

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

In the matter of:
Clean Harbors of Braintree, Inc.

Enforcement Document Number: **00015966**
Issuing Bureau: BAW
Issuing Region/Office: BOS
Issuing Program: HW
Primary Program Cited: HW
SMS/Program ID: 34839

ADMINISTRATIVE CONSENT ORDER

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 100 Cambridge Street, Suite 900, Boston, Massachusetts 02114.
2. Clean Harbors of Braintree, Inc. (“Respondent”) is a Corporation with its principal offices located at 42 Longwater Drive, Norwell, MA 02061-9149.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000. 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. Respondent owns and operates a hazardous waste treatment and storage facility located at 1 Hill Avenue, Braintree, MA, 02184 that is licensed by the Department (License #5B/19) pursuant to M.G.L. c. 21C and 310 CMR 30.000 (“Facility”).
5. The following facts and allegations have led MassDEP to issue this Consent Order:
 - A. On February 16, 2023, at approximately 10:00 p.m., a trailer containing hazardous waste in the loading dock area of the Facility caught fire. The fire spread to four other trailers containing hazardous waste before it could be extinguished, resulting in substantial damage to the trailers and surrounding area.
 - B. On the evening of February 16, 2023, all hazardous waste operations at the Facility were halted in accordance with the Facility’s Contingency Plan.
 - C. 310 CMR 30.524(6)(e)4. states:

(e) If the facility stops operations in response to a potential or actual fire, explosion, or other release, ...

4. Operations shall not be resumed at the facility until the owner or operator notifies the Department and appropriate local authorities that the facility is in compliance with 310 CMR 30.524(6)(e)3 and the Department determines in writing that there is no longer a threat to public health, safety, or welfare, or the environment.
 - D. 310 CMR 30.524(6)(e)3. states:

(e) If the facility stops operations in response to a potential or actual fire, explosion, or other release,...

3. The emergency coordinator [at the facility] shall ensure that, in the affected area(s) of the facility: a. no waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and b. all emergency equipment and systems listed in the contingency plan are cleaned, recharged, reactivated, and fit for their intended use before facility operations are resumed.

- E. On February 17, 18, 21, 22, 24, and 27, 2023, and on March 1 and 8, 2023, MassDEP visited the Facility to make observations and gather information.
- F. On February 25, 2023, Respondent sent a written request to MassDEP, pursuant to 310 CMR 30.524(6)(e)4, to resume limited operations at the Facility that included clean up and offsite removal of roll-offs containing fire debris, and firefighting water contained in frac tanks, and the management through storage or offsite shipment of existing onsite drum material unrelated to the fire.
- G. On February 26, 2023, MassDEP sent a letter to Respondent, pursuant to 310 CMR 30.524(6)(e)4., authorizing the resumption of limited operations at the Facility involving clean up and offsite removal of fire related waste and debris and management through storage and offsite shipment of existing onsite drum material.
- H. On March 1, 2023, Respondent sent a letter to MassDEP, pursuant to 310 CMR 30.524(6)(e)4., requesting to resume normal operations at the Facility. MassDEP did not grant Respondent's March 1, 2023, request to resume normal operations at the Facility.
- I. On March 6, 2023, Respondent sent a written request to MassDEP, pursuant to 310 CMR 30.524(6)(e)4., to resume stormwater treatment and discharge operations at the Facility.
- J. On March 8, 2023, Respondent sent a letter to MassDEP, pursuant to 310 CMR 30.524(6)(e)4., requesting to resume "normal operations except for transfer activity that involves truck-to-truck transfers or staging of waste on trailers overnight." On March 9, 2023, MassDEP sent a letter to the Respondent, based on information provided by the Facility and on a March 8, 2023, inspection by MassDEP of the Facility's stormwater treatment system, authorizing the Facility to resume operations of the stormwater treatment and discharge system as identified in, but not limited to, Section 3.8 - Precipitation Management, of Attachment IV - Vehicle Management Plan, of License No. 5B/19. MassDEP

acknowledged in the letter that activation of the system was needed to address a significant amount of normal rain and snow melt that had accumulated since the fire cleanup was completed.

- K. On March 15, 2023, MassDEP sent a letter to Respondent, pursuant to 310 CMR 30.524(6)(e)4., authorizing Respondent to resume normal operations in accordance with the Respondent's License #5B/19 starting March 15, 2023, with the following exception:

No resumption of truck-to-truck transfers of hazardous waste or staging of hazardous waste on trailers, as described in but not limited to, Attachment IV - Vehicle Management Plan and Exhibit I, Truck-to-Truck Waste Transfer Management Plan; or Sections 3.b., Truck-to-Truck Transfer of Containerized Waste or 1.a.6., Management of Containers in Staged Vehicles in the Specific License Conditions of License #5B/19.

