



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Central Regional Office • 8 New Bond Street, Worcester MA 01606 • 508-792-7650

Maura T. Healey
Governor

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Lieutenant Governor

Rebecca L. Tepper
Secretary

Gary Moran
Acting Commissioner

January 24, 2023

Grafton & Upton Railroad Company
42 Westborough Road
North Grafton, MA 01536
mmilanoski@graftonuptonrr.com

Re: Grafton & Upton Railroad
Property
364 West Street
Hopedale

RTN 2-0022153

Attention: Michal Milanoski

NOTICE OF RESPONSIBILITY
M.G.L. C. 21E, 310 CMR 40.0000
URGENT LEGAL MATTER: PROMPT ACTION NECESSARY

Dear Mr. Milanoski:

Thank you for submitting the Release Notification Form to the Massachusetts Department of Environmental Protection, Bureau of Waste Site Cleanup (MassDEP) on November 18, 2022. Your submittal presents MassDEP with information that the property at 364 West Street, Hopedale, MA (the site) has been subject to a release to the environment indicated by the presence of lead at concentrations that exceed the applicable Reportable Concentrations. Based on this information, MassDEP has reason to believe that the property, or portions thereof, is a disposal site that requires a response action. MassDEP has assigned Release Tracking Number (RTN) 2-0022153 to the disposal site.

The Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, which is implemented through regulations promulgated by MassDEP, governs the cleanup of disposal sites. These regulations are referred to as the Massachusetts Contingency Plan, (the MCP), and are codified at 310 CMR 40.0000. MassDEP wishes to ensure that you are aware of your rights and responsibilities under M.G.L. c. 21E and the MCP.

In your submittal, you (as used in this notice, “you” refers to Grafton & Upton Railroad Company) identify yourself as a party with potential liability for response action costs and damages under M.G.L. c. 21E, §5. This liability is “strict”, meaning it is not based on fault, but solely on your status as owner of the disposal site. This notice and the attached summary are intended to provide you

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

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with information about liability under Chapter 21E to assist you in deciding what actions to take in response to the conditions that are present at this disposal site.

You should be aware that you might have claims against third parties for damages, including claims for contribution or reimbursement for the costs of cleanup. Such claims do not exist indefinitely but are governed by laws that establish the time allowed for bringing litigation. MassDEP encourages you to take any action necessary to protect any such claims you may have against third parties.

SITE INFORMATION

On November 18, 2022, MassDEP received a Release Notification Form (RNF) from you for a release of oil and/or hazardous materials (OHM) to the soil at 364 West Street, Hopedale. The RNF reports the presence of the following OHM at concentrations that exceed the Reportable Concentrations for Soil Category RCS-2. The Department notes that an Imminent Hazard Evaluation prepared on your behalf by the LSP/consulting firm, Verdantas LLC was submitted along with the RNF. The Imminent Hazard Evaluation indicates that an Imminent Hazard is not currently present at the site. The Imminent Hazard Evaluation also indicates that additional assessment will be completed at the site and that a Release Abatement Measure (RAM) Plan proposing excavation and proper disposal of lead contaminated soil is likely forthcoming for the site.

<u>Chemical</u>	<u>SOIL (mg/kg)</u> <u>Site Concentration</u>	<u>RCS-2</u>
Lead	5,780	600

NECESSARY RESPONSE ACTIONS AND APPLICABLE DEADLINES

November 18, 2022, is the date of release notification for RTN 2-0022153. Unless otherwise stated, this date will be the baseline for calculating compliance of this disposal site with the deadlines contained in the MCP.

No disposal site will be deemed to have had all the necessary and required response actions taken for it unless and until all substantial hazards presented by the release and/or threat of release have been eliminated and a level of no significant risk exists or has been achieved in compliance with M.G.L. c. 21E and the MCP. The MCP requires persons undertaking response actions at a disposal site to submit to MassDEP a Permanent Solution Statement prepared by a Licensed Site Professional (LSP) upon determining that a level of no significant risk exists or has been achieved at the disposal site.

Unless otherwise provided by MassDEP, responsible parties have one year from the initial date notice of a release or threat of release is provided to MassDEP pursuant to 310 CMR 40.0300 or from the date MassDEP issues a Notice of Responsibility, whichever occurs earlier, to file with MassDEP one of the following submittals: (1) a completed Tier Classification Submittal; or (2) a Permanent Solution Statement; or if applicable, (3) a Downgradient Property Status Submittal.

Unless otherwise specified by MassDEP, the deadline for these submittals for this disposal site is **November 18, 2023**.

The MCP requires responsible parties and any other person undertaking response actions to perform Immediate Response Actions in response to sudden releases, Imminent Hazards and Conditions of Substantial Release Migration. Such persons must continue to evaluate the need for Immediate Response Actions and notify MassDEP immediately if such a need exists.

