Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Central Regional Office • 8 New Bond Street, Worcester MA 01606 • 508-792-7650

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TOWN OF NORFOLK
ZONING BOARD OF APPEALS

November 17, 2017

Buckley & Mann, Inc.
205 Linden Ponds Way
Hingham, MA 02043
Attn: Lois Mann, President

RE: **NOTICE OF AUDIT FINDINGS AND NOTICE OF NONCOMPLIANCE**
NORFOLK
17 Lawrence Street
RTN: 2-3000173
Enforcement Document Number: 00003655

Dear Mrs. Mann:

On September 7, 2017, Buckley & Mann, Inc. (hereafter referred to as you/your) was notified that the Massachusetts Department of Environmental Protection (MassDEP, the Department) began auditing response actions conducted to address the release of oil and/or hazardous material at the above referenced location. This Notice informs you of the results of MassDEP's audit.

An audit site inspection was conducted on September 13, 2017, by Joe Laughton of MassDEP's Central Regional Office with Tom DiPlacido of DiPlacido Development Corporation in attendance. In particular, the audit focused on the Class A-3 Response Action Outcome, now referred to as a Permanent Solution with Conditions (PS), prepared for the site. Response actions conducted at the site included soil excavation with off-site disposal, on-site soil consolidation with construction of an impermeable cap, implementation of a Notice of Activity and Use Limitation (AUL), and soil, groundwater and surface water sampling.

VIOLATIONS IDENTIFIED

MassDEP has determined that response actions were <u>not</u> performed in compliance with requirements of the Massachusetts Contingency Plan (MCP). The enclosed Notice of Audit Findings and Notice of Noncompliance lists the violation(s) and those action(s) that are required to achieve compliance. Specifically, the Notice of Audit Findings and Notice of Noncompliance contains: (1) the requirement violated, (2) the date and place that MassDEP asserts the requirement was violated, (3) either the specific actions that must be taken in order to return to compliance or direction to submit a written proposal to describing how and when you plan to return to compliance and (4) the deadline for taking such actions or submitting such a proposal.

LIMITATIONS

MassDEP's findings were based on the accuracy of the information reviewed 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 40.0000, or any other law, regulation, or requirement, or (4) limit MassDEP'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 that MassDEP deems necessary to protect health, safety, public welfare, or the environment.

If you have any questions regarding this Notice, please contact Joe Laughton at (508) 849-4018. Please reference the Release Tracking Number, RTN 2-3000173, and Enforcement Document Number, 00003655, in any future correspondence to MassDEP regarding the site.

Sincerely,

Rebecca Woolley
Audits Section Chief
Bureau of Waste Site Cleanup

RW/EJL

Enc. Notice of Audit Findings and Notice of Noncompliance Summary
MassDEP Compliance Fee Schedule

cc/ec: Norfolk Board of Health/Zoning
Tom DiPlacido, Jr. – DiPlacido Development Corporation
CERO: file, database [PS/ACTAUD AUDCOM/NAFNON]
Audit Coordinator, DEP-Boston
Regional Enforcement Coordinator, DEP-CERO
Enforcement Tracking, BWSC, DEP-CERO

NOTICE OF AUDIT FINDINGS AND NOTICE OF NONCOMPLIANCE SUMMARY

RTN: 2-3000173
Enforcement Doc. Number: 00003655

THIS IS AN IMPORTANT LEGAL NOTICE.
FAILURE TO RESPOND COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.

NAME OF ENTITY IN NONCOMPLIANCE:

Buckley & Mann, Inc.
205 Linden Ponds Way
Hingham, MA 02043

LOCATION WHERE NONCOMPLIANCE OCCURRED OR WAS OBSERVED:

17 Lawrence Street
Norfolk, Massachusetts

DATES WHEN NONCOMPLIANCE OCCURRED OR WAS OBSERVED:

August 20, 2001:	Date that Notice of Activity and Use Limitation was recorded at Norfolk Registry of Deeds
September 4, 2001:	Date that a Class A-3 Response Action Outcome Statement was received by MassDEP

DESCRIPTION OF REQUIREMENT(S) NOT COMPLIED WITH:

VIOLATION #1

310 CMR 40.1074: Notice of Activity and Use Limitation

"(1) General Requirements. At any disposal site or portion of a disposal site where a RP, PRP or Other Person is conducting a response action(s) for which a Notice of Activity and Use Limitation has been selected as a form of Activity and Use Limitation pursuant to 310 CMR 40.1070, the following requirements shall be met:

(d) Prior to the recording and/or registration of a Notice of Activity and Use Limitation pursuant to 310 CMR 40.1074(3), current holders of any record interest(s) in the area subject to the proposed Notice (including without limitation, owners, lessees, tenants, mortgagees, and holders of easements or licenses) shall be notified by certified mail, return receipt requested, of the existence and location of oil and/or hazardous material within such area and the terms of such proposed Notice."

