

# The Countdowns Continue

By Lisa Alexander

Last article, we covered common AUL violations. This month, we'll continue the enforcement theme with cases from the last six months that made our weekly press clips: Administrative Consent Orders with Penalties (ACOPs), Penalty Assessment Notices (PANs), Unilateral Administrative Orders (UAOs) and Demand Notices from approximately mid-November 2014 to mid-May 2015. We'll end with a summary of the 2014 Intern Project – which was an evaluation of enforcement cases from calendar year 2013.

Last June, BWSC updated several sections of the Massachusetts Contingency Plan (MCP). This year, we're anticipating another round of regulatory reviews and some staff downsizing through early retirements. Are your favorite DEP regulators in the mix? Lots of questions...Lots of rumors...Lots of maybes... It looks like no one will know for certain until July. From my own time here at MassDEP, the one thing I know is – there will always be change.

## ACOPs and other Penalties

For each of these cases, we'll indicate the type of HLE, the final assessed penalty, the approximate date and a short summary of the case, leaving out the identifying details.

- **ACOP, \$1,250, March 2015:** A highway accident in August 2014 caused an out-of-state trucking company (the Potentially Responsible Party or “PRP”) to release 75 gallons of diesel fuel. Initial response actions were performed by a local fire department and an environmental contractor. The clean up was successfully completed, but the company failed to submit the appropriate documentation despite a Notice of Noncompliance (NON).
- **Amended ACOP, \$2,500, January 2015:** MassDEP executed an Amended ACOP with a PRP to reset deadlines on a prior ACOP and demanded a portion of previously suspended penalties. The original ACOP was for deadlines associated with submittal of a Revised Permanent or Temporary Solution Statement and a RAM Status or Completion Report.
- **ACOP, \$2,875, January 2015:** A Massachusetts trucking company (the PRP) violated reporting regulations after diesel fuel was released to pavement and a storm drain at a service station. BWSC Emergency Response (ER) was notified by the local Fire Department and provided oversight of the cleanup. The service station operator retained an environmental contractor to conduct the clean up. The station's surveillance video revealed that a company driver had manipulated a fuel nozzle to allow it to function without being attended. The nozzle fell out and spilled about 15 gallons onto pavement near the pump island. The trucking company indicated that their driver had not informed them of the spill; they agreed to pay the penalty and to update the spill notification and response procedures for its drivers.
- **Demand Notice, \$5,000, March 2015:** MassDEP issued a \$5,000 Demand for payment of a previously suspended penalty to the owner of a former car dealership (the PRP). The site is contaminated with metals and PCBs and requires maintenance of pavement to prevent direct contact

with contaminated soil. The owner had filed a Temporary Solution for the site that requires periodic inspection and maintenance of the pavement and submittal of status reports documenting inspection results and any maintenance activities. The owner had entered into an ACOP in 2013 to resolve failure to maintain the pavement. At the time, MassDEP agreed to suspend \$5,000 of the penalty, but required that status reports be submitted in March and September of each calendar year until a Permanent Solution could be achieved. MassDEP received a status report in December 2014, three months late, indicating that pavement repair was necessary and would be conducted. MassDEP did not receive the required status report in March 2015, nor documentation of the necessary pavement repair.

- **ACOP, \$5,750, October 2014:** MassDEP executed an ACOP with a \$5,750 penalty with a property maintenance company (“the subcontractor” and PRP) for discharging waste floor finishing solution to a storm drain at a commercial property. Notification was provided by the company that had retained the subcontractor to clean and re-finish floors at a client’s site. MassDEP personnel responded to the site after a milky white substance had been identified in two storm drains in the parking lot by an employee of the client’s company who observed the discharge the next morning. Information provided to MassDEP indicated that one of the subcontractor’s employees had discharged the waste floor finishing solution into the drains while working at the site overnight. MassDEP personnel provided oversight of cleanup activities, including the vacuuming of floor finishing waste and impacted storm water from the drainage system. A penalty of **\$5,750** was assessed, with \$4,750 suspended, provided that the subcontractor complete re-training of employees on management and disposal of wastes generated during cleaning activities.
- **ACOP, \$5,750, November 2014:** MassDEP entered into an ACOP with an LSP after the LSP conducted an Immediate Response Action (IRA) at a residential fuel oil release. The LSP had injected remedial additives into the groundwater at the site without MassDEP approval and before the presumptive approval timeframe had elapsed. By doing so, the LSP prevented MassDEP from reviewing and commenting on the remedial plan as required in the MCP. The ACOP contained a penalty of **\$5,750**, with \$3,000 paid and \$2,750 suspended.
- **ACOP, \$7,500, December 2014:** MassDEP entered into an ACOP with a dry cleaner (the PRP) from which there had been a release of chlorinated solvents to groundwater. In April 2012, MassDEP issued an NON to the PRP for having failed to complete required MCP response actions in a timely manner. The PRP did not comply or respond to the NON. The ACOP established negotiated timelines for completion of work at the site and contained a **\$7,500** penalty for failing to respond to MassDEP’s original NON.
- **ACOP, \$7,622, March 2015:** MassDEP entered into an ACOP with a manufacturing company (the PRP) for a release of chlorinated solvents. A Department audit of the Phase II Comprehensive Site Assessment and MCP Phase III Remedial Action Plan for the site identified several violations of the MCP. A Notice of Audit Findings (NOAF) and NON were issued with violations listed, primarily concerning assessment of the release, and indicating that additional response actions were required. The company failed to meet the deadlines specified in the NON and requested a several month extension. MassDEP agreed to a revised compliance schedule and a suspended penalty of **\$7,622** to resolve the MCP violations.