PROCEDURES TO FOLLOW TO UNDERTAKE RESPONSE ACTIONS

MassDEP encourages parties having liability under M.G.L. c. 21E to take prompt action in response to releases and threats of release of oil and hazardous materials. By taking prompt action, liable parties may significantly lower cleanup costs and avoid the imposition of, or reduce the amount of, certain permit and/or annual compliance assurance fees payable under 310 CMR 4.00.

You must continue to employ or engage a Licensed Site Professional (LSP) to manage, supervise or perform all response actions that you intend to undertake at this disposal site. You may obtain a list of the names and addresses of LSPs by visiting <http://www.mass.gov/eea/agencies/lsp>, by contacting the Board of Registration of Hazardous Waste Site Cleanup Professionals by telephone at (617) 556-1091, or in person or by mail at 100 Cambridge Street, 9th Floor, Boston, Massachusetts 02114.

All submittals for this Disposal Site that require an LSP Opinion must be submitted through eDEP, MassDEP's electronic document and form submittal repository. For more information on electronic submittal of forms and reports, please visit MassDEP's website, <http://www.mass.gov/eea/agencies/massdep/service/online/edep-online-filing.html>.

If you have any further questions, please contact Phil Olson of this office at philip.olson@mass.gov. All future correspondence and communications regarding this disposal site should reference **RTN 2-0022153**.

Sincerely,



Anthony F. Kurpaska
Section Chief
Emergency Response & Risk Reduction
Bureau of Waste Site Cleanup

AFK/RED/pwo

Enclosures: Summary of Liability Under Chapter 21E, Summary of Fees, Communications Document

ecc: Hopedale Board of Health; cvilla@hopedale-ma.gov
Angela Boyd, LSP; angelavboyd@comcast.net
Database Entry [[NOR/ISSUED](#)]
File

SUMMARY OF LIABILITY UNDER CHAPTER 21E

As stated in the Notice of Responsibility accompanying this summary, MassDEP has reason to believe that you are a Potentially Responsible Party ("PRP") with potential liability under M.G.L. c. 21E, section 5, for response action costs and damages to natural resources caused by the release and/or threat of release. MassDEP has identified you as a PRP because it believes you fall within one or more of the following categories of persons made potentially liable by subsection 5(a):

- any current owner or operator of a site from or at which there is or has been a release or threat of release of oil and/or hazardous material;
- any person who owned or operated a site at the time hazardous material was stored or disposed of;
- any person who arranged for the transport, disposal, storage or treatment of hazardous material to or at a site;
- any person who transported hazardous material to a transport, disposal, storage or treatment site from which there is or has been a release or threat of release of such material; and
- any person who otherwise caused or is legally responsible for a release or threat of release of oil or hazardous material at a site.

For purposes of the MCP, you are considered a Responsible Party ("RP") with actual liability under Chapter 21E if you fall within one of these categories unless you (1) are entitled to a defense under section 5 or other applicable law, and (2) have reasonably incurred cleanup costs in an amount equal to or greater than any applicable cap on liability under subsection 5(d).

This liability is "strict," meaning it is not based on fault, but solely on your status as an owner, operator, generator, transporter or disposer. It is also joint and several, meaning that each person who falls within one of these categories may be held liable for all response action costs incurred at the site, regardless of the existence of any other liable parties.

Section 5 provides a few narrowly drawn defenses to liability, including a defense for releases and damages caused by an act of God, an act of war or an act by a third party other than an employee, agent or person with whom the party has a contractual relationship (*see* subsection 5(c)); a defense for certain owners of residential property at which the owner maintains a permanent residence (*see* subsection 5(h)); and a defense for certain public utilities and agencies of the Commonwealth which own a right-of-way that is a site (*see* subsection 5(j)).

You may voluntarily undertake response actions under the MCP without having your liability under Chapter 21E formally adjudicated by MassDEP. If you do not take the necessary response actions, or fail to perform them in an appropriate and timely manner, MassDEP is authorized by Chapter 21E to perform the necessary work.

By taking the necessary response actions, you can avoid liability for response action costs incurred by MassDEP in performing these actions. If you are an RP and you fail to perform necessary response actions at the site, you may be held liable for up to three (3) times all response action costs incurred by MassDEP and sanctions may be imposed on you for failure to perform response actions required by the MCP.

Response action costs include, without limitation, the cost of direct hours spent by Department employees arranging for response actions or overseeing work performed by persons other than MassDEP or its contractors, expenses incurred by MassDEP in support of those direct hours, and payments to MassDEP's contractors (for more detail on cost liability, *see* 310 CMR 40.1200: Cost Recovery). MassDEP may also assess interest on costs incurred at the rate of twelve percent (12%), compounded annually.

