

COMMONWEALTH OF MASSACHUSETTS
 EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 WESTERN REGIONAL OFFICE

Site:
 Break:
 Other: 6777

ARGEO PAUL CELLUCCI
 Governor

BOB DURAND
 Secretary

JANE SWIFT
 Lieutenant Governor

LAUREN A. LISS
 Commissioner

May 5, 2000

URGENT LEGAL MATTER: PROMPT ACTION NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Robert M. Alessio, President
 Berkshire Gas Company
 115 Cheshire Road
 Pittsfield, Massachusetts 01201

RE: Pittsfield
 Pittsfield Coal Gas
 Parcel I8-4-8, Deming Street
 RTN #1-13419

NOTICE OF RESPONSIBILITY & NOTICE OF RESPONSE ACTION
M.G.L. c. 21E, 310 CMR 40.0000

Dear Mr. Alessio:

The Department has learned that the above-referenced property has been subject to a release of oil and/or hazardous materials in unknown quantities. In June 1999, the United States Environmental Protection Agency (EPA) undertook systematic sampling activities in and along the East Branch of the Housatonic River from Lyman Street to the confluence of the East and West Branches in connection with an Engineering Evaluation/Cost Analysis the EPA is preparing. River sediments and riverbank soils were sampled and analyzed for a number of constituents, including polynuclear aromatic hydrocarbons (PAHs) and metals. Elevated levels of PAHs (above Massachusetts Contingency Plan Method 1 Standards) were found in a number of sediment and bank samples in the Deming Street area and in locations south of that area.

During those investigations, EPA's contractors observed free-phase oil and tar globules having a coal tar odor emanating from sediments and soils in several locations in the section of the river south of Elm Street and north of Dawes Avenue. An oil sample was collected for analysis from a location on Parcel I8-4-8 on Deming Street ("the property") approximately 90 feet south of the intersection of Deming and East Housatonic Streets. The sample was analyzed for PCBs and Appendix IX semivolatiles, inorganics, metals, and pesticides. Analysis of that sample detected metals and elevated levels of polynuclear

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

aromatic hydrocarbons (PAHs). PAHs were present at the following concentrations: 860 ppm anthracene; 1,400 ppm pyrene; 2,700 ppm phenanthrene; 4,400 ppm naphthalene; 140 ppm indeno(1,2,3-c,d)pyrene; 370 ppm acenaphthylene; 480 ppm chrysene; 420 ppm benzo(a)pyrene; 120 ppm benzo(ghi)perylene; 280 ppm benzo(b)fluoranthene; 1,400 ppm fluoranthene; 420 ppm benzo(k)fluoranthene; 43 ppm dibenzo(a,h)anthracene; 630 ppm benzo(a)anthracene; 820 ppm acenaphthene; and 950 ppm fluorene. Based on gas chromatography fingerprinting analyses, the oil appears to be a pyrogenic product, possibly a creosote, produced by a manufactured gas plant. The oil and elevated levels of PAHs in the soils and sediments may pose a significant risk of harm to health, safety, public welfare and the environment.

The Pittsfield Coal Gas Company (now the Berkshire Gas Company) operated a coal gasification facility at an adjacent location on Deming Street (then Water Street) from 1854 to 1902, before moving operations to the corner of East Street and Newell Street. The Pittsfield Coal Gas Company owned and/or operated its facility on the following parcels on Deming Street in Pittsfield: I8-26-2, I8-26-26, I8-26-27, I8-4-8, I8-2-5, I8-2-6, I8-2-7, I8-2-8, I8-2-9, and I8-2-10. In 1954, the Pittsfield Coal Gas Company reorganized under the new name of the Berkshire Gas Company.

Based on this information, the Department has reason to believe that Parcel I8-4-8 (and possibly other related properties, or portions thereof), is a disposal site for which a response action is required under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000. The Department has determined that actions to respond to a release of oil and/or hazardous material at the above-referenced site must proceed without further delay in order to protect public health, safety, welfare and/or the environment.