310 CMR 40.1074: Notice of Activity and Use Limitation

> "(2) Contents of a Notice of Activity and Use Limitation. A Notice of Activity and Use Limitation shall be documented on Form 1075 or, in the case of CERCLA sites, on a form developed and approved by the Department, and shall contain the following information:
>
> > (c) if a person(s) signing the Notice of Activity and Use Limitation is not an individual signing on his/her own behalf, but rather on behalf of an entity (LLC, LLP, limited partnership, etc.), or as trustee, executor, or attorney in fact, documentation consistent with conveyancing standards and practices verifying that the person(s) signing the Notice of Activity and Use Limitation has the authority to sign such document shall be attached as an exhibit to the Notice of Activity and Use Limitation. If the property owner is a corporation, such documentation shall consist of:
> >
> > > 1. a Clerk's Certificate of Incumbency from the clerk of the corporation certifying that the person(s) signing the Notice of Activity and Use Limitation on behalf of the corporation held his or her position as of the date of the Notice of Activity and Use Limitation;
> >
> > (i) a description of the Site Activities and Uses that are inconsistent with maintaining a Permanent Solution and condition of No Significant Risk or maintaining a Temporary Solution and condition of No Substantial Hazard with respect to exposures to oil and/or hazardous material;"

A Notice of Activity and Use Limitation (AUL) was recorded for this site at the Norfolk Registry of Deeds Land Court on August 20, 2001, Certificate Number 154753, Book 774, Page 153. The AUL was signed by Richard Mann as President and Treasurer of Buckley & Mann, Inc. However, the AUL did not contain documentation verifying the signatory authority as required by 310 CMR 40.1074(2)(c).

The AUL consists of a portion of the property and prohibits the excavation of soils at a depth greater than three feet below ground surface without the involvement of a Licensed Site Professional, and any activity that may cause physical, chemical or structural damage to the protective barrier layer in AUL subarea "A". The Method 1 human health risk assessment that was included within the September 2001 Class A-3 Response Action Outcome Statement (now referred to as a Permanent Solution with Conditions) concluded that concentrations of site contaminants in AUL sub-area "A" were above S-1 soil standards (established to be protective of unrestricted site use). Therefore, the Permanent Solution is predicated on restricting residential use of sub-area "A" with an AUL. The Inconsistent Activity and Uses section of the AUL does not explicitly prohibit residential use, in violation of 310 CMR 40.1074(2)(i).

Prior to recording the AUL, current holders of any record interests in the area subject to the proposed AUL must be notified by certified mail of the existence of the AUL. Documentation regarding record interest holders was not provided to MassDEP, in violation of 310 CMR 40.1074(1)(d).

VIOLATION #2

310 CMR 40.0995: Method 3 Environmental Risk Characterization

"The characterization of risk of harm to the environment shall be conducted for all current and reasonably foreseeable Site Activities and Uses identified in 310 CMR 40.0923. Characterization of the risk of harm to the environment shall include an assessment of chemical data, potential contaminant migration pathways, and an evaluation of biota and habitats at and in the vicinity of the disposal site, as described in 310 CMR 40.0995(2), as well as through the application of Upper Concentration Limits, as described in 310 CMR 40.0995(5).

(1) A Method 3 characterization of the risk of harm to the environment shall be based on the site, receptor and exposure information identified in 310 CMR 40.0901 through 40.0920, as well as any relevant data collected during the response action being performed.

(2) The risk of harm to the site biota and habitats shall be characterized by evaluating ecological parameters using a two-stage approach. In Stage I, the objective is to identify and document conditions which do not warrant a Stage II Risk Characterization, either because of the absence of a potentially significant exposure pathway or because environmental harm is readily apparent and therefore additional assessment would be redundant. If a potentially significant exposure pathway is indicated by the available information per 310 CMR 40.0995(3)(a) and (c), then a Stage II Environmental Risk Characterization is required to characterize the risks posed by those exposures.

(a) A Stage I Environmental Screening shall be performed as described in 310 CMR 40.0995(3) for all disposal sites evaluated using Risk Characterization Method 3, and for those disposal sites evaluated using a Method 3 Environmental Risk Characterization in combination with Method 1 or Method 2 as described in 310 CMR 40.0942."

