



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

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

COPY

December 8, 1998

Nantais Realty Trust
Post Office Box 478
Carver, Massachusetts 02330
Attention: Richard Nantais

RE: CARVER--BWSC/ASM 4-13333
Eagle Gasoline Station
131 Main Street (Route 58)
**NOTICE OF AUDIT FINDINGS/
NOTICE OF NONCOMPLIANCE/
NON-SE-98-3A-42**

*This is an important Notice.
Promptly respond to any requests contained herein.
Failure to respond to any such requests could result in
serious legal consequences.*

Dear Mr. Nantais:

On July 30, 1998, you were notified that the Massachusetts Department of Environmental Protection had begun to audit cleanup actions conducted in response to a release of oil at the location described above. The audit was conducted pursuant to M.G.L. c. 21E and the Massachusetts Contingency Plan (MCP) at 310 CMR 40.0000. This Notice apprises you (as used in this Notice "you" refers to Nantais Realty Trust) of the results of the Department's audit and the violations identified.

DETERMINATION

As a result of the Audit, the Response Action Outcome Statement filed on February 4, 1998, has been determined to be in noncompliance with the requirements of the MCP. **Additional actions must be taken to correct the violations that have been identified in order to demonstrate that a condition of No Significant Risk exists or has been achieved at the disposal site.**

The violations which are in noncompliance and the actions the Department wants you to take to come into compliance are described in the enclosed Noncompliance Summary (Attachment B). The Noncompliance Summary 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 those actions. An administrative penalty may be assessed for every day from now on that you are in noncompliance.

DEADLINE FOR RETURNING TO COMPLIANCE

You are advised to complete these actions **within sixty (60) days of the date of this Notice** as outlined in the Noncompliance Summary, to avoid additional enforcement action by the Department. To respond to the Department's request, please complete the additional actions specified and provide appropriate documentation to the Department (to the attention of Mary Ellen Smith) for each violation.

DO NOT IGNORE THIS NOTICE. Failure to correct the violations identified and provide documentation of such action to the Department may subject you and your officers to further enforcement action by the Department. The Department may conduct a follow-up audit to determine whether the required actions have been taken. If the Department finds that the violations have not been corrected, then the Department may issue a Notice of Noncompliance (NON), Notice of Intent to Assess a Civil Administrative Penalty (PAN), Administrative Enforcement Order, Notice of Responsibility (NOR), Notice of Intent to Take Response Action (NORA), Administrative Consent Order, Unilateral Order, or seek a Judicial Judgment as appropriate. You may also be subject to cost recovery under 310 CMR 40.1200 for failure to perform response actions at the disposal site.

LICENSED SITE PROFESSIONAL

A copy of this Notice has been sent to Bartlett W. Paulding, Jr., the Licensed Site Professional (LSP)-of-Record for your disposal site. Note, however, that you, not your LSP, are obligated to respond to this Notice and remedy the violations. Note that any submittals to the Department made in response to this Notice must include the certification provided in Attachment C signed by an authorized individual as specified in 310 CMR 40.0009.

ADDITIONAL COMMENTS

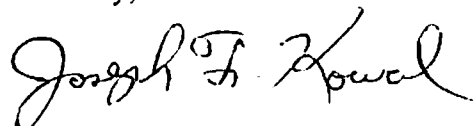
Finally, in Section V of the Site Memorandum, the Department has provided comments related to the implementation of requirements applicable to your actions. The Department provides those comments to assist you and your LSP to better understand its interpretation of the Massachusetts Contingency Plan. Since the Department did not conduct a detailed review of the reports titled Phase II - Comprehensive Site Assessment and Phase III - Comprehensive Remedial Action Alternatives Plan, these comments do not constitute violations or deficiencies nor are they intended to be the only issues related to those submittals. However, please note these issues will need to be addressed in future submittals (Phase II Report and Phase III Plan).

LIMITATIONS

The Department relies upon the accuracy of the information reviewed during the Audit, including information submitted during the course of the audit, to make these findings. 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 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 call Mary Ellen Smith at 508-946-2864. Please reference Release Tracking Number 4-13333 in any correspondence regarding the site.