The Department has identified you as a party with potential liability for response action costs and damages under M.G.L. c. 21E, § 5, with respect to this disposal site. In light of this action, the Department wishes to ensure that you (as used in this notice, "you" refers to the Berkshire Gas Company) are aware of your rights and responsibilities under Chapter 21E and the Massachusetts Contingency Plan. The attached summary is intended to provide you with information about liability under Chapter 21E to assist you in deciding what actions to take in response to this notice.

You should also be aware that you may 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 which establish the time allowed for bringing litigation. The Department encourages you to take any action necessary to protect any such claims you may have against third parties.

Also, this notice provides you an opportunity to take actions independently, before the Department does so. Unless you promptly reply to this notice, the Department will perform the actions described below on or after May 22, 2000. Massachusetts General Law Chapter 21E, Section 4 authorizes the Department to take such response actions.

ACTIONS UNDERTAKEN TO DATE AT THE SITE

Information on file with the Department indicates that no response actions, other than the sampling activities described above, have been performed, to date, at this disposal site

NECESSARY RESPONSE ACTIONS AND APPLICABLE DEADLINES

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 the Department a Response Action Outcome Statement prepared by a Licensed Site Professional upon determining that a level of no significant risk already exists or has been achieved at the disposal site.

Unless otherwise provided by the Department, responsible parties have one year from the initial date notice of a release or threat of release is provided to the Department pursuant to 310 CMR 40.0300 or from the date the Department issues a Notice of Responsibility, whichever occurs earlier, to file with the Department one of the following submittals: (1) a completed Tier Classification Submittal; or (2) a Response Action Outcome Statement. If required by the MCP, a completed Tier I Permit Application must also accompany a Tier Classification Submittal. The deadline for these submittals for this disposal site is *May 5, 2001*.

In addition, the MCP requires responsible parties and any other person undertaking response actions at a disposal site 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 the Department immediately if such a need exists.

The Department has determined that Immediate Response Actions, including, but not limited to those described in the following paragraph, are necessary at this disposal site to respond to a Condition of Substantial Release Migration. The MCP requires that a Responsible Party submit to the Department an Immediate Response Action Plan (IRAP) prepared in accordance with 310 CMR 40.0424 to address this Condition of Substantial Release Migration within 60 days of the date of this Notice of Responsibility. Therefore, the deadline for submitting and IRAP is July 5, 2000. This deadline for this disposal site constitutes an enforceable Interim Deadline established pursuant to 310 CMR 40.0167.

PROCEDURES TO FOLLOW TO UNDERTAKE RESPONSE ACTIONS

The Department 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 (e.g., no annual compliance assurance fee is due for Response Action Outcome Statements submitted to the Department within 120 days of the initial date of release notification).

You must employ or engage a Licensed Site Professional to manage, supervise or actually perform all response actions which you intend to undertake at this disposal site. You may obtain a list of the names and addresses of Licensed Site Professionals by contacting the Board of Registration of Hazardous Waste Site Cleanup Professionals by telephone at (617) 556-1145 or in person or by mail at One Winter Street, 6th Floor, Boston, Massachusetts 02108.

RESPONSE ACTIONS THE DEPARTMENT INTENDS TO TAKE

The Department intends to perform the following Response Actions commencing as early as May 22, 2000:

- A minimum of eleven (11) deep borings will be advanced on the former Pittsfield Coal Gas Company property.
- A minimum of: three (3) borings will be advanced on parcel grouping A (Parcels I8-26-2, I8-26-26, and I8-26-27); three (3) borings will be advanced on parcel grouping B (Parcels, I8-2-5, I8-2-6, I8-2-7, I8-2-8, I8-2-9, and I8-2-10); and five (5) borings will be advanced on Parcel I8-4-8.
- Boring locations will be selected to concentrate on areas of expected contamination, such as tar separators, etc., and locations presumed to be downgradient of these facilities.
- Bedrock in this area lies within 18 to 30 feet below the ground surface. Borings will be advanced in a manner to prevent possible cross-contamination, and to the top of till or to bedrock, if till is not encountered, to ensure that any dense non-aqueous phase liquid (DNAPL) present at depth is observed.
- Borings will be logged over 2-foot intervals and samples shall be collected from representative intervals for analysis, based on evidence of staining, sheen, odor, etc.
- All soil samples will be analyzed for volatiles, semivolatiles, and inorganics.
- All borings will be converted to monitoring wells, screened at the depth of any observed DNAPL, or staining, in the absence of oil.
- Wells will be gauged on a monthly basis using oil/water interface probes.
- Groundwater samples will be collected during a minimum of one (1) monitoring round from the wells installed on parcel grouping A, and from wells located on Parcel I8-4-8 in locations downgradient of the former facility location. Groundwater samples will be analyzed for volatiles, semivolatiles, and inorganics.
- Upon completion of the investigations, the Department's contractor will submit a report summarizing its findings to the Department within 30 days of completing its investigations. This report will contain the contractor's conclusions concerning the nature and extent of soil contamination, and groundwater information, as well as any recommendations for future investigations to be performed at the site.

INTERIM DEADLINE FOR NOTIFICATION OF YOUR INTENT TO CONDUCT RESPONSE ACTIONS

Pursuant to 310 CMR 40.0167, the Department hereby established May 19, 2000 as an Interim Deadline by which you must respond in writing whether or not you intend to take Response Actions, including performing the IRA, as identified above. If you choose to perform the Response Actions described above in lieu of the Department, you must provide the Department the following information by 5:00 p.m. on *May 19, 2000*:

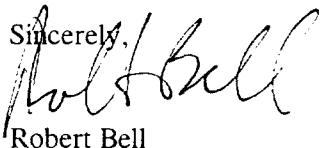
- (1) signed agreements with a Licensed Site Professional and an environmental clean-up contractor experienced in conducting response actions under M.G.L. c. 21E to perform the Response Actions;
- (2) a strict timetable for conducting the Response Actions that includes submitting to the Department a

report summarizing the findings of the Immediate response Action investigations by no later than September 5, 2000;

- (3) a certification that you have sufficient financial resources to timely complete the Response Actions; and,
- (4) a completed Release Notification & Notification Retraction Form (Form BWSC-103, attached).

If you fail to notify the Department that you intend to perform the work as indicated above, or fail to undertake the necessary response actions in accordance with the MCP, the Department may perform the necessary response actions and take appropriate legal action against you, including cost recovery activities.

If you have any further questions, please contact J. Lyn Cutler at the letterhead address or at (413) 755-2116. All future correspondence regarding the disposal site should reference the following Release Tracking Number: 1-13419.

Sincerely,

Robert Bell
Acting Deputy Regional Director
Bureau of Waste Site Cleanup

Certified Mail, return receipt requested: Z 790 979 023

Enclosures
RB/SJS
Berkgasdemnor

cc: Pittsfield Health Commissioner
Mayor Gerald Doyle
Alan Weinberg, Acting Regional Director
J. Lyn Cutler, DEP
Susan Steenstrup, DEP
Bryan Olson, EPA Region 1
Chester Janowski, EPA Region 1
Dean Tagliaferro, EPA Region 1
John Kilborn, Esq., EPA Region 1
Property owners: Parcel I8-4-8
Site File GESD04

SUMMARY OF LIABILITY UNDER CHAPTER 21E

As stated in the Notice of Responsibility accompanying this summary, the Department 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. The Department 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 the Department. If you do not take the necessary response actions, or fail to perform them in an appropriate and timely manner, the Department 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 the Department 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 the Department 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 the Department or its contractors, expenses incurred by the Department in support of those direct hours, and payments to the Department's contractors (for more detail on cost liability, *see* 310 CMR 40.1200: Cost Recovery). The Department 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, the Department 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 the Department 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 a 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 the Department 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 the Department's response action costs and 310 CMR 40.0172 provides you with a limited defense to the Department's assessment of civil administrative penalties.