

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Boston Gas Company
d/b/a National Grid

Enforcement Document Number: 00009941NT
Issuing Bureau: BWSC
Issuing Region/Office: NERO
Issuing Program: BWSC
Suffix(es): NT
FMF/Program ID No. 3-0032792

**ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street, Wilmington, Massachusetts 01887..
2. Boston Gas Company d/b/a National Grid ("Respondent") is a Massachusetts Corporation with its principal offices located at 40 Sylvan Road, Waltham, MA 02451-1120. Respondent's mailing address for purposes of this Consent Order is 40 Sylvan Road, Waltham, MA 02451-1120.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of: M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Unless otherwise indicated, the terms used herein shall have the meaning given to them by the MCP, and if such terms are not defined in the MCP, they shall have the meanings given to them by M.G.L. c. 21E. "Property" shall mean the real property located at 284 Winter Street, Haverhill, Massachusetts. The "Site" shall mean the particular Site (as that term is defined in the MCP) resulting from releases of oil and/or hazardous materials at the Property. The Site shall include, without limitation, any place or area within or outside the Property where oil and/or hazardous material resulting from such releases has come to be located. Releases have been assigned Release Tracking

Numbers (“RTNs”) under the MCP at the Property. Respondent is a Responsible Party (“RP”) or Potentially Responsible Party (“PRP”) for the Site, specifically RTNs 3-32792 and 3-32875.

5. The following facts and allegations have led MassDEP to issue this Consent Order:

A. On March 30, 2015, MassDEP was notified of phenanthrene, benzene, 2-methylnaphthalene, and naphthalene in soil above Reportable Concentrations at the Property. MassDEP assigned Release Tracking Number (“RTN”) 3-0032792 to the reported release.

B. On May 12, 2015, MassDEP received a report of a sudden release of greater than 10 gallons of petroleum and an oil sheen on the Little River in Haverhill. MassDEP assigned RTN 3-0032875 to the reported release.

C. On July 17, 2015, MassDEP received an Immediate Response Action Plan for RTN 3-0032875, as required by 310 CMR 40.0420.

D. On September 11, 2015, and every six months thereafter, MassDEP has received an IRA Status Report for RTN 3-0032875, as required by 310 CMR 40.0425.

E. On April 6, 2016, MassDEP received a Phase I - Initial Site Investigation (“Phase I Report”) and a Tier Classification Submittal for the Site combining RTN 3-32875 and RTN 3-32792. The Site is Classified as a Tier I Site due to the ongoing Immediate Response Actions.

F. As of April 6, 2019, the Site was overdue for the submittal of a Phase II Comprehensive Site Assessment (“Phase II Report”) as required by 310 CMR 40.0560(2)(b).

G. On October 11, 2019, MassDEP issued a Notice of Noncompliance to the owner of the Property for failure to submit a Phase II Report within three years of Tier Classification, as required by 310 CMR 40.0560(2)(b).

H. On November 26, 2019, MassDEP received a Tier Classification Transfer for the Site indicating that responsibility for conducting MCP response actions was being transferred from the current owner of the Property to Respondent. MassDEP issued a Notice of Responsibility to Respondent on the same day.

I. On March 6, 2020, MassDEP received a request from Respondent to extend the MCP deadlines for submittal of the Phase II Report, the Phase III Remedial Action Plan (“Phase III Report”), and the Phase IV Remedy Implementation Plan (“Phase IV Report”).

J. On March 13, 2020, MassDEP issued an Re-establishment of Deadlines Letter to Respondent requiring the submittal of a Phase II Report, a Phase III Report, and a Phase

IV Report by August 4, 2020, and a Permanent or Temporary Solution Statement or Remedy Operation System by April 12, 2021, as requested by Respondent.

K. On July 14, 2020, Respondent informed MassDEP that it would be unable to meet the deadlines in the March 13, 2020 Re-establishment of Deadlines Letter. Further investigation had revealed that the Site was more complicated and the contamination more extensive than previous investigations had shown. Respondent indicated remediation will require access agreements with multiple parties, comprehensive waterways permits and to address physical safety and access issues related to working in or around the riverbed and shoreline, a steep river bank with an old retaining wall, an old bridge and an aged culvert.

