



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

20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

MITT ROMNEY  
Governor

KERRY HEALEY  
Lieutenant Governor

ELLEN ROY HERZFELDER  
Secretary

ROBERT W. GOLLEDGE, Jr.  
Commissioner

November 26, 2003

Mr. Najib Badaoui, President  
Eagle Gas, Inc.  
131 Main Street  
Carver, Massachusetts 02330

RE: CARVER-BWSC  
RTN: 4-17825  
131 Main Street  
NON-SE-03-3T-109

**NOTICE OF NONCOMPLIANCE**

THIS IS AN IMPORTANT NOTICE. FAILURE TO TAKE ADEQUATE ACTION IN RESPONSE TO THIS NOTICE COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.

Dear Mr. Badaoui:

The Massachusetts Department of Environmental Protection, Bureau of Waste Site Cleanup (the "Department"), is tasked with ensuring the permanent cleanup of oil and hazardous material releases pursuant to Massachusetts General Law Chapter 21E ("Chapter 21E"). The law is implemented through regulations known as the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP").

Through the MCP, the Department is currently regulating a release of oil and/or hazardous material that has occurred at 131 Main Street in Carver, Massachusetts. The Department was first notified of the release on May 16, 2003.

The Department's records indicate that you (as used in this Notice, "you" collectively refers to Eagle Gas, Inc.) are a Potentially Responsible Party ("PRP") for this release.

This Notice is provided to inform you that you are not in compliance with the MCP. The Department has no record of your completing the response actions required by the MCP to address the release reported on May 16, 2003 and assigned Release Tracking Number 4-17825.

Attachment A of this Notice is a Noncompliance Summary sheet that outlines the provisions of the MCP that you have not complied with. Contained within the Noncompliance Summary are the necessary action(s) you must complete to return to compliance. Additionally, there is a prescribed deadline for your completion of the action(s).

This information is available in alternate format. Call April McCabe, ADA Coordinator at 1-617-556-1171. TDD Service - 1-800-298-2207.

DEP on the World Wide Web: <http://www.mass.gov/dep>

Printed on Recycled Paper

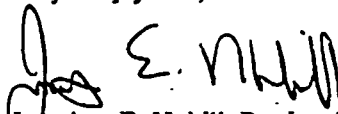
The Department may assess a Civil Administrative Penalty potentially in excess of several thousand dollars if you continue to be in noncompliance with the violation(s) cited herein.

Notwithstanding this Notice of Noncompliance ("NON"), the Department reserves the right to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including, but not limited to, criminal prosecution, civil action including court-imposed civil penalties, or administrative penalties assessed by the Department.

Finally, Attachment 2 of this Notice is a fact sheet containing supplemental information regarding this NON.

If you have any questions regarding this matter, or if you would like to discuss compliance with this Notice, please contact Cynthia Baran, at the letterhead address or by telephone at (508) 946-2887. All future communications regarding this matter must reference Release Tracking Number 4-17825.

Very truly yours,

  
Jonathan E. Hobill, Regional Engineer  
Bureau of Waste Site Cleanup

H/CAB/rt

Attachments: Attachment 1: Noncompliance Summary Sheet  
Attachment 2: Supplemental Information Regarding This Notice of Noncompliance

CERTIFIED MAIL # 7003 2260 0005 0942 5359  
NON-60 DAY TIMELINE/4-17825 NON 109

fc: Town of Carver  
Board of Selectmen  
(508) 866-4213

Town of Carver  
Board of Health  
(508) 866-4213

Town of Carver  
Fire Department  
(508) 866-4408

DEP-SERO  
cc: Attn: Regional Enforcement Office (2 Copies)  
ec: Data Entry

**ATTACHMENT 1**

**NOTICE OF NONCOMPLIANCE**  
**NONCOMPLIANCE SUMMARY**

**ENTITY/POTENTIALLY RESPONSIBLE PARTY IN NONCOMPLIANCE:**

Mr. Najib Badaoui, President  
Eagle Gas, Inc.  
131 Main Street  
Carver, Massachusetts 02330

