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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CENTRAL REGIONAL OFFICE

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Secretary

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Commissioner

URGENT LEGAL MATTER: PROMPT ACTION NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

August 26, 1997

WRT Management
1 Main Street
Northbridge, MA 01588

RE: CRWSC - Northbridge
355 Main Street

Attention: Len Jolles,
Property Manager

Release Tracking #2-11846

NOTICE OF RESPONSIBILITY
120-DAY NOTIFICATION
M.G.L. c. 21E, 310 CMR 40.0000

Dear Mr. Jolles:

Thank you for submitting the Oil and Hazardous Material Release Notification Form (RNF) received by the Department of Environmental Protection (the Department) on August 5, 1997. In light of this action, the Department wishes to ensure that you (as used in this notice, "you" refers to WRT Management) are aware of your rights and responsibilities under 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.

The information contained in your submittal indicates that the above-referenced property has been subject to a release of oil to soil in excess of the applicable reportable concentrations. Based on this information, the Department has reason to believe that the property, or portions thereof, is a disposal site which requires a response action. The cleanup of disposal sites is governed by M.G.L. c. 21E and the MCP.

Information available to the Department also indicates that you are a party with potential liability for response action costs and damages under M.G.L. c. 21E, § 5. The attached summary provides information about liability under Chapter 21E to assist you in deciding what actions to take in response to this notice.

RDMS Doc ID 107673

627 Main Street • Worcester, Massachusetts 01608 • Telephone (508) 792-7653

Fax (508)792-7621

Printed on Recycled Paper

TTD #(508)767-2788

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. The Department encourages you to take any action necessary to protect any such claims you may have against third parties.

ACTIONS UNDERTAKEN TO DATE AT THE SITE

On August 5, 1997, the Department received an RNF for the above-referenced site. According to the RNF, total petroleum hydrocarbons (TPH) are present in soil at the site at concentrations up to 5,810 parts per million (ppm). This concentration exceeds the Reportable Concentration of 500 ppm identified in the RNF.

The Department has assigned Release Tracking #2-11846 to the release of oil. The Department has no information regarding other actions conducted or proposed in response to this release.

NECESSARY RESPONSE ACTIONS AND APPLICABLE DEADLINES

Please be advised that August 5, 1997 is considered to be the date of release/threat of release notification for this release. Unless otherwise stated, this date will be the baseline for calculating compliance with deadlines contained within the MCP.

No disposal site will be deemed to have had all the necessary and required response actions taken for it 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 the MCP.

The MCP requires persons undertaking response actions at a disposal site to submit to the Department a Response Action Outcome Statement prepared by a Licensed Site Professional upon determining that a level of no significant risk already exists or has been achieved at the disposal site. **A fee of $750.00 is assessed if an RAO is filed 120 days after release notification, but before Tier Classification.** If all remediation work has been completed, you are encouraged to submit the RAO promptly to avoid the fee.

Unless otherwise provided by the Department, responsible parties have one year from the initial date notice of a release or threat of release is provided to the Department pursuant to 310 CMR 40.0300 or from the date the Department issues a Notice of Responsibility, whichever occurs earlier, to file with the Department one of the following submittals: (1) a completed Tier Classification Submittal; or (2) a Response Action Outcome Statement. If required by the MCP, a completed Tier I Permit Application must also accompany a Tier Classification Submittal. The deadline for these submittals for this release is **August 5, 1998.**

The MCP requires responsible parties and any other person undertaking response actions to perform Immediate Response Actions in response to sudden releases, Imminent Hazards and Conditions of Substantial Release Migration. Such persons must continue to evaluate the need for Immediate Response Actions and notify the Department immediately if such a need exists.

PROCEDURES TO FOLLOW TO UNDERTAKE RESPONSE ACTIONS

The Department encourages parties having liability under M.G.L. c. 21E to take prompt action in response to releases and threats of release of oil and hazardous materials. By taking prompt action, liable parties may significantly lower cleanup costs and avoid the imposition of, or reduce the amount of, certain permit and/or annual compliance assurance fees payable under 310 CMR 4.00 (e.g., no annual compliance assurance fee is due for Response Action Outcome Statements submitted to the Department within 120 days of the initial date of release notification).

You must continue to employ or engage a Licensed Site Professional to manage, supervise or perform all response actions which you intend to undertake at this disposal site. You may obtain a list of the names and addresses of Licensed Site Professionals by contacting the Board of Registration of Hazardous Waste Site Cleanup Professionals by telephone at (617) 556-1145 or in person or by mail at One Winter Street, 6th Floor, Boston, Massachusetts 02108.

If you have any further questions, please contact the Central Regional Office at the letterhead address or at 508/792-7653. All future correspondence communications regarding this release should reference Release Tracking #2-11846.

Sincerely,

Edmond G. Benoit
Deputy Regional Director
Waste Site Cleanup

EGB\FS\DMT
Enclosure
cc: Northbridge Health Department
Northbridge Fire Department
Kroll Associates, 10 Waterview Boulevard, Parsippany, NJ 07054
Database Entry

2-11846.nor

SUMMARY OF LIABILITY UNDER CHAPTER 21E

As stated in the Notice of Responsibility accompanying this summary, the Department 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. The Department 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 the Department. If you do not take the necessary response actions, or fail to perform them in an appropriate and timely manner, the Department 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 the Department 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 the Department 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 the Department or its contractors, expenses incurred by the Department in support of those direct hours, and payments to the Department's contractors (for more detail on cost liability, *see* 310 CMR 40.1200: Cost Recovery). The Department 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, the Department 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 the Department under M.G.L. c. 21A, section 16, for each violation of Chapter 21E, the MCP or any order, permit or approval issued thereunder.

If you are an 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 the Department 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 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.