



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

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Gary Moran
Acting Commissioner

January 24, 2023

Town of West Tisbury
Attn: Jennifer Rand, Town Administrator
1059 State Road
P.O. Box 278, 1st Floor
West Tisbury, Massachusetts 02575

Via email: townadmin@westtisbury-ma.gov

RE: **WEST TISBURY- BWSC**
Release Tracking Number: 4-0029310
West Tisbury Fire Station
551 Edgartown Road
**NOTICE OF RESPONSIBILITY / REQUEST
FOR IMMEDIATE RESPONSE ACTION /
INTERIM DEADLINE
ENFORCEMENT DOCUMENT NUMBER
00013772**

URGENT LEGAL MATTER: PROMPT ACTION NECESSARY

Dear Ms. Rand:

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

This Notice of Responsibility (“NOR” or “Notice”) is intended to notify the Town of West Tisbury of its liability as a Potentially Responsible Party (“PRP”) for the release of per and polyfluoroalkyl substances (collectively referred to as “PFAS”) at and near the property at 551 Edgartown Road, West Tisbury, Massachusetts (the “Site”) that has affected private drinking water wells in the area. This Notice also describes the necessary actions that the Town of West Tisbury must take with respect to this release.

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

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BACKGROUND/ACTIVITIES COMPLETED TO DATE

In December 2019, MassDEP established standards for the regulation of six PFAS compounds (collectively referred to as "PFAS6") in groundwater that is used as a drinking water source. The drinking water standard was set at 20 nanograms-per-liter (ng/L or generally parts-per-trillion or ppt).

In April 2022, MassDEP's residential well sampling program, in partnership with the University of Massachusetts, identified a West Tisbury private drinking water well as having 102 -ng/L - of PFAS6. This concentration represents an Imminent Hazard (IH) as defined by a concentration of PFAS6 in excess of 90 ng/L. Due to the presence of this Imminent Hazard, MassDEP initiated a site/source discovery program to identify potential properties at risk and to identify potential sources of PFAS6, which included the West Tisbury Fire Department. As a result of this investigation, one additional private well was found to contain PFAS6 at 125 ng/L -- also above the IH concentration. MassDEP has installed, and is currently operating and maintaining, granulated activated carbon (GAC) point-of-entry treatment (POET) systems at these two residential properties.

Based on the data obtained through the UMASS/MassDEP private drinking water sampling program and the data from this site discovery process, two additional properties in the area were found to contain PFAS6 above the Massachusetts Maximum Contaminant Level (MMCL) of 20 ng/L but below the Imminent Hazard concentration of 90 ng/L. Six other properties were found to contain PFAS6 above method reporting limits. MassDEP considers measurable concentrations of contaminants in private drinking water wells to be Critical Exposure Pathways (CEPs) which must be eliminated and/or mitigated to the extent feasible. Requirements pertaining to the CEPs are described below under "Required Actions/Interim Deadlines".

As such, MassDEP has concluded that there has been a release of PFAS at the West Tisbury Fire Station located at 551 Edgartown Road which has impacted private drinking water wells. MassDEP has come to this conclusion based on MassDEP's investigation of PFAS impacts to private water supplies in the neighborhood and the general, inferred groundwater flow in the area. Additionally, MassDEP received information provided by the Fire Chief and several residents that aqueous film-forming foam (AFFF) was discharged to the ground surface at the Fire Station during several occurrences in the past. AFFF is a known source of PFAS6 contamination to aquifers and other media.

STATUTORY LIABILITY

MassDEP has reason to believe that you (as used in this Notice, "you" and "your" refer to the Town of West Tisbury), as the current owner of the property where a release has 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.

REQUIRED ACTIONS/INTERIM DEADLINES

1. **By February 24, 2023**, you must engage or employ a Licensed Site Professional (LSP) to oversee and conduct response actions at the Site;
2. **By February 24, 2023**, you must submit a Release Notification Form (“RNF”) using Transmittal Form BWSC103;
3. **By March 24, 2023**, you must provide a written Immediate Response Action (IRA) Plan that includes, without limitation, the following:
 - a. A schedule for the sampling of any private or public water supply wells that have not previously been sampled by MassDEP or UMASS and are located near the identified PFAS source areas;
 - b. A schedule for the ongoing residential treatment system sampling for homes with POET systems;
 - c. A schedule for the ongoing residential sampling of private wells that do not have detectable concentrations of PFAS but are within 500’ of a well where PFAS exceeds MMCLs;
 - d. A plan for the provision of bottled water and/or POET installation to mitigate any Critical Exposure Pathway.

Note that pursuant to 310 CMR 40.0414(4), IRAs shall be presumed to require the elimination, and/or mitigation of Critical Exposure Pathways (CEPs) as defined in 310 CMR 40.0006. Such elimination or mitigation measures may include the provision of bottled water or the installation of a point-of-entry treatment system; and

- e. A plan to sample soil and groundwater at the Site and other locations in the affected area where AFFF was known or suspected to have been stored or discharged.

MassDEP hereby requires you to submit the first IRA Status report by **May 24, 2023**. Subsequent IRA Status reports shall be submitted quarterly thereafter: **August 24, 2023, November 24, 2023, February 24, 2024**, and so on, until such time that MassDEP approves a longer interval between IRA Status reports.

These dates constitute **Interim Deadlines** established pursuant to 310 CMR 40.0167. Failure to comply with Interim Deadlines may result in enforcement actions by MassDEP, including, but not limited to, the issuance of a Notice of Noncompliance, an Administrative Penalty, and/or Enforcement Orders, or referral to the Massachusetts Attorney General’s Office.

ADDITIONAL ACTIONS REQUIRED

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 <https://www.mass.gov/orgs/board-of-registration-of-hazardous-waste-site-cleanup-professionals>.

Unless otherwise provided by MassDEP, potentially responsible parties (PRPs) 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 **January 24, 2024**. **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.**

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. The MCP requires persons undertaking response actions at a Disposal Site 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 at the site.

If you have any questions relative to this Notice, please contact Ms. Angela Gallagher at the letterhead address or at (617) 620-2626. All future communications regarding this release must reference the following Release Tracking Number: **4-0029310**.

Sincerely,

John Handrahan

John T. Handrahan, Chief
Compliance & Enforcement / Risk Reduction
Bureau of Waste Site Cleanup

H/AG/ag

ec: Town of West Tisbury
Board of Selectmen
Fire Department
Board of Health

DEP-SERO
Millie Garcia-Serrano, Regional Director
Angela Gallagher, Project Manager, BWSC
Courtney Rainey, Legislative Liaison / Municipal Affairs
Lara Goodine, Regional Enforcement Coordinator