"(3) Stage I Environmental Screening. Exposures of site biota and habitats shall be characterized by the Stage I Environmental Screening as follows:

(a) Available evidence shall be evaluated to determine whether there is current or potential future exposure of Environmental Receptors to contamination at or from the disposal site. Sources of such evidence shall include historical records, site data, field observations, statements by present and past residents or employees, and any other relevant source.

1. Evidence of current or potential exposure shall include, but is not limited to:

c. Analytical data indicating the presence of oil and/or hazardous material attributable to the site in question in surface water or sediment (including wetlands);

e. The presence of oil and/or hazardous material at the disposal site within two feet of the ground surface and the potential for such contamination to result in exposure to wildlife."

A Method 1 risk characterization included in the August 2001 Class A-3 RAO determined that concentrations of site contaminants do not pose a significant risk to human health. However, the evaluation of potential risk to environmental receptors (terrestrial and wetland habitats) was not presented with any detail. Generic statements regarding contaminant concentrations in sediment samples collected from the carbonizer lagoon and trench were made in the RAO, concluding that "...the contaminant concentrations are low, no waste discharged to the area for over 35 years, and the areas are visually normal vegetated wetlands." Sediment samples were collected from the carbonizer lagoon and trench and analyzed for metals and Total Petroleum Hydrocarbons (TPH). Elevated concentrations of chromium, lead, zinc and TPH were detected. In 2001, sediment screening criteria were based on the Lowest Effects Level from the Ontario Ministry of the Environment (1993). The table below compares sediment data to the sediment screening criteria.

Contaminant	Range	Average	Lowest Effects Level
Chromium	< 2 – 450	146	26
Lead	74 – 670	241	31
Zinc	260 – 920	590	120
TPH	860 – 1,300	1,080	not established

Notes: concentrations reported as parts per million (ppm)

As indicated in the above table, concentrations of chromium, lead and zinc exceeded their respective sediment benchmarks. Concentrations above the Lowest Effects Level do not mean that adverse effects to aquatic organisms will occur but suggests that further testing may be necessary.

The undeveloped portion of the disposal site is approximately 12 acres in size. As such, a Stage I Environmental Screening of the terrestrial environment is needed. This should involve an evaluation of habitat quality, as described in Chapter 9 of the Guidance for Disposal Site Risk Characterization (WSC/ORS-95-141).

Failure to include a Stage I Environmental Screening in the August 2001 RAO is a violation of 310 CMR 40.0995.

ACTIONS TO BE TAKEN AND THE DEADLINES FOR TAKING SUCH ACTIONS:

Within **one hundred eighty (180)** days of the date of this Notice you must complete the following:

1. Terminate the Notice of AUL at the Norfolk County Registry of Deeds pursuant to 310 CMR 40.1083 and immediately thereafter submit a new Notice of AUL prepared in accordance with 310 CMR 40.1074 that corrects the violations present above; **and**

2. Submit a revised Permanent Solution Statement prepared in accordance with 310 CMR 40.1000, that corrects violations presented above;

OR

3. Terminate the Notice of AUL, retract the Permanent Solution, submit a Tier Classification Extension request in accordance with 310 CMR 40.0560(7), and submit a Notice of Delay in accordance with 310 CMR 40.0560, using form BWSC-121, explaining the reason for the delay, steps taken to minimize the delay and a schedule detailing the dates proposed for returning the site to regulatory compliance.

Complete the actions specified above and submit a Post-Audit Completion Statement (BWSC-111) prepared in accordance with 310 CMR 40.1170. Please be advised that submissions to MassDEP should be made via electronic submissions through the eDEP program: https//edep.dep.mass.gov/DEPLogin.aspx.

If you fail to revise the Permanent Solution Statement within the specified deadline, MassDEP may continue to treat this site as a Tier II disposal site and require you to pay compliance fees until a Permanent or Temporary Solution in compliance with the MCP has been achieved. Should you fail to comply with the requirements contained in this notice, MassDEP will invalidate the Permanent Solution submittal and will amend its records to indicate that an invalid Permanent Solution has been filed.

Please be advised that all requests for applications for Financial Inability to perform response actions should be directed to Ms. Wanda Kopcych of the MassDEP Boston Office at (617)348-4055

If the required actions are not completed by the deadlines specified, an administrative penalty may be assessed for every day after the date of this Notice that the noncompliance occurs or continues. MassDEP reserves its rights 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 action, including administrative penalties imposed by MassDEP.

For the Department of Environmental Protection:

Date: Nov. 17, 2017

By: Rebecca J Woolley
Rebecca Woolley
Audits Section Chief
Bureau of Waste Site Cleanup