



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 150 Presidential Way Woburn, MA 01801 • 978-694-3200

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Certified Mail No: 7022 2410 0000 7501 3583

October 26, 2023

Prolerized New England Company, LLC
299 SW Clay Street
Portland, OR 97201

RE: SALEM-
Lot 300B/373 Highland Avenue,
Lot 308B/10 Cedar Road
Notice of Responsibility
RTN 3-38132

**NOTICE OF RESPONSIBILITY AND ESTABLISHMENT OF INTERIM DEADLINES
PER M.G.L. c.21E & 310 CMR 40.0000, the MASSACHUSETTS CONTINGENCY PLAN**

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

Dear Sir/Madam,

The Massachusetts Department of Environmental Protection (MassDEP) has information in its files indicating that a release of oil and/or hazardous material has occurred at Lot 300B, a portion of 373 Highland Avenue and Lot 308B, a portion of 10 Cedar Avenue, Salem, MA (collectively, the Site). On April 3, 2023, MassDEP received a Release Abatement Measure (RAM) Plan from Berman Properties, LLC for disposal site location 355 Highland Avenue, Salem, MA, Release Tracking Number (RTN) 3-0037432. Information appending the RAM Plan included an April 29, 2019 ASTM Phase II Limited Subsurface Investigation report (Vertex ASTM Phase II Report) prepared by The Vertex Companies, Inc. (Vertex). Laboratory analytical data obtained by Vertex indicates that there is or has been a release of Oil and/or Hazardous Material at the above-referenced properties which exceeds a "120 day" reporting threshold (310 CMR 40.0315) and which requires one or more Response Actions.

Test pit logs included in the Vertex ASTM Phase II Report indicate "car parts" and/or "shredded automotive parts" were encountered in test pits advanced on both of the subject properties. According to information in MassDEP's files, the subject properties and areas abutting these parcels were the location of the disposal of automotive shredder residue (ASR). MassDEP files contain information indicating that ASR dumped at the Site in or about the 1970s was from

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

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Prolerized New England Company, LLC (Prolerized)¹. Analytical results of soil testing completed by Vertex indicate the presence of polychlorinated biphenyls (PCBs), heavy metals, polycyclic aromatic hydrocarbons (PAHs), and extractable petroleum hydrocarbons (EPH) at the Site at concentrations exceeding Reportable Concentrations listed at 310 CMR 40.1600.

Based on this information, MassDEP has reason to believe that the subject properties or portion(s) thereof is a Disposal Site as defined in the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, and the Massachusetts Contingency Plan, 310 CMR 40.0000 (the MCP). M.G.L. c. 21E and the MCP govern the assessment and cleanup of Disposal Sites.

The purpose of this notice is to inform you of your legal responsibilities under state law for assessing and/or remediating the subject release. For purposes of this notice, the terms and phrases used herein shall have the meaning ascribed to them by the MCP unless the text clearly indicates otherwise.

STATUTORY LIABILITIES

MassDEP has reason to believe that you (as used in this letter, “you” refers to Prolerized New England Company, LLC) are a Potentially Responsible Party with liability under M.G.L. c. 21E, § 5, for Response Action Costs. Section 5 makes the following parties liable to the Commonwealth of Massachusetts: current owners or operators of a site from or at which there is or has been a release/threat of release of oil 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/threat of release of such material; and any person who otherwise caused or is legally responsible for a release/threat of release of oil or hazardous material at a site.

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 you may be liable for all Response Action Costs incurred at the site, regardless of the existence of any other liable parties.

The MCP requires Responsible Parties to take necessary Response Actions at properties where there is or has been a release or threat of release of oil and/or hazardous material. If you do not take the necessary Response Actions, or fail to perform them in an appropriate and timely manner, MassDEP is authorized by M.G.L. c. 21E to have the work performed by its contractors.

¹ According to your July 7, 2023 Response to MassDEP’s May 30, 2023 Request for Information: “Prolerized New England Company, LLC (“PNE”) was formerly a New York General Partnership organized on October 3, 1965 which was converted to a Delaware limited liability company in March 2006. PNE is an indirect wholly-owned subsidiary of Schnitzer Steel Industries, Inc. (“SSI”), an Oregon corporation.”

By taking such Response Actions, you can avoid liability for Response Action Costs incurred by MassDEP and its contractors in performing these actions, and for possible sanctions, which may be imposed for failure to perform necessary Response Actions under the MCP.