Sincerely,



Joseph F. Kowal, Chief
Audit & Site Management Section

JFK/MES/rr

- Attachments:
- A. Site Memorandum
 - B. Noncompliance Summary
 - C. Certification of Submittal
 - D. Important Information You Should Have About
Licensed Site Professionals
 - E. Hiring a Licensed Site Professional

CERTIFIED MAIL #Z 598 884 713
RETURN RECEIPT REQUESTED

cc: Town of Carver
Board of Selectmen
Town Hall
Main Street
Carver, MA 02330

cc: Town of Carver
Board of Health
Town Hall
Main Street
Carver, MA 02330

Mr. Najib Badaoui
131 Main Street
Carver, MA 02330

Mr. Bartlett W. Paulding, Jr., LSP
The Paulding Company, Inc.
18 Pepperell Road, P.O. Box 500
West Groton, MA 01472

DEP/Boston
ATTN: Thomas Potter

DEP/SERO
Regional Enforcement Office - 2
Data Entry - IRA, RAO

**ATTACHMENT A
SITE MEMORANDUM
WSC 4-13333**

I. RESPONSE ACTIONS AUDITED

The Audit included a review of the following:

- Class C Response Action Outcome (RAO) Statement received by the Department on February 4, 1998, with an opinion rendered for the subject location by Mr. Bartlett W. Paulding, Jr., LSP, license # 7266.

II. AUDIT ACTIVITIES

The Audit consisted of the following activities:

- A Notice of Audit dated July 30, 1998.
- A site inspection on August 19, 1998, and a meeting with Mr. Richard Nantais former owner of the Eagle Gasoline Station.
- A review of documents contained in the Department's file for this location, including:
 - ♦ A letter report containing the Immediate Response Action (IRA) Plan dated September 13, 1997, prepared by The Paulding Company, Inc.. (PCI).
 - ♦ A letter report containing the IRA Completion Statement dated December 3, 1997, prepared by PCI.
 - ♦ The report titled Phase II - Comprehensive Site Assessment dated January 28, 1998, prepared by PCI.
 - ♦ The report titled Phase III - Comprehensive Remedial Action Alternatives dated January 28, 1998, prepared by PCI.

III. SITE SUMMARY\SITE INSPECTION

On August 19, 1998, Thomas M. Potter of the Department made a site visit at the Eagle Gasoline Station property located at 131 Main Street in Carver, Massachusetts to observe current site conditions. Mr. Richard Nantais, former owner and the identified potential responsible party (PRP) for the property was present during the site inspection. The inspection began with an introduction of the audit regulatory process. A general overview of release conditions, site features and surrounding properties was discussed and investigated.

In June 1997, an environmental site assessment was conducted on a 5 acre residential property located at 132 Main Street (downgradient of the subject site). A water sample was collected from a shallow potable well located at this address on two occasions (January 14, 1997 and May 13, 1997). Results of the analysis for volatile organic compounds (VOC) via EPA 524.2 indicated the presence of benzene above the applicable GW-1 Reportable Concentration.

Based on the results of the first sampling event, the owner of the residential property at 132 Main Street, notified the Department of a 72-hour release condition at his property. The release condition revealed drinking water contained benzene above the applicable GW-1 Reportable Concentration (RC). The source of this contamination was unknown but was suspected to be the gas station located across the street. This notification was assigned Release Tracking Number (RTN) 4-12848

On April 11, 1997, the Department issued a Notice of Responsibility (NOR) to the owner of the gasoline station, Mr. Richard Nantais. The NOR required the submittal of a written Immediate Response Action (IRA) Plan for evaluation of an Imminent Hazard (IH) or conditions of Substantial Release Migration (SRM) within (twenty-one) 21 days. The IRA Plan was to include installation of groundwater monitoring wells, identification of all possible sources of the release on the property, tank tightness test records and the past five years of hazardous material disposal manifests, sampling and analysis of the on-site drinking water and a description of all prior uses of the property.