Any liability to the Commonwealth under Chapter 21E constitutes a debt to the Commonwealth. To secure payment of this debt, MassDEP may place liens on all of your property in the Commonwealth under M.G.L. c. 21E, section 13. To recover this debt, the Commonwealth may foreclose on these liens or the Attorney General may bring legal action against you.

In addition to your potential liability for response action costs and damages to natural resources caused by the release, civil and criminal liability may also be imposed by a court of competent jurisdiction under M.G.L. c. 21E, section 11, and civil administrative penalties may be assessed by MassDEP under M.G.L. c. 21A, section 16, for each violation of Chapter 21E, the MCP or any order, permit or approval issued thereunder.

If you are an RP and you have reason to believe that your performance of the necessary response actions is beyond your technical, financial or legal ability, you should promptly notify MassDEP in writing of your inability in accordance with Chapter 21E, subsection 5(e), and 310 CMR 40.0172. If you assert and demonstrate in compliance therewith that performing or paying for such response action is beyond your ability, subsection 5(e) provides you with a limited defense to an action by the Commonwealth for recovery of two to three times MassDEP's response action costs and 310 CMR 40.0172 provides you with a limited defense to MassDEP's assessment of civil administrative penalties.



Massachusetts Department of Environmental Protection
One Winter Street, Boston MA 02108 • Phone: 857 262-0606
Communication for Non-English-Speaking Parties - 310 CMR 1.03(5)(a)



1 English:

This document is important and should be translated immediately. If you need this document translated, please contact MassDEP’s Diversity Director at the telephone numbers listed below.



2 Español (Spanish):

Este documento es importante y debe ser traducido inmediatamente. Si necesita este documento traducido, comuníquese con el Director de Diversidad de MassDEP a los números de teléfono que aparecen más abajo.



3 Português (Portuguese):

Este documento é importante e deve ser traduzido imediatamente. Se você precisa deste documento traduzido, entre em contato com Diretor de Diversidade da MassDEP para os números de telefone listados abaixo.



4(a) 中國（傳統） (Chinese (Traditional)):

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與 MassDEP 的多元化總監聯繫。



4(b) 中国（简体中文） (Chinese (Simplified)):

本文件非常重要，应立即翻译。如果您需要翻译这份文件，请用下面列出的电话号码与 MassDEP 的多元化总监联系。



5 Ayisyen (franse kreyòl) (Haitian) (French Creole):

Dokiman sa-a se yon bagay enpòtan epi yo ta dwe tradui imedyatman. Si ou bezwen dokiman sa a tradui, tanpri kontakte Divèsite Direktè MassDEP a nan nimewo telefòn ki nan lis pi ba a.



6 Việt (Vietnamese):

Tài liệu này rất quan trọng và cần được dịch ngay lập tức. Nếu bạn cần dịch tài liệu này, xin vui lòng liên hệ với Giám đốc Đa dạng của MassDEP theo các số điện thoại được liệt kê dưới đây.



7 ប្រទេសកម្ពុជា (Kmer (Cambodian)):

ឯកសារនេះគឺមានសារៈសំខាន់និងគួរត្រូវបានបកប្រែភ្លាម។ ប្រសិនបើអ្នកត្រូវបានបកប្រែឯកសារនេះសូមទំនាក់ទំនងឆ្នោតជំនួយកម្មវិធី MassDEP នៅលេខទូរស័ព្ទដែលបានរាយខាងក្រោម។



8 Kriolu Kabuverdianu (Cape Verdean):

Es documento é importante e deve ser traduzido imidiatamente. Se bo precisa des documento traduzido, por favor contacta Director de Diversidade na MassDEP’s pa es numero indicode li d’boche.



9 Русский язык (Russian):

Это важный документ и он должен быть безотлагательно переведен. Если вам нужен перевод данного документа, пожалуйста, свяжитесь с директором по разнообразию компании MassDEP по телефону указанному ниже



10 العربية (Arabic):

هذه الوثيقة مهمة ويجب ترجمتها على الفور. إذا كنت بحاجة إلى هذه الوثيقة المترجمة، يرجى الاتصال بمدير التنوع في PMassDE على أرقام الهواتف المدرجة أدناه.



11 한국어 (Korean):

이 문서는 중요하고 즉시 번역해야 합니다. 이 문서의 번역이 필요하시다면, 아래의 전화 번호로 MassDEP의 다양성 감독에 문의하시기 바랍니다.



12 հայերեն (Armenian):

Այս փաստաթուղթը շատ կարևոր է եւ պէտք է թարգմանել անմիջապես. Եթե Ձեզ անհրաժեշտ է այս փաստաթուղթը թարգմանվել դիմել MassDEP բազմազանությունը տնօրեն է հեռախոսահամարների թվարկված են ստորև.