You may be liable for up to three (3) times all Response Action Costs incurred by MassDEP. Response Action Costs include, without limitation, the cost of direct hours spent by MassDEP employees arranging for response actions or overseeing work performed by persons other than MassDEP or its contractors, expenses incurred by MassDEP in support of those direct hours, and payments to MassDEP's contractors. (For more detail on cost liability, see 310 CMR 40.1200.)

MassDEP may also assess interest on costs incurred at the rate of twelve percent (12%), compounded annually. To secure payment of this debt, the Commonwealth may place liens on all of your property in the Commonwealth. To recover the debt, the Commonwealth may foreclose on these liens, or the Attorney General may bring legal action against you. In addition to your liability for up to three (3) times all Response Action Costs incurred by MassDEP, you may also be liable to the Commonwealth for damages to natural resources caused by the release. Civil and criminal liability may also be imposed under M.G.L. c. 21E, § 11, and civil administrative penalties may be imposed under M.G.L. c. 21A, § 16 for each violation of M.G.L. c. 21E, the MCP, or any order, permit or approval issued thereunder.

NECESSARY RESPONSE ACTIONS & INTERIM DEADLINES

The subject Site shall not be deemed to have all the necessary and required Response Actions taken unless and until all Substantial Hazards presented by the site 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. In addition, the MCP requires persons undertaking Response Actions at Disposal Sites to perform Immediate Response Actions (IRAs) in response to "sudden releases", Imminent Hazards and Substantial Release Migration. Such persons must continue to evaluate the need for IRAs and notify MassDEP immediately if such a need exists.

It should be noted that MassDEP has received notifications of releases that pose or could pose an Imminent Hazard (IH) at properties abutting the Site to the west, east, and south due to the presence of metals and PCBs in surface soils in proximity to ASR or friable asbestos at the ground surface². In addition, the presence of asbestos and asbestos containing material (ACM) within areas of "dumping/landfilling" of automotive shredder waste at the Site was reported in the Vertex ASTM Phase II Report. As such, MassDEP has determined that Initial Site Investigation Activities and an Imminent Hazard Evaluation are necessary to determine if release conditions at the Site pose or could pose an Imminent Hazard pursuant to 310 CMR 40.0405 and 40.0950.

You must employ or engage a Licensed Site Professional (LSP) to manage, supervise or actually perform the necessary Response Actions at the subject Site. In addition, the MCP requires

² See RTN 3-0038120, 355-373 Highland Ave., Salem, <https://eeaonline.eea.state.ma.us/portal#!/wastesite/3-0038120>, and RTN 3-0038273, 14 Barnes Rd., 12 Cedar Rd., & 14 Cedar Rd., Salem, <https://eeaonline.eea.state.ma.us/portal#!/wastesite/3-0038273>.

persons undertaking response actions at a Disposal Site to submit to MassDEP a Permanent Solution Statement prepared by an LSP in accordance with 310 CMR 40.1000 upon determining that a level of No Significant Risk already exists or has been achieved at a Disposal Site or portion thereof. [You may obtain a list of the names and addresses of these licensed professionals from the Board of Registration of Hazardous Waste Site Cleanup Professionals at <http://www.mass.gov/eea/agencies/lsp/> or (617) 556-1091.]

There are several other submittals required by the MCP which are related to release notification and/or Response Actions that may be conducted at the subject Site in addition to a Permanent Solution Statement that, unless otherwise specified by MassDEP, must be provided to MassDEP within specific regulatory timeframes. The submittals are as follows:

- 1) A Release Notification Form (RNF) must be provided to MassDEP within 60 days of your receipt of this Notice in accordance with 310 CMR 40.0336.
- 2) A detailed scope of work for Initial Site Investigation Activities to be completed at the Site to determine if release conditions pose or could pose an Imminent Hazard must be submitted to MassDEP by **December 1, 2023**. The scope of work must include details for the characterization of surficial soils for PCBs, MCP-14 metals, friable asbestos, and ACM.
- 3) Using the results of the Initial Site Investigation Activities, an Imminent Hazard Evaluation must be completed in accordance with 310 CMR 40.0950 and submitted to MassDEP by **January 31, 2023**. The IH Evaluation must include an LSP Opinion as to whether an Imminent Hazard exists at the Site and must document all Method 3 Risk Characterization equations and factors used to make such a determination. If a conclusion on the existence of an IH cannot be made by January 31, 2023, the IH Evaluation must include the following information:
 - (a) a description of investigative efforts that have been made and remain to be taken in order to determine whether an Imminent Hazard to human health actually exists at the Site, as well as a timetable for the remaining activities; or
 - (b) a plan to undertake removal and/or containment actions at the Site to address those conditions that could pose an Imminent Hazard to human health.
- 4) Unless a Permanent Solution Statement or Downgradient Property Status Submittal is provided to MassDEP earlier, a completed Tier Classification Submittal pursuant to 310 CMR 40.0510 must be submitted within one year of the initial date of notification of a release pursuant to 310 CMR 40.0300 or from the date MassDEP issues an NOR, whichever occurs earlier or as otherwise specified by the Department in an Interim Deadline or order issued pursuant to 310 CMR 40.0501(2).

If an Imminent Hazard Condition is identified at the Site, MassDEP must be notified pursuant to 310 CMR 40.0311(7).

Please note that the deadlines above are being established as Interim Deadlines pursuant to 310 CMR 40.0167. If you fail to voluntarily undertake the response actions necessary at the subject Site within the Interim Deadlines established herein, MassDEP may perform such response actions and seek to recover MassDEP's costs and/or may initiate other appropriate enforcement actions to ensure that such response actions are conducted. MassDEP's decision to establish one or more Interim Deadlines in accordance with 310 CMR 40.0167 is not subject to M.G.L. c. 30A or any other law governing adjudicatory proceedings.

It is important to note that you must dispose of any Remediation Waste generated at the subject Site in accordance with 310 CMR 40.0030 including, without limitation, contaminated soil and/or debris. Any Bill of Lading accompanying such waste must bear the seal and signature of an LSP or, if the response action is performed under the direct supervision of MassDEP, the signature of an authorized representative of MassDEP.

IDENTIFICATION OF ADDITIONAL POTENTIALLY RESPONSIBLE PARTY

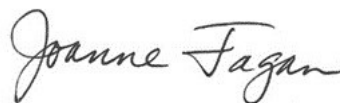
MassDEP has identified K. R. Starr Realty Holding, LLC as a PRP associated with the subject disposal Site. M.G.L. c.21E liability is "strict," meaning it is not based on fault, but solely on a person's status as an owner, operator, generator, transporter or disposer. It is also joint and several, meaning that a person may be liable for all response action costs incurred at the Site, regardless of the existence of any other liable parties.

In light of this, similar notices have been sent to K. R. Starr Realty Holding, LLC.

MassDEP encourages all PRPs referenced in this Notice to contact one another and take prompt action to respond to this Notice. By taking prompt action, PRPs may significantly lower their assessment and cleanup costs and avoid the imposition of, or reduce the amount of, certain annual compliance fees for response actions payable under 310 CMR 4.00.

If you have any questions relative to this notice, you should contact the undersigned by email: Erik.Johnson@mass.gov, at the letterhead address or (781) 400-4378. All future communications regarding this release should reference the Release Tracking Number contained in the subject block of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Fagan".

Joanne Fagan
Section Chief, Brownfields/Risk Reduction
Bureau of Waste Site Cleanup

CC:

CT Corporation System, 155 Federal St, Ste. 700, Boston MA 02110

(Certified Mail No: 7022 2410 0000 7501 3590)

Kathleen Starr, Manager K. R. Starr Realty Holding, LLC, c/o 336 Ocean Way, Vero Beach, FL 32963

Kathleen Starr, Manager, K. R. Starr Realty Holding, LLC. 416 Commonwealth Avenue, Apt. 200, Boston, MA 02215

Kathleen Starr, Manager, K. R. Starr Realty Holding, LLC. 970 16th Place, Vero Beach, FL 32960

Michael R. Pinta, Esq., Resident Agent, K. R. Starr Realty Holding, LLC. 171 Milk St., Ste. 400, Boston, MA 02109

eCC:

David Greenbaum, RS., Public Health Agent, Board of Health, City of Salem,

dgreenbaum@salem.com

Elizabeth Rennard, City Solicitor, City of Salem, brennard@salem.com

Peter Durning, Esq., Burns & Levinson LLP, pdurning@burnslev.com

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