On September 8, 1997, Mr. Bartlett Paulding, LSP contacted the Department to report a release of oil at the gas station property. Mr. Paulding provided the Department with groundwater analytical results from a single groundwater monitoring well sampled in July 1997. The analytical results indicated the presence of Total Petroleum Hydrocarbon (TPH), benzene, and MTBE in excess of their respective GW-1 RC Reportable Concentration (RCGW-1). The groundwater monitoring well that was sampled was located within 500 feet of the private on-site drinking water well. At that time the Department assigned release tracking number 4-13333 to this notification.

On September 16, 1997, the Department received an IRA Plan for the site. The IRA plan proposed the installation and sampling of soil and groundwater from six (6) microwells. Four of the wells were to be installed on the property and the remaining two wells at the residence located at 132 Main Street. In addition to proposed field investigations, the IRA Plan included information on the underground storage tank (UST) history, results of groundwater sampling from two residential private drinking water wells which were indicated to be "generally downgradient" from the site, and results from sampling conducted for the on site drinking water well.

Eight microwells, (BP-1, BP-2, BP-3, BP-4, BP-5, BP-6, BP-7, and BP-9) were installed. Reportedly, soil samples collected during microwell installations "were examined visually and by odor for evidence of hydrocarbon contamination." ..., "the soil samples in wells BP-5 and BP-9 were the only ones with obvious contamination," consequently two soil samples from BP-5 and one from BP-9 were collected for laboratory analysis of Volatile Petroleum Hydrocarbons (VPH) and Extractable Petroleum Hydrocarbons (EPH) including target analytes by MADEP Method.

Results of soil analysis indicated the presence of VPH in all three samples. Soil collected from 3 to 7 feet at BP-5 exceeded the S-3/GW-1 cleanup standard for C5-C8 aliphatics, C9-C10 aromatics, ethylbenzene, and naphthalene.

Groundwater samples were collected for laboratory analysis of VPH including target analytes from the eight microwells and one preexisting on-site well identified as MW-A. Results of the groundwater analysis indicated GW-1 cleanup standards for VPH were exceeded in three wells and target analytes were exceeded in two wells. GW-3 cleanup standards for VPH were also exceeded in one well. Target analytes did not exceed GW-3. However, the minimum laboratory method detection limit (MDL) for all groundwater samples collected was 20 ug/l which exceeds or meets the respective GW-1 cleanup standards for benzene (5 ug/l) and naphthalene (20 ug/l). A MDL of 20 ug/l is not appropriate to determine the potential risk posed to the nearby drinking water wells. Additionally, neither lead nor ethylene dibromide (EDB) were evaluated as contaminants of concern for the apparent gasoline release condition. The groundwater flow direction was indicated to be generally south to southeast.

On February 4, 1998, the Department received a Class C Response Action Outcome (RAO) Statement and two reports titled Phase II - Comprehensive Site Assessment and Phase III - Comprehensive Remedial Action Alternatives prepared by PCI. The RAO statement indicated that a Method 1 Risk Characterization had been conducted; the applicable soil category for the site is S-3; and the applicable groundwater category for the site is GW-1.

A Phase I - Initial Site Investigation was not completed, nor was a Phase II Scope of Work (SOW) submitted prior to Phase II activities.

The Phase II Report documented assessment and investigation activities previously completed through the IRA. Additional field investigation to identify all potential sources and to fully delineate the extent of contamination was neither proposed nor conducted to complete the Phase II. Therefore, the Phase II was not of significant scope or detail to conduct an appropriate Risk Characterization. Additionally, the Phase III Plan was not of significant scope or detail to warrant a comprehensive Department review.

IV SUMMARY OF VIOLATIONS

On the basis of the information reviewed, the Department has found that you are in non-compliance with one or more laws, regulations, orders, permits or approvals enforced by the Department. The activities which are in noncompliance and the actions the Department wants you to take to come into compliance are described in the Noncompliance Summary (Attachment B) contained in the Notice of Audit Findings.