- **ACOP, \$8,500, January 2015:** The distributor of an automotive replacement parts company (the PRP) violated oil spill reporting regulations after a truck driver manipulated a diesel fuel nozzle, allowing it to function without being attended. This caused a release of fuel after the nozzle fell out of the tank. The truck driver informed the station attendant of the spill, but left the station without notifying MassDEP. The impacted service station company reported an estimated 20 gallons of diesel fuel had spilled to paved surfaces and a storm drain at their station. The PRP agreed to pay a penalty of **\$8,500** to MassDEP for the violation, to prepare oil spill notification and response procedures for its delivery drivers and provide documentation of employee retraining as part of the Consent Order.
- **ACOP, \$8,630, November 2014:** MassDEP executed an ACOP with a dismantling company (the PRP) for failing to report a release of approximately 80 gallons of non-PCB mineral oil dielectric fluid within two hours. The ACOP imposed a penalty of **\$8,630.00**, with \$4,500.00 payable to MassDEP within 30 days. The remainder was suspended contingent on compliance with the ACOP. The ACOP also imposed stipulated penalties of \$1,000 per day for any future violations of the ACOP. (A second company, below, was also involved.\*)
- **ACOP, \$8,630, December 2014:** MassDEP executed an ACOP with a construction company (the PRP) for failing to report a release of approximately 80 gallons of non-PCB mineral oil dielectric fluid at a demolition site within two hours. The ACOP imposed a penalty of **\$8,630.00**, payable within 30 days, and imposed stipulated penalties of \$1,000 per day for any future violations of the ACOP. (Another company, above, was also involved.\*)
- **ACOP, \$9,000, November 2014:** MassDEP executed an ACOP with property owners of a commercial property for violations of deadlines set out in a prior ACOP. The updated ACOP set new deadlines for submittal of a Tier II Extension Submittal and a Permanent or Temporary Solution Statement. The ACOP contains a **\$9,000** penalty with \$2,000 paid, \$7,000 suspended and a stipulated penalty provision for any missed ACOP deadlines.
- **ACOP, \$9,485, November 2014:** MassDEP executed an ACOP with the owner of a self-storage facility (the PRP) for an overdue Periodic Review Opinion and for conducting a Release Abatement Measure (RAM) without approval. The site has been in the system since 1987. The PRP agreed to a **\$9,485** penalty, paying \$5,000, with \$4,485 suspended unless there are additional violations of the ACOP associated with the required cleanup of volatile organic contaminants.
- **ACOP, \$11,586, January 2015:** MassDEP executed an ACOP with a shipping company (the PRP) for failing to submit a Phase IV Remedy Implementation Plan, a Permanent or Temporary Solution Statement, and failing to submit Tier Classification Extensions. The ACOP set new deadlines for the submittals and contains an **\$11,586** penalty, of which \$8,586 will be suspended provided the PRP does not violate any condition of the ACOP.
- **ACOP, \$11,791, February, 2015:** MassDEP entered into an ACOP with an interior design company (the PRP) for violations of the MCP. While refueling a delivery vehicle, an employee released over 29 gallons of diesel fuel, impacting a driveway and two storm drains. The company failed to report the release and failed to conduct an IRA. The ACOP total penalty is **\$11,791** of which \$5,750 is suspended. (Related case follows, below.\*\*)

