



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOUTHEAST REGIONAL OFFICE  
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

December 5, 2007

Attorney Kevin J. McAllister  
Brennan, Recupero, Cascione, Scungio &  
McAllister, LLP  
Attorneys at Law  
362 Broadway  
Providence, RI 02909

RE: **SWANSEA-BWSC/SME**  
**RTN 4-20370, NON-SE-07-3T-318**  
Lot 30A, Vinnicum Road  
**Response to August 17, 2007 letter**  
**from Attorney Kevin J. McAllister**

Dear Attorney McAllister:

The Massachusetts Department of Environmental Protection (MassDEP) is in receipt of your letter dated August 17, 2007 regarding the above-referenced property and Notice of Noncompliance. This letter is intended to clarify the issues of concern outlined in your August 17, 2007 letter (hereinafter referred to as "August letter") and to assert MassDEP's position regarding those issues.

It is the position of the MassDEP Bureau of Waste Site Cleanup that the Downgradient Property Status (DPS) regulations, as described in 310 CMR 40.0180, apply to situations where the migration of contaminants results from surface waters consisting of a river or other channelized stream, but do not apply to situations where the migration resulted from surface waters consisting of overland flow and/or storm water runoff (the two terms are used interchangeably in this letter). This opinion is based on two considerations: 1) the downgradient property owner's ability to control the migration pathway, and 2) difficulty in proving the means of contaminant transport.

First, the downgradient property owner has the ability to prevent overland flow from impacting its property (i.e., controls can be instituted to prevent the contamination from migrating). However, when the mechanism of migration is surface water in a river or other channelized stream, the owners of a downgradient property cannot effectively and feasibly control contaminant migration. In such case, the upgradient property owner remains responsible for the source control and remediation of the release, as long as the upgradient property is actually the source of the contamination. Also, in this case, the upgradient property owner would be required to include the contamination found at the downgradient property in its evaluation of the extent of contamination.

12/6/07


Secondly, pursuant to 310 CMR 40.0183, the downgradient property owner has the burden to prove that the source of release at the downgradient property is or was located on an upgradient location. It is very difficult to prove that historical flooding events or historical storm water flow events have caused hazardous material to be located downgradient, unless particular contaminants unique to an upgradient source can be specifically identified

In your case, previous reports have stated, and inspections conducted by MassDEP personnel have confirmed, that salvaged auto parts were formerly stored on the Swansea Water District property (Lot 30A, Vinnicum Road). These auto parts may be the source of some of the lead contamination found in the surficial soils. Since it is not possible to prove conclusively that the contamination migrated from an upgradient source, downgradient property status cannot be technically supported.

The MassDEP's mission and goal is to ensure the timely and effective cleanup of disposal sites in Massachusetts and to protect human health and the environment. The disposal site at Lot 30A is located within the Zone II of a public water supply well. For this reason, remediation of the disposal site is a high priority within the Swansea Water District. MassDEP affirms its audit of the site, and its conclusion that the downgradient property assertion is not supported technically. Remediation of the disposal site at Lot 30A is the responsibility of the Swansea Water District.

Please do not hesitate to contact me at 508-946-2727 if you have any questions or comments on this matter. Thank you in advance for your cooperation.

Sincerely,

  
GUSTAVO H. R. MARTIN  
FOR: Millie Garcia-Serrano, MPH  
Deputy Regional Director  
BWSC, SERO

MGS/M/AG/re  
4-20370 Swansea - Response to Attorney McAllister

cc: Laurie Burt, Commissioner  
Gary Moran, Regional Director, SERO