

Audits and Enforcement at BWSC

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This issue features four recent higher level enforcement cases: one from each region, and each with different origination points:

- One Administrative Consent Order with a Penalty (ACOP) from multiple AUL audits
- One ACOP for a Class C RAO with new site conditions
- One Administrative Consent Order (ACO) Tier ID audit of a site inactive for several years
- One ACOP from direct enforcement following failure to provide timely notification

Watch for announcements about the 2009 MassDEP Audit Case Study Training sessions that started in April. This year, the sessions will be scheduled about one per month throughout spring and fall in different regions. We adopted a suggestion made at past training sessions: to feature one comprehensive case, Phases II through V with a Phase III – V focus.

Higher Level Enforcement – Regional Selections

ACOP for Failure to Maintain Pavement as Condition of an AUL

BACKGROUND

The site was originally identified in 1994 after petroleum and semivolatile organic compounds were detected at depths of up to ten feet in soil (and/or “fill”) underlying the parking lot of a former auto parts store. MassDEP issued a Notice of Responsibility to the property owner of record at the time. The property owner subsequently conducted response actions and in October 1995 filed a Class B-2 Response Action Outcome with an Activity and Use Limitation to restrict access to site soils. Approximately a year later, in August 1996, the property was sold to a new owner. The AUL, requiring the property owner to maintain the asphalt parking lot to prevent access and exposure to underlying soils, was referenced in the transfer deed.

AUDIT INSPECTION #1

On October 9, 2003, MassDEP conducted an audit inspection of the AUL and found that eroded asphalt had exposed contaminated soil in a pothole adjacent to a catch basin in the parking lot. MassDEP subsequently issued an ACOP to the property owner, effective March 2004, requiring repair of the pavement, photographic documentation of the repair, and submittal of a Pavement Maintenance Plan. The documentation and Plan were received in April 2004.

AUDIT INSPECTION #2

On January 6, 2009, MassDEP again conducted an audit inspection and again found exposed soil in the parking lot. One of the areas of the exposed soil was in the same location as the one that eroded in 2004.

RESULTS

As a result of the second audit inspection, MassDEP prepared an ACOP, citing **310 CMR 40.1070(2)** – failure to maintain pavement as a condition of the Activity and Use Limitation. Among the requirements in the ACOP were:

- Within 15 days: Notify all employees responsible for managing the property of several issues: (a) the existence of the AUL and the conditions of maintaining the AUL, (b) inconsistent activities and uses of the property and (c) the requirements of the April 2004 Pavement Maintenance Plan and the Consent Order
- Within 90 days: repair or replace the damaged asphalt and submit photographic evidence that the repairs or replacement had been completed
- Conduct ongoing quarterly visual inspections of the asphalt in the AUL area and repair or replace any areas where underlying soil is not completely covered within 45 days of observation
- Within 90 days, file an Amendment to the existing AUL to incorporate the new requirements for pavement maintenance
- Pay a **Penalty of \$13,500** for failure to maintain the previous AUL conditions

In addition to the above, Stipulated Penalties of \$500 per day were outlined for any future violations or failure to meet the terms of the ACOP.

[West Springfield, RTN 1-10557, ACOP-WE-09-3004]

ACOP for Multiple Violations at a Class C RAO Site with New Condition

BACKGROUND

The property was first listed as a Location to Be Investigated in 1987. It had been used from 1923 to 1987 as a metal stamping and tool and die shop and was later converted to a plumbing and heating supply company. Initial assessment found petroleum, chlorinated solvents and polycyclic aromatic hydrocarbons (PAHs) in soil and groundwater.

Following extensive sampling and assessment, this transition site was Tier Classified as a Tier IB Site in June of 1998. At that time, the PAHs were attributed to degraded asphalt binder. In November 2003, the Respondent submitted a Class C Response Action Outcome with Phase IV “as-built” reports, followed by a number of post RAO Status Reports. In March 2008, MassDEP initiated a comprehensive audit of the site.

