



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

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OCT 11 2019

Certified Mail # 7015 1520 0002 1414 5181

Haffner Realty Trust
2 International Way
Lawrence, MA 01843

RE: Haverhill
284 Winter Street
RTN 3-0032792
Enforcement Document No. 00008315

Attention: Joanne D. Fournier, Trustee

NOTICE OF NONCOMPLIANCE WITH THE MCP

**THIS IS AN IMPORTANT NOTICE. FAILURE TO TAKE ADEQUATE ACTION IN
RESPONSE TO THIS NOTICE COULD RESULT IN SERIOUS LEGAL
CONSEQUENCES.**

Dear Ms. Fournier:

The Massachusetts Department of Environmental Protection's (MassDEP's) records indicate that Haffner Realty Trust (hereinafter referred to as "you" or "your") is a Potentially Responsible Party (PRP) for the site named above. As the current owner of the property where the site is located, you are responsible for conducting response actions necessary to maintain compliance with the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000. This Notice of Noncompliance (NON) informs you that you are not in compliance with the MCP. An Administrative Penalty may be assessed for every day that you remain in noncompliance.

On March 30, 2015, MassDEP received a report of polycyclic aromatic hydrocarbons in soil above Reportable Concentrations at the subject property. MassDEP assigned Release Tracking Number (RTN) 3-0032792 to the reported release. On May 12, 2015, MassDEP received oral notification of a sudden release of oil from the subject property resulting in a sheen on surface water. MassDEP assigned RTN 3-0032875 to the reported release.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

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The subject site, including RTN 3-0032792 and RTN 3-0032875, was classified as a Tier I Disposal Site on April 6, 2016, and to date, response actions necessary to achieve a Permanent Solution, Temporary Solution, or Remedy Operation Status have not been completed. As you are aware, a Tier Classification for a disposal site authorizes you to undertake response actions at the subject site in order to address a release of oil and/or hazardous material. This NON sets out a schedule to return the site to compliance with the MCP.

DESCRIPTION OF NONCOMPLIANCE

As of the date of this Notice, you are not in compliance with the following MCP requirements:

- 1. Violation of 310 CMR 40.0560(2)(b) – Failure to submit a Phase II Comprehensive Site Assessment within three years of Tier Classification:** 310 CMR 40.0560(2)(b) states that a Phase II Comprehensive Site Assessment shall be submitted to MassDEP within three years of Tier Classification. You have failed to submit to MassDEP a Phase II Comprehensive Site Assessment within three years of the effective date of Tier Classification as is required by 310 CMR 40.0560(2)(b).

You should also be aware that a Notice of Delay does not forgive noncompliance for failing to submit Phase submittals to MassDEP or providing Phase submittals late.

DESCRIPTION OF REQUIRED ACTIONS AND DEADLINES FOR TAKING ACTIONS

To avoid an Administrative Penalty of up to \$1,000 per violation per day, submit the following documents to MassDEP by the deadlines established herein:

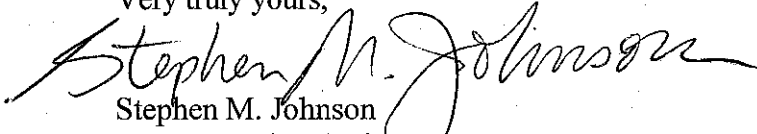
- 1. by April 6, 2020,** a Phase II Comprehensive Site Assessment Report in accordance with 310 CMR 40.0830 through 40.0840, and if applicable, a Phase III Remedial Action Plan in accordance with 310 CMR 40.0850 through 40.0864, and a Phase IV Remedy Implementation Plan in accordance with 40.0874.

If a Permanent Solution Statement or a Temporary Solution Statement, which meets the applicable MCP requirements, is submitted earlier, the deadline for the documents specified above will no longer apply.

Notwithstanding this Notice, MassDEP reserves its rights to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including, but not limited to, administrative action including administrative penalties imposed by MassDEP.

The enclosures contain information about the regulations you are violating and more information about the actions you must take to return to compliance. If you have any questions, please contact Paegan Deering at (978) 694-3382.

Very truly yours,



Stephen M. Johnson
Deputy Regional Director
Bureau of Waste Site Cleanup

Enclosures: REGULATIONS YOU HAVE NOT COMPLIED WITH
FREQUENTLY ASKED QUESTIONS

cc: Data Entry/File: C&E/NON

City of Haverhill, Health Department, by electronic mail, rmacdonald@cityofhaverhill.com

Eric S. Wood, LSP, by electronic mail, eswood@environcorp.com

REGULATIONS YOU HAVE NOT COMPLIED WITH: Tier Classification

This attachment lists the regulations referred to in the attached Notice of Noncompliance. Please consult the Massachusetts Contingency Plan, 310 CMR 40.0000 (the MCP) for additional information about these regulations. The MCP may be viewed on our web page at <http://www.mass.gov/regulations/310-CMR-4000-massachusetts-contingency-plan>. Copies may be purchased through the State Book Store in the State House, Room 116, Boston, MA (617-727-2834). You should also contact your Licensed Site Professional (LSP) to discuss what you must do to return to compliance.

“Tier Classification” refers to the process established in the MCP to categorize a disposal site as Tier I or Tier II. Typically, sites that meet the Tier I designation may be more complex, potentially pose greater risks, and merit more MassDEP oversight than Tier II sites.

The Role of Responsible Parties (RPs), Potentially Responsible Parties (PRPs) and Other Persons in Response Actions: 310 CMR 40.0170(4) states, in part, that RPs, PRPs and Other Persons shall perform each and every response action properly and promptly within deadlines prescribed by, or pursuant to, M.G.L. c. 21E and/or the MCP, including any Interim Deadlines.