**LOCATION WHERE NONCOMPLIANCE OCCURRED OR WAS OBSERVED:**

Eagle Gas, Inc.  
131 Main Street  
Carver, Massachusetts 02330  
RTN:4-17825

**DATE(S) WHEN NONCOMPLIANCE OCCURRED OR WAS OBSERVED:**

July 16, 2003 – The date when a Release Notification Form (RNF) and Immediate Response Action (IRA) Plan were due to be submitted to the Department.

**DESCRIPTION OF ACTIVITY OR CONDITION RESULTING IN NONCOMPLIANCE:**

1. You have failed to submit a Release Notification Form (RNF) to the Department as required by 310 CMR 40.0333 and 40.0336.
2. You have failed to submit either an Immediate Response Action Plan, an Immediate Response Action Completion Report, or a Response Action Outcome Statement to the Department as required by 310 CMR 40.0420(7), 310 CMR 40.0427 and 310 CMR 40.1000, respectively.

**DESCRIPTION OF REQUIREMENT NOT COMPLIED WITH:**

1. Pursuant to 310 CMR 40.0333 and 40.0336, persons described in 310 CMR 40.0331(1) shall submit to the Department a completed Release Notification Form within the earliest of the following dates:
  - a) within sixty (60) days of your notifying the Department of the release condition, or,
  - b) within sixty (60) days of your receipt of a Notice of Responsibility (NOR) from the Department.
2. Pursuant to 310 CMR 40.420(7), an Immediate Response Action Plan shall be submitted to the Department within 60 days of providing oral notification to the Department of a '2 Hour' or '72 Hour' Release.

anniversary date, we must assume that you are not implementing any cleanup at all. Without your cooperation in obtaining the cleanup information, the Department does not know whether serious environmental problems are being addressed. If work is not being performed, the Department must take action to ensure it happens. On the other hand, you may have finished the cleanup but neglected to forward the cleanup documentation required by the MCP.

#### **What do I have to do to comply with the NON?**

First, all response actions not directly managed by the Department staff must be overseen and directed by a "Licensed Site Professional" or LSP. LSPs are licensed by the Commonwealth, and their stamp and signature are required (together with yours) on all but one form you must submit to the Department. If you don't already have the forms and information required for you to comply with this NON, contact the consultant and/or cleanup contractor who worked on your cleanup. If you have not undertaken any cleanup work, contact an LSP immediately. A list of LSPs may be obtained by calling (617) 556-1091 or viewing the list on the Internet at <http://www.state.ma.us/lsp>.

The documents you must submit to the Department require LSP stamp and signature. For example, when a cleanup is completely finished, the MCP requires that you submit a document called a "Response Action Outcome" (RAO) to the Department in which you attest that you have completed the cleanup in accordance with the MCP. If you do not submit an RAO to the Department, the case remains open in the Department's files even if the fieldwork is completely finished. If you received this NON and you think the fieldwork is completely finished, call your cleanup contractor and LSP to find out how to have an RAO prepared and submitted to the Department.

If more environmental studies or cleanup are needed (for example, following the initial cleanup of a highway spill or soil contamination found during a tank replacement), you must submit forms describing your plans to continue the work in a timely manner. Again, these forms must contain an LSP's stamp and signature, and be co-signed by you. Depending on the circumstances, the possible submittals are an Immediate Response Action (IRA) Plan, IRA Status Report, IRA Completion Statement, and/or a Tier Classification Submittal and Tier I Permit Application.

You should also be aware that the Department does not become involved in or help mediate billing disputes with insurance companies, cleanup contractors, or LSPs. A common response to a NON is that an insurance company is slow on paying cleanup bills or will not cover various cleanup costs. We also hear that cleanup firms and LSPs will not send in RAOs and other forms because their clients have not paid their bills. These matters must be resolved privately by you. You ultimately must comply with the attached NON or be subject to significant penalties from the Department.

