

LSP Board File Copy

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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CERTIFIED MAIL

November 6, 2003

Speedy Lube, Inc.
633 North Main Street
Randolph, MA 02368

Attn: Mr. Eyad Badawi
Vice President and Treasurer

Re: Randolph, RTN-~~3-15188~~
633 North Main Street
Invalid RAO
NON-NE-03-3A108

4-3015188

NOTICE OF AUDIT FINDINGS
NOTICE OF NONCOMPLIANCE

Dear Mr. Badawi:

On June 18, 2002, the Department of Environmental Protection (the Department) received a Class A-3 Response Action Outcome (RAO) Statement and Activity and Use Limitation (AUL) for the above-referenced site. The RAO and AUL were prepared by James J. Decoulos, the Licensed Site Professional (LSP) of Record, license #9360. The Department has conducted a technical file review audit of the submittals in order to ensure that they meet the requirements of Massachusetts laws and regulations, including Massachusetts General Law Chapter 21E (M.G.L.c.21E) and the Massachusetts Contingency Plan (MCP). The audit was performed by Department staff at the Northeast Regional Office.

AUDIT FINDINGS

Based on the information reviewed during the audit, the Department has determined that a condition of No Significant Risk (NSR) has not been achieved to support a Class A RAO for the subject site. Specifically, groundwater data provided in the RAO does not demonstrate that the source of release has been adequately controlled and/or eliminated, or that the extent of contamination has been adequately defined, to meet MCP requirements for site assessment and risk characterization.

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DETERMINATIONS

Pursuant to its authority under 310 CMR 40.0100(1)(e), the Department hereby determines the RAO submittal and LSP Opinion received on June 18, 2002 to be in noncompliance with M.G.L. c.21E and the MCP, and therefore, the RAO submittal is not valid. Because of the above conditions, further assessment and/or remediation in compliance with the MCP must be conducted at the site until a level of NSR can be achieved.

The activity that is in noncompliance and the actions the Department wants you to take to come into compliance are described in the Notice of Noncompliance (Attachment A). The Notice of Noncompliance describes: (1) each activity identified during the audit which is in noncompliance; (2) the requirements violated; (3) the action the Department now wants you to take; and (4) the deadline for taking this action.

In addition, the Notice of AUL must be terminated using the attached AUL termination form, including Exhibit A, the metes and bounds description of the property. It is noted that Exhibit A of the AUL is not a legal description of the property as required by 310 CMR 40.1074(2)(a)(2).

If you fail to come into compliance by the prescribed deadline(s), or if you otherwise fail to comply in the future with requirements applicable to you, you could be subject to legal action. Such action could include criminal prosecution, court imposed civil penalties, or civil administrative penalties assessed by the Department. A civil administrative penalty may be assessed for every day from now on that you remain out of compliance with the requirements described in the Notice of Noncompliance. The law provides for administrative penalties of up to \$25,000 per day for certain violations of the MCP through chapter 21A§16 and 310 CMR 5.00.

Post-Audit Completion Statement Required

When the site returns to compliance, you should submit to the Department a Post-Audit Completion Statement in accordance with 310 CMR 40.1170. The Post-Audit Completion Statement shall be submitted on a form established by the Department to the attention of Nancy M. White. A copy of the Post-Audit Completion Statement (BWSC-111) can be found on the DEP's website at www.state.ma.us/dep.

LICENSED SITE PROFESSIONAL

A copy of this Notice has been sent to James J. Decoulos, the LSP-of-Record for the disposal site. Please note that you, and not your LSP, are responsible for complying with the requirements contained in this Notice.

LIMITATIONS & RESERVATION OF RIGHTS

The Department's findings were based upon the certainty of the information received during the audit. These findings do not: (1) apply to actions or other aspects of the site that were not reviewed in the audit; (2) preclude future audits of past, current, or future actions at the site; (3) in any way constitute a release from any liability, obligation, action or penalty under M.G.L.c.21E, 310 CMR

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40.0000, or any other law, regulation, or requirement; or (4) limit the Department's authority to take or arrange, or to require any Responsible Party or Potentially Responsible Party to perform, any response action authorized by M.G.L.c.21e which the Department deems necessary to protect health, safety, public welfare or the environment.

If you have any questions regarding this Notice or any requirements contained in it, please contact Nancy White at 617-654-6571. Please reference the Release Tracking Number 3-15188 and Enforcement Tracking Number NON-NE-03-3A108 in any future correspondence to the Department regarding the site.

Sincerely,

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of the original document is on file with the DEP.

Richard J. Chalpin
Regional Engineer for the
Bureau of Waste Site Cleanup

Attachments: Notice of Noncompliance

cc: James J. Decoulos, PE, LSP, 248 Andover Street, Peabody, MA 01960
(w/Attachment A) via e-copy, [jamesj@decoulos.com]

Town of Randolph Board of Health, 1 Turner Lane, Randolph, MA 02368
(w/Attachment A) via e-copy, [info@Randolphboardofhealth.com]

DEP/NERO/Data Entry/Files/AUDCOM-NAFNON RAO-INVSUB
Thomas M. Potter, Audit Coordinator, DEP-Boston (y: directory)

Attachment A

NOTICE OF NONCOMPLIANCE
NON-NE-03-3A108

ENTITY IN NONCOMPLIANCE

Speedy Lube, Inc.