AUDIT FINDINGS

During the 2008 Audit, it was noted that in September 2003, a layer of black, semi-solid tar material was encountered during excavation of a storm water drainage system. Testing of the material revealed PAHs and EPHs inconsistent with those previously detected, suggestive of coal tar, and in concentrations that were several orders of magnitude higher than had previously been detected. The PAHs indicated a separate release condition, likely to be from a former coal gas manufacturing plant abutting the site. Nevertheless, because (other) PAHs had been known to exist on the site, the Respondent asserted that no new notification was necessary. The Respondent’s contractor then excavated 117 tons of this contaminated material and transported it off site, prior to notification, in October 2003.

The Audit also revealed that the Class C RAO relied on a Method 3 Risk Characterization that was included in November 2000 Phase II report which concluded that “No Substantial Hazard” existed at the site. The 2000 Method 3 evaluated the potential risk to human health posed by volatilization of chlorinated hydrocarbons from groundwater to indoor air. Concentrations of the contaminants in indoor air were estimated using the Johnson & Ettinger (J&E) model in effect at that time. In 2006, changes were made to the original J&E model that required development of chemical specific attenuation factors and which could result in the prediction of higher indoor air concentrations (from prior calculations). Considering the new information, as part of the requirements for maintaining a Class C RAO, indoor air impacts at the site should have been re-evaluated as part of the requirement to demonstrate that the site continued to meet the condition of No Substantial Hazard.

Finally, the original assessment work submitted in 1998 for the site indicated the elevated levels of copper in soil and nearby Charles River sediments (approximately 70 mg/kg) relative to natural background (approximately 40 mg/kg), but no attempt was made in later site characterization to further delineate the extent of copper in the River sediments.

RESULTS

Based on the review of the information in the files, MassDEP held an enforcement conference with the Respondent and came to agreement on the Administrative Consent Order with Penalties. The violations noted were:

- **310 CMR 40.0315(1)** – Failure to notify of the additional PAHs and EPHs (from the coal tar, new site condition)
- **310 CMR 40.0404(4)** – Failure to provide notification of the release prior to conducting remedial response actions for that release
- **310 CMR 40.0897(3)** – Failure to demonstrate that a condition of No Substantial Hazard continues to be met in order to maintain the Class C Response Action Outcome
- **310 CMR 40.0835(f)** – Failure to determine the extent of copper in the sediments

The MassDEP required correction of the violations and calculated a penalty of \$7,970, but suspended \$3,970 provided that terms of the ACOP were met, and included additional stipulated penalties if they were not met or for any future violations.

[Milford, RTN 2-0000101, ACOP-CE-09-3A004]

ACO for Default Tier ID Site with Schedule to Return to Compliance

BACKGROUND

This site was first listed in January 1989 following the removal of two 3,000 gallon underground petroleum storage tanks and detection of contamination in soil. A preliminary site assessment was submitted in July 1991 and then the site languished for a number of years as a Tier ID site with the property owners missing a number of submittal deadlines.

In January 2009, as part of its effort to return Default sites back into compliance, MassDEP issued a Notice of Noncompliance to the Respondent indicating their responsibilities under the MCP for the site.

RESULTS

In February 2009, the Respondent submitted a schedule for returning to compliance. Subsequently, they signed an Administrative Consent Order, outlining a schedule for future submittals and agreeing to stipulated penalties of \$1,000 per day for each day or portion thereof in the event of any future violations.

[Billerica, 3-02137, ACO-NE-09-3A007]

ACOP for Release to Storm Drain and Failure to Provide Timely Notification

BACKGROUND

In May 2008, at approximately 11:30 a.m., an employee of this commercial laundry facility released approximately 2 gallons of a 10-15% sodium hypochlorite solution to a storm drain (in excess of the Reportable Quantity of 10 pounds for this solution). The Fire Department was contacted and upon arriving on scene, observed a chemical reaction taking place in the storm drain, so they temporarily blocked access to the parking lot. An environmental response contractor was called and arrived at approximately 3 p.m. the same day to perform response actions. The Respondent did not notify MassDEP within the requisite two hours of obtaining knowledge of this release, a violation of **310 CMR 40.0311(1)**.

RESULTS

Following the delayed notification, MassDEP directly enforced against the Respondent who agreed to pay the \$1,150 Consent Order fine.

[Hyannis, 4-21245, ACOP-SE-08-3E-002]