## ATTACHMENT 2:

### SUPPLEMENTAL INFORMATION REGARDING THIS NOTICE OF NONCOMPLIANCE

This attachment further explains why this Notice of Noncompliance (NON) has been issued to you.

#### Why was I issued this NON?

The Department's records indicate that you have not submitted one or more of the documents listed in the attached NON. This NON was issued to inform you of this fact and offer you an opportunity to come back into compliance by submitting the missing information to the Department by the deadlines specified in the NON. You are listed in the Department's records as the person who is responsible for cleaning up the release cited in the attached NON. For example, at the time you or another party notified the Department that the release occurred, you either informed the Department that you accepted responsibility for the cleanup or you were sent a "Notice of Responsibility" (NOR) by the Department informing you that we found you responsible for the release. In either case, the Department has reason to believe that you are an owner, operator, generator, transporter, disposer, or person who otherwise caused the release or threat of release of oil and/or hazardous materials cited in the attached NON. This means that, under Section 5 of M.G.L. Chapter 21E, you are a *Potentially Responsible Party* (PRP) and liable for response action costs associated with the release. As a PRP, you are required to conduct and complete certain response actions outlined in the MCP to clean up the release of oil and/or hazardous materials expeditiously.

#### What happens if I fail to comply with or respond to the NON?

You have thirty (30) days from the date you receive the NON to comply. If you fail to comply, you will be assessed a penalty by the Department.

Your total penalty exposure can be considerable. For example, penalties can be assessed for each day you remain in noncompliance. Note that the Department is allowed by law to back calculate daily penalties to begin on the date you received the NON. You can be penalized thousands of dollars should you fail to comply with or respond to the NON by the 30-day deadline. Please refer to the Civil Administrative Penalty Statute, Chapter 21A, Section 16 and 310 CMR 5.00, the Civil Administrative Penalty Regulations, for complete details on the Administrative Penalty rules.

#### When the cleanup contractor finished the work in the field, I thought my dealings with the Department were finished. What more do I have to do?

This is a common question asked when a NON is received. PRPs often think their dealings with the Department are over when, for example, the fieldwork is completed by a cleanup contractor. Examples of this type of fieldwork include cleaning up a spill from a saddle tank leak on a roadway, or removing contaminated soil from a tank grave during a tank replacement or oil-contaminated debris from a storage tank after a fire. The fieldwork may be complete, but you still must submit some paperwork to the Department to prove that the cleanup was undertaken in compliance with the MCP.

The MCP includes deadlines by which you must complete response actions and submit information about those response actions to the Department. We track the progress of cleanups by checking to see if you are sending information about your cleanup progress to the Department on time. For example, if we do not receive a Response Action Outcome Statement (RAO) before the 1-year anniversary date of the release, we must assume that the environmental cleanup has not been completed. For work to continue after the 1-year anniversary date of the release, the MCP requires that you submit a Tier I or Tier II Classification to the Department. If the Department does not receive either an RAO or Tier Classification by the 1-year

**DESCRIPTION AND DEADLINES OF ACTIONS TO BE TAKEN:**

To avoid imposition of a Civil Administrative Penalty in excess of several thousand dollars for violations of the MCP, you must complete the following action(s) within thirty (30) days of your receipt of this NON:

1. Submit to the Department a completed Release Notification Form.
2. Submit to the Department a completed Immediate Response Action (IRA) Plan. A separate IRA Plan is not required if the IRA has been completed; in that case, you must submit an IRA Completion Statement or, if applicable, a Response Action Outcome Statement to the Department.

**All items must be prepared in full accordance with the MCP.**

Notwithstanding this NON, the Department reserves the right to exercise the full extent of its legal authority to obtain full compliance with all applicable requirements, including but not limited to, criminal prosecution, civil action including court-imposed civil penalties, and Civil Administrative Penalties issued by the Department.