- L. On March 21, 2023, Respondent sent a letter to MassDEP requesting to resume Truck-to-Truck Transfer operations at the Facility with the following conditions:
- a) additional spacing between parked trailers; and
 - b) a waiver by MassDEP of 310 CMR 30.408(5)(b) to allow Respondent to remove wastes in transit from trailers for temporary storage inside buildings at the Facility equipped with fire suppression.
- M. MassDEP did not grant Respondent's March 21, 2023, request.
- N. On April 7, 2023, Respondent sent a letter to MassDEP requesting to resume Truck-to-Truck transfer operations at the Facility with restrictions.
- O. In order to allow Respondent to resume truck to truck transfer activity while ensuring that there is no longer a threat to public health, safety, or welfare, or the environment at the Facility after the February 16, 2023, fire, MassDEP and Respondent enter into this Administrative Consent Order ("Consent Order" or "ACO").

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. Immediately upon the effective date of this Consent Order, Respondent shall designate trailer storage locations by number, shall secure manifests for those trailer locations with a corresponding number at a designated location such as the Facility's guard shack, and shall also make those manifests electronically available to emergency responders in the event of an incident.

B. Immediately upon the effective date of this Consent Order, all trailers, except empty trailers, at the Facility shall be spaced with an empty slot measuring a minimum of eighteen (18) feet between each trailer.

C. Immediately upon the effective date of this Consent Order, no trailers containing any amount of hazardous waste shall be stored or left onsite at the Facility unless, at a minimum, one member of Facility staff is present. Facility Staff shall include a Supervisor, General Manager, Facility Compliance Manager or Compliance Specialist, per the Job Descriptions in APPENDIX 3 in Attachment XIV, Training Plan, in License #5B/19.

D. Immediately upon the effective date of this Consent Order, Respondent shall place an additional wheeled fire extinguisher on the Building 6 west side truck dock.

E. Immediately upon the effective date of this Consent Order, Respondent shall perform daily inspections of truck-to-truck trailers using a portable infrared camera. This condition shall remain in effect until the conditions required under Paragraph 8.F. are satisfied.

F. Within 90 days of the effective date of this Consent Order, Respondent shall install one or more fixed infrared monitors sufficient to monitor truck to truck trailers on-site that are not actively involved in truck-to-truck transfer operations and shall notify the Department in writing, when the monitors are installed and operable.

G. Immediately upon the effective date of this Consent Order, Respondent shall have a multi-gas meter, portable PID and proof of personnel trained on their use readily available at the Facility for utilization in the event of an emergency requiring air monitoring including, but not limited to, a fire or other incident resulting in a release of chemicals to the ambient air.

H. Within 90 days of the effective date of this Consent Order, Respondent shall install a “kill switch” for the Facility’s stormwater management system at the Facility’s guard shack to ensure that the stormwater system can be shut down remotely in the event of an emergency, and shall notify the Department, in writing, when the switch is installed and operable.

I. Within 30 days of the effective date of this Consent Order, Respondent shall update its Contingency Plan with regard to changes outlined in Paragraph 8. A-F, in accordance with 310 CMR 30.0000, and provide copies to the Braintree Fire Department and MassDEP.

J. Within 30 days of the effective date of this Consent Order, Respondent shall ask permission of the town of Braintree to install an additional fire hydrant line from Hill Avenue directly to the Facility.

K. Within 120 days of receiving permission from the Town of Braintree, Respondent shall install an additional fire hydrant line from the main road directly to the Facility, and shall notify the Department, in writing, when the fire hydrant is installed and operable.

9. Respondent’s obligations under this Consent Order shall cease when Respondent’s hazardous waste facility license has been updated to include enhanced fire protection, public safety, environmental controls, and operational measures regarding truck-to-truck transfer activity, and MassDEP has confirmed such measures have been installed and are operable.

10. Unless submitted via Accela or except as otherwise provided herein, all notices, submittals and other communications required by this Consent Order shall be directed to:

Richard Blanchet, Deputy Division Director – Hazardous Waste Unit
MassDEP
100 Cambridge Street
Suite 900
Boston, MA 02114

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

11. 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.

12. 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.

13. This Consent Order may be modified only by written agreement of the parties hereto.

14. 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.

15. 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 as follows:

A. 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 cause 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. If Respondent violates any provision in Paragraph 8 of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000.00 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.

22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. 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 the Facility 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.

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

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

26. All applicable transmittal fees shall accompany any submissions(s) required by 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 Order** must be delivered, for execution (signature) by MassDEP, to the following address:

Richard Blanchet, Deputy Division Director – Hazardous Waste Unit
MassDEP
100 Cambridge Street
Suite 900
Boston, Massachusetts 02114

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

SIGNED ACOs ARE TO BE SENT TO THE ABOVE ADDRESS.

Please call Richard Blanchet at 617-447-1292 if you have questions regarding instructions.

Consented To:

Clean Harbors of Braintree, Inc.


By: 

Rebecca Underwood
President – Clean Harbors of Braintree, Inc.
42 Longwater Drive, Norwell, MA 02061-9149
Federal Employer Identification No.: 04-2507498

Date:

Issued By:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Greg Cooper, Division Director – BAW Hazardous & Solid Waste Division
MassDEP
100 Cambridge Street, Suite 900, Boston, MA 02114

Date: 7/24/2023