13 فارسی (Farsi [Persian]):

این سند مهم است و باید فوراً ترجمه شده است. اگر شما نیاز به این سند ترجمه شده، لطفاً با ما تماس تنوع مدیر PMassDE در شماره تلفن های ذکر شده در زیر.



14 Français (French):

Ce document est important et devrait être traduit immédiatement. Si vous avez besoin de ce document traduit, s'il vous plaît communiquer avec le directeur de la diversité MassDEP aux numéros de téléphone indiqués ci-dessous.



15 Deutsch (German):

Dieses Dokument ist wichtig und sollte sofort übersetzt werden. Sofern Sie die Übersetzung von diesem Dokument benötigen, wenden Sie sich bitte an den Diversity Director MassDEP unter der unten aufgeführten Telefonnummer.



16 Ελληνική (Greek):

Το παρόν έγγραφο είναι σημαντικό και θα πρέπει να μεταφραστεί αμέσως. Αν χρειάζεστε μετάφραση του παρόντος εγγράφου, παρακαλούμε επικοινωνήστε με τον Διευθυντή Διαφορετικότητας του MassDEP στους αριθμούς τηλεφώνου που αναγράφονται παρακάτω.



17 Italiano (Italian):

Questo documento è importante e dovrebbe essere tradotto immediatamente. Se avete bisogno di questo documento tradotto, si prega di contattare il Direttore di Diversità di MassDEP ai numeri di telefono elencati di seguito.



18 Język Polski (Polish):

Dokument ten jest ważny i powinien zostać natychmiast przetłumaczony. Jeśli potrzebujesz przetłumaczonej wersji dokumentu, prosimy o kontakt z dyrektorem ds. różnorodności MassDEP pod jednym z numerów telefonu wymienionych poniżej.



19 हिन्दी (Hindi):

यह दस्तावेज़ महत्वपूर्ण है और तुरंत अनुवाद किया जाना चाहिए. यदि आपको इस दस्तावेज़ का अनुवाद करने की आवश्यकता है, तो कृपया नीचे सूचीबद्ध टेलीफोन नंबरों पर मासडेप्ट डाइवर्सिटी के निदेशक से संपर्क करें।.

Please Be Aware of MassDEP Fees

Unless response actions at this site are completed within one year of the release notification date, you will be billed an Annual Compliance Assurance Fee by MassDEP for each year thereafter up to and including the year in which a Permanent Solution is achieved and filed for this disposal site. Annual Compliance Assurance Fees cover a portion of MassDEP's costs for ensuring compliance of response actions with the Massachusetts Contingency Plan. Annual Compliance Assurance Fees are issued pursuant to M.G.L. chapter 21E Section 3B and 310 CMR 4.00, the *Timely Action Schedule and Fee Provisions*. Fee categories and rates are summarized on the reverse side. Fees invoiced by MassDEP are considered a debt to the Commonwealth. Unpaid fee invoices are typically referred for collection action. Contact your Licensed Site Professional to discuss what is necessary to *complete the response actions required for this site as quickly as possible*. For more information on the Annual Compliance Assurance Fees that apply in your case, see <http://www.mass.gov/eea/agencies/massdep/cleanup/grants/waste-site-cleanup-fees.html> or contact your Licensed Site Professional or the MassDEP Fee inquiry line at (617) 292-5545.

A thorough & timely cleanup will result in fewer MassDEP Fees.

OVER →

SUMMARY OF MassDEP ANNUAL COMPLIANCE ASSURANCE FEES

Type	Fee Category	Timing of Submittal (for One-Time fees)			Fee Rate	
		Within 120 days of initial notification	After 120 days and prior to Tier Classification	After Tier Classification	Non-Homeowner	Homeowner ³
One-Time Fees ¹	Permanent Solution	---	Permanent Solution Fee	See Note ⁴	\$1,470	\$735
	RAM Plan	RAM Fee	RAM Fee	---	\$980	\$490
	DPS	DPS Fee	DPS Fee	---	\$1,965	\$1,965
	Notice of AUL	AUL Fee	AUL Fee	AUL Fee ⁵	\$2,000	\$1,000
Regular Annual Fees ²	Tier ID				\$4,915	\$2,455
	Tier I				\$4,320	\$1,225
	Tier II				\$2,455	\$1,225
	Temporary Solution				\$980	\$490
	Phase V				\$980	\$490

Notes: 1. One-Time Fees must be paid when submittal is made.

2. Regular Annual Fees are billed by MassDEP after Tier Classification; Fee Category is based on Status of site on each Annual Status Date. BWSC 12-5-2018

3: Completed Homeowner Certification Form BWSC120 is required to qualify for lower Homeowner fee rates.

4: One-Time Permanent Solution Fee also applies if site is Tier ID and submittal is made within first 90 days after initial Status Date.

5: One-Time AUL Fee is applicable for a Notice of AUL filed prior to or concurrent with a Permanent Solution.