- **ACOP, \$11,937, January, 2015:** MassDEP executed an ACOP with a railroad operator (the PRP) for violation of oil spill notification regulations related to a motor oil spill at their train yard. In July 2014 the PRP notified MassDEP of a release of twenty gallons of engine oil from a locomotive to the ground surface and railroad tracks in front of the engine house. Information provided at the time of the notification and during a field inspection indicated that the PRP had knowledge of the spill the prior day and that notification should have been provided within two hours of that knowledge. The PRP agreed to pay a penalty of **\$11,937** for the violation. The PRP will also update an environmental management plan that was developed as part of a *previous* enforcement action. The PRP's employees will be re-trained on procedures contained within the updated plan.
- **ACOP, \$15,000, April 2015:** An ACOP was executed with a commercial property owner (the PRP) for failure to submit a tier Classification Extension, Phase II Comprehensive Site Assessment Report, Phase III Remedial Action Plan, Phase IV Remedy Implementation Plan, and a Response Action Outcome Statement by MCP deadlines. The ACOP assessed a total penalty of **\$15,000** of which \$7,500 is due within 30 days. The remainder of the penalty was suspended. The ACOP established new deadlines for the missing submittals.
- **ACOP, \$18,347.50, February 2015:** BWSC entered into an ACOP with a commercial fuel company (the PRP) for violating reporting regulations. While refueling a vehicle, over 29 gallons of diesel fuel were released to a driveway and two storm drains. The operators of the commercial fueling facility failed to report a release, and failed to notify the Department prior to conducting an IRA. The ACOP total penalty is **\$18,347.50** with \$9,173.75 suspended. (Related to another case, above.\*\*)
- **ACOP, \$19,375, March 2015:** MassDEP executed an ACOP with a transportation company (the PRP) for failing to report a release of approximately 127 gallons of gasoline that occurred during a bulk delivery to a service station. The ACOP required the PRP to pay a penalty of \$6,500, with \$12,875 suspended, pending compliance with the ACOP. The ACOP also required the PRP to prepare and submit an Oil and Hazardous Material Release Reporting and Response Plan within 45 days, and imposed stipulated penalties of \$1,000 per day for any violation of the ACOP.
- **ACOP, \$20,000, January 2015:** MassDEP executed an ACOP with a private college (the PRP) for failure to notify of a discharge to surface and groundwater that was not appropriately pre-treated to remove contamination. The ACOP requires that Respondent comply with the MCP and contains a **\$20,000** penalty.
- **ACOP, \$25,800, February 2015:** MassDEP executed an ACOP with the Trustee of a Realty Trust (the PRP) for violations in a May 2014 Notice of Noncompliance that laid out interim deadlines for MCP submittals. The ACOP issued new deadlines for the missing submittals and contains a **\$25,800** penalty with \$2,400 payable and \$23,400 suspended, with stipulated penalty provision for any missed ACOP deadlines.
- **ACOP, \$26,000, December 2014:** MassDEP executed an Amended ACOP with a company (the PRP) for BWSC violations. The PRP had requested an extension of deadlines in its original

ACOP. MassDEP granted the extension and set new deadlines. The PRP agreed to pay \$2,000 of the \$26,000 suspended penalty.

- **ACOP, \$30,000, April 2015:** MassDEP executed an ACOP with a property management company (the PRP) for failure to comply with a previous NON. The NON required a Phase II, Phase III and Phase IV Report by October 2014. The ACOP required that, unless a Downgradient Property Status Submittal or a Permanent or Temporary Solution Statement is submitted earlier, the Respondent shall submit a Phase II Report, a Phase III Report and a Phase IV Report within set deadlines. The PRP agreed to a \$30,000 penalty, paying \$2,000, with \$28,000 of the penalty suspended. The suspended penalty will come due if the PRP violates any provision of the Consent Order.
- **ACOP, \$30,000, October 2014:** MassDEP executed an ACOP with an economic development company (the PRP) for failure meet deadlines previously set out in a NON in March 2014. The ACOP set new deadlines for a Phase IV Report and a Permanent or Temporary Solution Statement and contains a \$30,000 penalty with \$28,000 suspended and a stipulated penalty provision for any missed ACOP deadlines.
- **UAO/PAN, \$30,000, February 2015:** BWSC issued a UAO and a PAN to a PRP for failing to complete response actions, submit Phase II, III, and IV Reports, and achieve a Temporary or Permanent Solution. These violations were originally addressed in prior NONs and an ACOP, however the violator remains out of compliance and MassDEP has not received any of the required reports. MassDEP issued the UAO requiring submittal of the required reports within one year, and a PAN assessing a penalty of \$30,000.
- **ACOP, \$30,000, March 2015:** BWSC executed an ACOP with a commercial company (the PRP) for failure to achieve a Response Action Outcome (RAO) within the deadlines established in a NON issued by MassDEP in December 2012. New deadlines were set in the ACOP to return to compliance with the submittal of a Temporary or Permanent Solution, or a Remedy Operation Status Submittal. In addition, the PRP agreed to pay \$3,000, with an additional penalty of \$27,000 suspended, pending compliance with the ACOP.
- **ACOP, \$30,000, April 2015:** MassDEP executed an ACOP with a property owner (the PRP) for failure meet MCP deadlines set out in an Amended NON from October 2014. The ACOP requires a Phase II Report, Phase III Report, Phase IV Report and a Permanent or Temporary Solution Statement for the Site. The ACOP contains a \$30,000 penalty with \$2,000 payable and \$28,000 suspended and a stipulated penalty provision for any missed ACOP deadlines.
- **UAO/PAN, \$30,860, December 2014:** BWSC issued a UAO and a \$30,860 PAN against a commercial property owner (the PRP) for failing to conduct response actions at a former gasoline service station. In 1993, leaking underground storage tanks were removed from the site and MassDEP was notified of the release. The PRP initially engaged an LSP and conducted response actions at the site; however, the PRP stopped conducting response actions and failed to file a Permanent Solution Statement. In May of 2013, MassDEP had issued a NON to the PRP requiring continued response actions at the site. The PRP has not complied with the NON.