L. As of August 17, 2020, Respondent has failed to make the outstanding MCP submittals and has proposed a schedule to return the Site to compliance.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

8. Respondent shall perform the following actions:

A. by September 12, 2020 and every six months thereafter, Respondent shall submit an IRA Status Report, which meets the requirements set forth in 310 CMR 40.0425. If the IRA is completed Respondent shall submit an IRA Completion Report;

B. by February 20, 2021, Respondent shall submit a Tier Classification Extension Submittal, which meets the requirements set forth in 310 CMR 40.0560(7);

C. Unless a Permanent or a Temporary Solution Statement is submitted earlier, Respondent shall perform the following actions on or before the deadlines established herein:

1. by April 6, 2022, Respondent shall submit a Phase II Report, which meets the requirements set forth in 310 CMR 40.0830 through 40.0840;

2. by July 15, 2022, Respondent shall submit a Phase III Report, which meets the requirements set forth in 310 CMR 40.0850 through 40.0864;
 3. by June 15, 2023, Respondent shall submit a Phase IV Report, which meets the requirements set forth in 310 CMR 40.0874; and
 4. by September 12, 2025, Respondent shall submit to MassDEP a Permanent or Temporary Solution for the Site, which meets the requirements of 310 CMR 40.1000 through 40.1099 or, if appropriate, a Remedy Operation Status (“ROS”) Submittal, which meets the requirements of 310 CMR 40.0890 through 40.0896.
9. Unless submitted via eDEP or except as otherwise provided herein, all notices, submittals and other communications required by this Consent Order shall be directed to:
- Stephen M. Johnson, Deputy Regional Director
Department of Environmental Protection
205B Lowell Street
Wilmington, MA 01887
- Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.
10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
 11. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent’s noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.
 12. Respondent is Permittee, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees pursuant to M.G.L. c. 21A, §18 and M.G.L. c. 21E, §3B.
 13. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.
 14. This Consent Order may be modified only by written agreement of the parties hereto.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

18. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

19. If respondent violates, any provision" or identify specific paragraphs of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

20. Force Majeure - General

A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.

B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

D. If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

21. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to 284 Winter Street, Haverhill, Massachusetts for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

22. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

23. This Consent Order does not relieve Respondent's obligation to pay Annual Compliance Assurance Fees pursuant to 310 CMR 4.00 et. seq.

24. All applicable transmittal fees shall accompany any submissions(s) required by this Consent Order.

25. The Respondent shall comply with all applicable Public Involvement Activities regarding the Site, as described in 310 CMR 40.1400.

26. Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to Paragraphs seven through of this Consent Order.

27. The undersigned certify that they are full authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

28. This Consent Order shall become effective on the date that it is executed by MassDEP.

SPECIAL INSTRUCTIONS:

Your two **signed copies of the Administrative Consent Orders (ACO)** must be delivered, for execution (signature) by MassDEP, to the following address:

Stephen M. Johnson, Deputy Regional Director
Department of Environmental Protection
205B Lowell Street
Wilmington, MA 01887

MassDEP will return **one signed copy** of the ACO to you after MassDEP has signed, provided you have followed the above instructions.

Please call Paegan Deering if you have questions regarding instructions.

Consented To:

BOSTON GAS COMPANY d/b/a NATIONAL GRID

By: 

Charles Willard
National Grid-Director Site Remediation
40 Sylvan Road
Waltham, MA 02451-112

Federal Employer Identification No.: 41103580

Date: 9/28/20

Issued By:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Eric Worrall, Regional Director
Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

Date: 10/2/20



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

OCT 02 2020

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

National Grid
40 Sylvan Road
Waltham, MA 02451-1120

RE: Haverhill
284 Winter Street
RTN: 3-0032792
Enforcement No.: 00009941

Attention: Elizabeth Greene

Dear Ms. Greene:

Attached is the Administrative Consent Order ("ACO") documenting an agreement between the Massachusetts Department of Environmental Protection ("MassDEP") and National Grid. The ACO is effective as of the date of MassDEP's signature. You are expected to comply with the Disposition an Order Section of the document.

If you have any questions, please contact Paegan Deering at (978) 694-3382.

Yours truly,

David T. LaPusata
Audits and Enforcement Section Chief
Bureau of Waste Site Cleanup

cc: Data Entry: C&E/ACO

