located on the upgradient portion of the property filing the DPS. Although the tanks were removed in 1995, the contents of these tanks and the details of the removal were not provided. Fire department records indicated conflicting information that contamination had been observed at both tank locations when they were removed. Additionally, the location and condition of associated piping was not identified;

- A 5000 gallon Aboveground Storage Tank containing #2 fuel oil currently exists at the upgradient portion of the downgradient property but the location of the existing piping as well as any historic information regarding possible releases or repairs was not provided;
- Limited sampling from the downgradient property indicated #2 fuel oil had been found on the site, but only #4 petroleum was identified on the upgradient property;
- Contaminant migration pathways were complicated by the groundwater table existing in fractured bedrock at the upgradient portion of the downgradient property; and,
- Contaminant concentrations in one of the monitoring wells on the upgradient portion of the downgradient property were lower than what was observed further downgradient (on the downgradient property).

Based on the complexity of the site conditions, the use of petroleum at the property filing the DPS Opinion, the location of past and present petroleum storage, the presence of the water table in fractured bedrock at the upgradient portion of the parcel and the distribution of contaminants across the parcel, the information provided did not support the conclusion that the petroleum contamination on the downgradient property was solely originating from the upgradient property. MassDEP terminated the DPS unless or until new evidence could support otherwise. (Note: Additional work is taking place at the site.) [**Brighton, RTN 3-26420, NON-NE-08-3A142**]

NOAF/NON for DPS for Chlorinated Solvents in Groundwater at Gas Station BACKGROUND

Chlorinated solvents, unrelated to site operations, were detected in soil and groundwater at a retail gasoline station during sampling that took place from 1991 to 1993. A DPS was filed for the solvent contamination in March 1997 along with a Method 1 Risk Characterization. Despite the detection of GW-2 exceedences, no monitoring or evaluation was done to ensure that there were no impacts to employees working inside the on-site building from chlorinated solvents.

FINDINGS

During the Audit conducted in 2009, it was noted that the 1991-1993 groundwater samples provided for the 1997 DPS Opinion showed concentrations of certain chlorinated solvent fractions that exceeded the GW-2 standards in 1997.

The NOAF/NON cited one violation: **310 CMR 40.0185(1)(c)** for failure to take reasonable steps to maintain the DPS status. In this case, this referred to the failure to assess (and, if necessary, prevent) the exposure of human receptors to the hazardous material at the downgradient property, i.e., contaminants in indoor air inside the on-site building. This potential for exposure was indicated by groundwater concentrations greater than Method 1 GW-2 cleanup standards.

The Audit required either a revised DPS or Termination of the Opinion within 90 days of the date of the NOAF/NON. [**Worcester, RTN 2-0011678, NON-CE-09-3A058**]