



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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January 18, 2017

Braintree Electric Light Department
150 Potter Road
Braintree, MA 02184

RE: BRAINTREE - BWSC
Release Tracking Number: 4-26207
44 Allen Street
NOTICE OF RESPONSIBILITY

URGENT LEGAL MATTER: PROMPT ACTION NECESSARY

Dear Ken Stone :

On June 24, 2016 the Department of Environmental Protection ("MassDEP") received a Release Notification Form ("RNF") which indicates that a release of oil and/or hazardous material has occurred at the location referenced above.

The Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c.21E, and the Massachusetts Contingency Plan (the "MCP"), 310 CMR 40.0000, 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 Notice of Responsibility, the terms and phrases used herein shall have the meaning ascribed to such terms and phrases by the MCP unless the context clearly indicates otherwise.

MassDEP has reason to believe that the release and/or threat of release, which has been reported, is or may be a disposal site as defined by the MCP. MassDEP also has reason to believe that you (as used in this letter, "you" refers to Braintree Electric Light Department) are a Potentially Responsible Party (a "PRP") with liability under M.G.L. c.21E §5, for response action costs. 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.

MassDEP encourages parties with liabilities 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 also avoid the imposition of, the amount of or reduce

certain annual compliance fees payable under 310 CMR 4.00. Please refer to M.G.L. c.21E for a complete description of potential liability. For your convenience, a summary of liability under M.G.L. c.21E is attached to this notice.

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 that 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.

SITE INFORMATION

Information on file with MassDEP indicates the following contaminant(s) were detected in soil samples collected from the 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>	
C5 - C8 Aliphatic Hydrocarbons	790	mg/kg	100	mg/kg
C9 - C18 Aliphatic Hydrocarbons	1,500	mg/kg	1,000	mg/kg
C19 - C36 Aliphatic Hydrocarbons	3,100	mg/kg	3,000	mg/kg
C9 - C10 Aromatic Hydrocarbons	440	mg/kg	100	mg/kg
C11-C-22 Aromatic Hydrocarbons	5,600	mg/kg	1,000	mg/kg
Acenaphthene	6.3	mg/kg	4	mg/kg
Acenaphthylene	1.1	mg/kg	1	mg/kg
Benzo(a)anthracene	24	mg/kg	7	mg/kg
Benzo(a)pyrene	21	mg/kg	2	mg/kg
Benzo(b)fluoranthene	28	mg/kg	7	mg/kg
Indeno(1,2,3)pyrene	8.2	mg/kg	7	mg/kg
2-methylnaphthalene	3.1	mg/kg	.7	mg/kg
Phenanthrene	70	mg/kg	10	mg/kg
Naphthalene	9.9	mg/kg	4	mg/kg
Lead	1,700	mg/kg	200	mg/kg

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.

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 June 24, 2017. 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 notification.

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 Sean Healey of Weston and Sampson, Inc. listed as the LSP of Record.

If you have any questions relative to this Notice, please contact Robert Murphy at the letterhead address or at (508) 946-2794. All future communications regarding this release must reference the following Release Tracking Number: 4-26207.

Sincerely,



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

C/RCM/lg

Enclosures: Summary of Liability under M.G.L. c.21E

ec: Board of Health
Board of Selectmen
Fire Department

ATTACHMENT B

SUMMARY OF LIABILITY UNDER CHAPTER 21E

As stated in the Notice of Responsibility accompanying this summary, MassDEP has reason to believe that you are a Potentially Responsible Party ("PRP") with potential liability under M.G.L. c. 21E, section 5, for response action costs and damages to natural resources caused by the release and/or threat of release. MassDEP has identified you as a PRP because it believes you fall within one or more of the following categories of persons made potentially liable by subsection 5(a):

- any current owner or operator of a site from or at which there is or has been a release or threat of release of oil and/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 or threat of release of such material; and
- any person who otherwise caused or is legally responsible for a release or threat of release of oil or hazardous material at a site.

For purposes of the MCP, you are considered a Responsible Party ("RP") with actual liability under Chapter 21E if you fall within one of these categories unless you (1) are entitled to a defense under section 5 or other applicable law, and (2) have reasonably incurred cleanup costs in an amount equal to or greater than any applicable cap on liability under subsection 5(d).

This liability is "strict," meaning it is not based on fault, but solely on your status as an owner, operator, generator, transporter or disposer. It is also joint and several, meaning that each person who falls within one of these categories may be held liable for all response action costs incurred at the site, regardless of the existence of any other liable parties.

Section 5 provides a few narrowly drawn defenses to liability, including a defense for releases and damages caused by an act of God, an act of war or an act by a third party other than an employee, agent or person with whom the party has a contractual relationship (*see* subsection 5(c)); a defense for certain owners of residential property at which the owner maintains a permanent residence (*see* subsection 5(h)); and a defense for certain public utilities and agencies of the Commonwealth which own a right-of-way that is a site (*see* subsection 5(j)).

You may voluntarily undertake response actions under the MCP without having your liability under Chapter 21E formally adjudicated by MassDEP. If you do not take the necessary response actions, or fail to perform them in an appropriate and timely manner, MassDEP is authorized by Chapter 21E to perform the necessary work.

By taking the necessary response actions, you can avoid liability for response action costs incurred by MassDEP in performing these actions. If you are an RP and you fail to perform necessary response actions at the site, you may be held liable for up to three (3) times all response action costs incurred by MassDEP and sanctions may be imposed on you for failure to perform response actions required by the MCP.

Response action costs include, without limitation, the cost of direct hours spent by Department 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: Cost Recovery). MassDEP may also assess interest on costs incurred at the rate of twelve percent (12%), compounded annually.

Any liability to the Commonwealth under Chapter 21E constitutes a debt to the Commonwealth. To secure payment of this debt, MassDEP may place liens on all of your property in the Commonwealth under M.G.L. c. 21E, section 13. To recover this debt, the Commonwealth may foreclose on these liens or the Attorney General may bring legal action against you.

In addition to your potential liability for response action costs and damages to natural resources caused by the release, civil and criminal liability may also be imposed by a court of competent jurisdiction under M.G.L. c. 21E, section 11, and civil administrative penalties may be assessed by MassDEP under M.G.L. c. 21A, section 16, for each violation of Chapter 21E, the MCP or any order, permit or approval issued there under.

If you are a RP 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 MassDEP in writing of your inability in accordance with Chapter 21E, subsection 5(e), and 310 CMR 40.0172. If you assert and 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 MassDEP's response action costs and 310 CMR 40.0172 provides you with a limited defense to MassDEP's assessment of civil administrative penalties.

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.