V. ADDITIONAL COMMENTS

1. An analytical evaluation for the presence of ethylene dibromide (EDB) and lead was not conducted for soil and groundwater media. This will be required in accordance with 310 CMR 40.0904(2)&(3).

In accordance with 310 CMR 40.0904(2)&(3), the documentation of the Risk Characterization shall contain a description of the source and extent of the release of the oil and/or hazardous material, including, where appropriate: (a) the horizontal and vertical extent and concentrations of oil and/or hazardous material in all evaluated media; (b) background concentrations of oil and/or hazardous material in all evaluated media; and (c) all existing or potential migration pathways, including, but not limited to: soil, groundwater, surface water, air, sediment, and food chain pathways. The documentation of the Risk Characterization shall describe the oil and/or hazardous material at the disposal site, including, without limitation and where appropriate: (a) type, volume, composition, nature, physical, chemical and toxicological characteristics; and (b) environmental fate and transport characteristics, including mobility, stability, volatility, ability and opportunity for bioaccumulation, and persistence in the environment.

Based upon the historical storage and retail sale of gasoline on the site since approximately 1945, an investigation for site contamination consistent with its usage should have included testing for the presence of EDB and lead in soil and groundwater media. Testing for EDB and lead shall be performed in accordance with the Department's Policy for the Investigation, Assessment, and Remediation of Petroleum Releases - Interim Site Investigation Protocol Document, BWSC Policy #WSC-401-91, and Characterizing Risks posed by Petroleum Contaminated Sites: Implementation of MADEP VPII/EPII Approach, Public Comment Draft, October 31, 1997.

2. The single groundwater sampling and monitoring event conducted in November 1997 was not adequate to make a reasonable and meaningful conclusion regarding the characterization of groundwater quality and associated risks. In accordance with the Department's publication titled "Characterizing Risks posed by Petroleum Contaminated Sites: Implementation of MADEP VPII/EPH Approach", Public Comment Draft, October 31, 1997, except for petroleum products with a low water soluble fraction, it is generally not possible to adequately characterize groundwater quality on the basis of a single round of sampling. Seasonal and antecedent precipitation events can significantly influence groundwater quality within any given well on any given day. The amount of spatial and temporal monitoring points needed to make reasonable and meaningful conclusions is necessarily a site-specific decision, based upon (1) the type/water-solubility of the petroleum product(s) released, (2) the homogeneity of the formation, and (3) the sensitivity of potential pollutant receptors. A preferred approach is to obtain at least 4 measurements over a 1 year period, coinciding with seasonal variations. The minimum recommended number of rounds of groundwater sampling at gasoline contaminated sites within 500 feet of potable water supplies is four (4) events.

Attachment B

**NONCOMPLIANCE SUMMARY
NON-SE-98-3A-42**

ENTITY IN NONCOMPLIANCE

Nantais Realty Trust
P.O. Box 478
Carver, Massachusetts 02330

LOCATION WHERE NONCOMPLIANCE OCCURRED OR WAS OBSERVED

Eagle Gasoline Station
131 Main Street (Route 58)
Carver, Massachusetts
RTN 4-13333

**DATE(S) WHEN NONCOMPLIANCE OCCURRED OR WAS OBSERVED AND
DESCRIPTION OF ACTIVITY IN NONCOMPLIANCE**

1. On February 4, 1998, you failed to ensure that analytical monitoring data used in support of the RAO is of a level of precision and accuracy commensurate with its intended use. Benzene is considered a potential contaminant of concern both on and off the property. An evaluation for the presence of this contaminant was performed using the MADEP Method for VPH. The corresponding method detection limit set for Benzene was 20 ug/l which is higher than the necessary level to adequately evaluate groundwater category GW-1 impacts (5 ug/l). This is a violation pursuant to 310 CMR 40.0017(1).
2. On February 4, 1998, you failed to support the Class C RAO by assessments and evaluations conducted pursuant to 310 CMR 40.0000 which are of sufficient scope, detail, and level of effort to characterize the risk of harm to health, safety, public welfare and the environment posed by the site or disposal site pursuant to 310 CMR 40.0900. This is a violation pursuant to 310 CMR 40.1004(1).