- **ACOP, \$44,375, October 2014:** MassDEP executed an ACOP with a realty company for violations of the MCP regarding the excavation and movement of contaminated soil prior to and during construction of a residential property on a Tier ID Site. A RAM, Tier Classification, Phase II and Phase III report were not submitted to MassDEP prior to or in conjunction with the property development. The Site was not Tier Classified within one year of reporting. Soil on the property was relocated without filing a RAM Plan. The ACOP contains a **\$44,375** penalty with \$30,000 paid, \$14,375 suspended and a stipulated penalty provision for any missed ACOP deadlines.
- **Consent Judgment, \$265,000, January 2015:** Suffolk Superior Court entered a Consent Judgment against a company (the PRP) after the Attorney General's Office and MassDEP filed a complaint alleging a PRP had violated the MCP at a former silversmith facility. An audit and site inspections performed by BWSC staff identified numerous MCP violations including vapor intrusion of trichloroethylene (TCE) and perchloroethylene (PCE) into several residences. Insufficient site characterization and the improper use of remedial additives at the Site had resulted in migration of the TCE/PCE and subsequent impact on the residences. The Consent Judgment requires the PRP to pay a civil penalty of **\$205,000** and **reimbursement of \$60,000 for MassDEP response action costs** and established deadlines for revised MCP submissions. The Site had been in Remedy Operation Status (ROS), but MassDEP terminated ROS in March 2011 for failure to meet ROS performance standards. A revised Phase II Comprehensive Site Assessment was submitted by the PRP in October 2014; a revised Phase III is in 2015.

## 2014 Intern Project Results

A couple months ago, when the Audit chiefs met with the LSPA, we were asked about last year's Boston intern project and whether we were still going to present the findings. Given that there were some glitches in the project (e.g., not all of the documents were located) we had been hesitant to post the findings, but acknowledged that the percentages in the documents that *were* reviewed were probably pretty close to typical even if the list of sites was incomplete, so we agreed to present them here..

The intern was asked to review higher level enforcement documents for calendar year 2013. Select information was collected (e.g., type of site, HLE, penalties, etc.) from which the intern analyzed the relative percentages. A table with the various citations was also created.

The percentages for the most common violations were calculated as follows:

- Missing response action deadlines (310 CMR 0.0560) comprised: 18% of all HLE
- Tier Classification issues (310 CMR 40.501) 6%
- RAM related HLE (310 CMR 40.0443): 6%
- Missing IRA Status reports and Remedial Monitoring Reports (310 CMR 40.0425): 6%
- Missing approval conditions, deadlines or other requirements for IRAs (310 CMR 40.0420): 6%
- Failure to meet notification requirements for notification for Two-Hour release notification conditions (310 CMR 40.0311): 6%

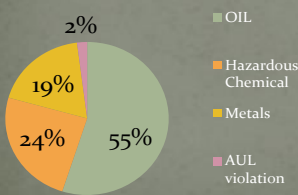
Two tables were included in the report, one with the overview of origins of penalties, penalty types, major percentages and relative dollar amounts and one with pretty much every kind of violation.

## Evaluation of BWSC Audit/Enforcement Actions to identify trends

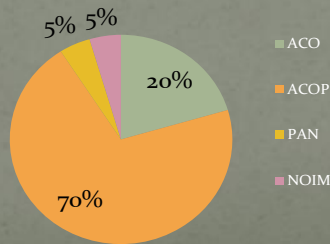
### Description of Duties:

- Review BWSC High Level Enforcement for calendar year 2013 in the electronic data bases.
- Compile a list of the types of violations that led to enforcement.
- Create a summary table of results for the time period.

#### Origin of Penalty (Releases)



#### Penalty Types



#### ACOP/PAN Fiscal Penalties