LOCATION WHERE NONCOMPLIANCE OCCURRED OR WAS OBSERVED

633 North Main Street, Randolph, MA

DATE WHEN NONCOMPLIANCE OCCURRED OR WAS OBSERVED

June 18, 2002 (RAO submittal date)

DESCRIPTION OF ACTIVITY IN NONCOMPLIANCE

1. **Violation of 310 CMR 40.1003(5) Asserting a Class A RAO without eliminating or controlling sources (Class II)**

As described in 310 CMR 40.1003(5), a Class A RAO shall not be achieved unless and until each source of oil and/or hazardous material which is resulting in an increase in concentrations of oil and/or hazardous material in an environmental medium either as a consequence of a direct discharge or through intermedia transfer of oil and/or hazardous material is eliminated or controlled.

2. **Violation of 310 CMR 40.0904(2) Failure to adequately define the horizontal and vertical extent and concentrations of oil and/or hazardous materials in all evaluated media (Class II)**

Pursuant to 310 CMR 40.0904(2), the documentation of the Risk Characterization shall contain a description of the source and the horizontal and vertical extent of the release of the oil and/or hazardous material.

3. **Violation of 310 CMR 40.0926(3)(b)(1) Failure to identify Exposure Point Concentrations (EPCs) that are conservative estimates of concentrations contacted by a receptor at the Exposure Point (Class II)**

Pursuant to 310 CMR 40.0926(3)(b)(1), in determining or estimating the EPC, the objective shall be to identify a conservative estimate of the arithmetic mean which represent the average concentration contacted by a receptor at the Exposure Point over the period of exposure...The use of upper percentile, or maximum concentrations is appropriate when a simple arithmetic average of the available data is likely to underestimate the true mean, including...evaluations of

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site conditions for which there is insufficient data or other information to adequately characterize the site (e.g., when there is insufficient data to adequately characterize the effects of seasonal variation on groundwater contaminant concentrations).

4. Violation of 310 CMR 40.0973(7) Failure to achieve a level of No Significant Risk (Class II)

Pursuant to 310 CMR 40.0973(7), a condition of No Significant Risk of harm to health, safety, public welfare and the environment exists if no exposure point concentration (EPC) is greater than the applicable MCP Method 1 soil or groundwater standard.

- The RAO report presents two rounds of groundwater data collected within four weeks of one another on May 10, 2002 and June 4 2002. The data show increasing levels of benzene, toluene, ethyl-benzene, xylenes (total BTEX), methyl tertiary butyl ether (MTBE), C5-C8 aliphatics, and C9-C10 aromatics at several on-site groundwater monitoring wells. In particular, benzene and total xylenes (meta-, para-, and ortho-) increased significantly at wells DMW-1 and MW-3R, while MTBE exhibited dramatic increases from 2,550 ug/L to 19,3030 ug/L at DMW-1 and from 34,200 ug/L to 69,800 ug/L at DMW-4, the two most downgradient wells at the site. Such conditions do not support that the source of the release has been eliminated or controlled, or that the extent of the plume has been adequately defined to evaluate potential exposure risks to downgradient receptors. The groundwater data does not provide sufficient information relative to seasonal fluctuations of the water table and contaminant concentrations in order to support an RAO.
- Relative to the risk characterization, data from the two groundwater sampling events were averaged to develop Exposure Point Concentrations (EPCs) for each contaminant at each well. The calculated EPCs do not represent conservative estimates of contaminant concentrations to which receptors may be exposed, since higher concentrations measured during the second groundwater monitoring event were effectively averaged down. It is notable that, despite this approach, the EPCs calculated for benzene, toluene, xylenes, MTBE, C5-C8 aliphatics, and C9-C10 aromatics in certain wells continued to exceed the Method 1, GW-2 and GW-3 Standards. Site-specific Method 2, GW-2 and GW-3 Standards were subsequently developed based upon two soil gas data points and assumed dilution factors. These evaluations are inadequate to rule out future vapor migration to buildings or discharge to surface water, considering the upward trend in groundwater concentrations.

DEADLINES AND ACTION TO BE TAKEN

In order to return to compliance, the following actions must be taken:

1. By December 19, 2003, submit a Tier II Extension in accordance with 310 CMR 40.0560(7) to conduct response actions in accordance with the MCP under the original Tier II Classification submitted for the site on June 18, 1998;
2. By December 19, 2003, terminate the AUL using the attached AUL termination form, including Exhibit A, the metes and bounds description of the property. Record the form at

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the appropriate Registry of Deeds. At the time of recording, request that the termination be marginally referenced on the original AUL and on the deed by which you obtain title to the property. Obtain a copy of the recorded termination form, certified by the Registry of Deeds, and submit it to DEP. Please note that the enclosed termination form differs from the forms at 310 CMR 40.1099.

3. Perform additional site investigations to determine whether the significant increases in MTBE concentrations at wells DMW-1 and DMW-4 constitute a new reporting condition under the provisions of the MCP at 310 CMR 40.0300 et seq. The locations of the wells suggest that underground piping associated with the dispenser island may be damaged and/or leaking.