Deadlines for Permanent or Temporary Solutions or Remedy Operation Status Submittal at Tier Classified Disposal Sites: 310 CMR 40.0560(1) states that, unless expressly provided by 310 CMR 40.0000 or as otherwise ordered or agreed to in writing by the Department, an RP, PRP, or Other Person undertaking response actions at a Tier Classified disposal site shall achieve a Permanent or Temporary Solution or Remedy Operation Status within five (5) years of the effective date of initial Tier Classification. In addition, an RP, PRP or Other Person shall not conduct Comprehensive Response Actions at a disposal site for which a Tier Classification has expired unless a Tier Classification Extension is submitted pursuant to 310 CMR 40.0560(7).

Disposal Site Submittal Deadlines: 310 CMR 40.0560(2) states that, except as provided by 310 CMR 40.0530(4), 310 CMR 40.0560(3), or otherwise ordered or agreed to in writing by the Department, an RP, PRP, or Other Person undertaking response actions at a Tier Classified disposal site shall submit the following documents to the Department by the following deadlines unless otherwise ordered or agreed to in writing by the Department: (a) a conceptual scope of work for a Phase II - Comprehensive Site Assessment prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification; (b) a Phase II Report within three (3) years of the effective date of Tier Classification; (c) a Phase III Remedial Action Plan and (d) a Phase IV Remedy Implementation Plan within four (4) years of the effective date of Tier Classification; and (e) a Permanent or Temporary Solution or Remedy Operation Status Statement within five (5) years of the effective date of Tier Classification.

Tier Classification Extensions: 310 CMR 40.0560(7) states that if a Permanent or Temporary Solution or Remedy Operation Status has not been submitted to the Department for a Tier Classified disposal site prior to the expiration of the Tier Classification, the person undertaking response actions at such site shall extend the Tier Classification for two (2) years by submitting a Tier Extension Submittal containing all required information to the Department at least 45 days before the date of expiration of the Tier Classification and notice shall be given to the Department if additional extensions are required thereafter.

FREQUENTLY ASKED QUESTIONS

This attachment explains why this Notice of Noncompliance (NON) has been issued to you. The Massachusetts Department of Environmental Protection (the Department or MassDEP) audits a percentage of response action submittals to make sure that cleanups are scientifically and technically sound and that they have been conducted in compliance with the M.G.L. c. 21E and the Massachusetts Contingency Plan (the MCP, 310 CMR 40.0000). MassDEP also tracks the progress of cleanups by checking to see if you are sending information about your cleanup to MassDEP on time. *As of the date of the attached NON, MassDEP has not received some important MCP submittals from you.* Please read the following information carefully. It will help explain what you must do to return to compliance with the MCP. Please refer to the enclosure titled "REGULATIONS YOU HAVE NOT COMPLIED WITH" for the list of regulations cited in the attached NON. Consult M.G.L. c. 21E and the MCP for a complete explanation of your liability and responsibility for the noncompliance cited in the NON. The MCP may be viewed on our web page at <http://www.mass.gov/regulations/310-CMR-4000-massachusetts-contingency-plan>. Copies may be purchased through the State Book Store located in the State House, Room 116, Boston, MA (617-727-2834).

What do I have to do to comply with the NON? *Take note of each violation on the attached NON. In order to return to compliance and avoid penalties you must submit the missing documents, information and/or submittals associated with each violation to MassDEP by the deadline specified in the NON.* Contact your Licensed Site Professional (LSP) immediately to make arrangements to provide MassDEP with the missing submittals by the established deadline.

What happens if I fail to comply with or respond to the NON? You have until the deadlines established in the NON to comply. If you fail to comply, MassDEP may assess a penalty for such noncompliance. Your total penalty exposure can be considerable. For example, penalties can be assessed for each violation each day you remain in noncompliance and MassDEP calculates daily penalties from the date you received the NON. **You may be penalized several thousand dollars or more should you fail to comply with or respond to the NON by the stated deadlines.** Please refer to the Civil Administrative Penalty Statute, M.G.L. Chapter 21A, Section 16 and 310 CMR 5.00, the Civil Administrative Penalty Regulations, for complete details on Administrative Penalties. NOTE: If you are not in compliance with the MCP and you are the owner/operator of a gasoline station where a release occurred from a leaking underground storage tank, you may not be eligible for cleanup fund reimbursement under M.G.L. c.21J, the Underground Storage Tank Petroleum Product Cleanup Fund until you return to compliance with the MCP.

Why are the MCP submittal deadlines important? The MCP includes deadlines by which you must complete testing and cleanup actions and submit information about those actions to MassDEP. If you do not provide submittals to MassDEP, we must assume that site testing and cleanup activities are not being conducted in a timely manner or that you have stopped conducting the work needed to address a serious environmental problem. If you are conducting site testing and/or cleanup or you have finished the cleanup but you have neglected to forward the documentation required by the MCP to MassDEP, you should send in the missing information immediately. It is in your best interest to conduct testing and cleanup actions properly and provide MassDEP with the submittals on time in order to avoid administrative penalties.

What must I do if my Tier Classification has expired or is about to expire? If your initial Tier Classification has expired or is about to expire, you must submit to MassDEP a Tier Classification Extension Submittal in order for you to initiate or continue to perform Comprehensive Response Actions at the subject site [310 CMR 40.0560(7)]. A Tier Classification Extension is valid for two years from its effective date. If you do not apply for or accept a Tier Classification Extension and one is needed, you are not acting in compliance with the MCP. You should be aware that a Tier Classification Extension does not forgive noncompliance for failing to achieve a Permanent or Temporary Solution or Remedy Operation Status by the MCP's 5 year deadline, or for not providing Phase II, III, IV, or V submittals, or for providing these submittals late.