DESCRIPTION OF REQUIREMENT(S) NOT COMPLIED WITH

1. Pursuant to 310 CMR 40.0017(1), any person undertaking response actions under the provisions of this Contingency Plan shall ensure that analytical and environmental monitoring data used in support of recommendations, conclusions, or LSP Opinions with respect to assessment, removal, or containment actions is scientifically valid and defensible, and of a level of precision and accuracy commensurate with its stated or intended use.

2. Pursuant to 310 CMR 40.1004(1), a Response Action Outcome shall be supported by assessments and evaluations conducted pursuant to 310 CMR 40.0000 which (a) are of sufficient scope, detail, and level of effort to characterize the risk of harm to health, safety, public welfare and the environment posed by the site or disposal site pursuant to 310 CMR 40.0900; (b) are consistent with the Response Action Performance Standard described in 310 CMR 40.0191; (c) are commensurate with the nature and extent of the release or threat of release and complexity of site conditions; (d) demonstrate that all requirements of the applicable class of Response Action Outcome pursuant to 310 CMR 40.1000 have been met; and (e) conform with applicable requirements and procedures for conducting response actions specified in 310 CMR 40.0000. Performance standards that have not been met for a Class C RAO include but are not limited to Phase I - Initial Site Investigation, Phase II Scope of Work, Phase II - Comprehensive Site Assessment, and Phase III - Remedial Action Plan in accordance with 310 CMR 40.0000.

DESCRIPTION OF AND DEADLINE FOR ACTION TO BE TAKEN

Within sixty (60) days of the date of this Notice, you must take the following actions to come into compliance:

1. Obtain a groundwater sample from each monitoring well (BP-1, BP-2, BP-3, BP-4, BP-5, BP-6, BP-7, BP-9, and BP-A) and have the sample analyzed such that the analytical results are scientifically valid and defensible, and of a level of precision and accuracy commensurate with an evaluation for contamination in GW-1 areas. The analytical results will be necessary to correct Violation #2 (see below) as a component of a Phase I - Initial Site Investigation. the Phase I Investigation shall be conducted in accordance with 310 CMR 40.0483 and should be used to support a Tier Classification of the Site.

The sampling results shall be used to determine whether or not a condition of **Substantial Release Migration** exists in accordance with 310 CMR 40.0413. **The analytical results shall be provided to the Department immediately upon availability.** Should the additional groundwater analytical results indicate that the site is a potential source of contamination to the residential property located at 132 Main Street, and Substantial Release Migration exists, an Immediate Response Action shall be conducted in accordance with 310 CMR 40.0410.

2. Retract the existing Class C Response Action Outcome Statement and prepare a Tier Classification in accordance with 310 CMR 40.0500. The Tier Classification shall be supported by the results of a Phase I - Initial Site Investigation. The Phase I Investigation shall provide sufficient information to meet the requirements of the Numerical Ranking System and Tier Classification process described in 310 CMR 40.0500, and shall include the analytical results requested in the Noncompliance Summary (Attachment B).

In addition, the Department has determined that this site meets the Tier I inclusionary criteria as described at 310 CMR 40.0520(2)1.b. and shall be categorically classified as Tier I due to its location within an Interim Wellhead Protection Area (IWPA). Therefore, you must also **prepare and submit a Tier I Permit** to the Department in accordance with 310 CMR 40.0700 to conduct Comprehensive Response Actions in accordance with 310 CMR 40.0800.

If you fail to demonstrate compliance with either one of those actions within the specified deadline, the Department can classify this site as a Tier IB disposal site. If designated as a Tier IB disposal site the Department can require you to pay compliance fees until a Response Action Outcome in compliance with the MCP has been achieved and take further enforcement actions as appropriate.

Attachment C

CERTIFICATION OF SUBMITTAL (310 CMR 40.0009)

This certification must be included with your response to any request for further information or documentation

I attest under the pains and penalties of perjury, (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained herein is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate or incomplete information.

Name (Print): _____

Position or Title: _____

Signature: _____

Date: _____