



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

**URGENT LEGAL MATTER – PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

APR 3 2008

Amilio Zompa  
23 County Road  
Barrington, Rhode Island 02885

Re: Notice of Potential Liability, Invitation to Perform or Finance Proposed Cleanup  
Activities and Request for Access  
Birch Swamp Road Site, Warren, Rhode Island

Dear Mr. Zompa:

This letter serves to notify you of potential liability regarding the Birch Swamp Road Site ("Site") as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), commonly known as the federal "Superfund" law. This letter also notifies you of planned removal activities at the Site which you are invited to perform or finance and which you may be ordered to perform at a later date. Finally, this letter requests permission for access to the Site.

Under CERCLA, the U.S. Environmental Protection Agency ("EPA") is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment - that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release occurred or threat of release exists at the Birch Swamp Road Site ("the Site") located in Warren, Rhode Island. EPA has spent, or is considering spending public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that you are potentially liable under CERCLA for the cleanup of the Site or costs EPA has incurred in cleaning up the Site, which you are invited to perform or finance and which you may be ordered to perform at a later date.

EPA has documented the release or threatened release of hazardous substances or pollutants or contaminants at the Site, which is located on Birch Swamp Road, Warren, Bristol County, Rhode Island. The Site includes property owned by you, identified by Warranty Deed in Book 103, Page 566, which describes the property as approximately 15.8 acres at Lot 4 on Tax Map 22 on file at the Warren Town Clerk's Office (the "Property"). The Site also includes adjacent property under different ownership identified as Lot 175 on Tax Map 22.

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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Hazardous substances involved in the release or threat of release at the Site include, but are not limited to, polychlorinated biphenyls ("PCBs") and metals, including, but not limited to, lead. EPA has spent public funds and is considering spending additional public funds to investigate and address the releases and/or threatened release(s) at the Site. Unless a potentially responsible party ("PRP") or parties commit to properly performing or financing such actions, EPA will perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

### **EXPLANATION OF POTENTIAL LIABILITY**

Under CERCLA, specifically Sections 106(a) and 107(a), 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and other laws, potentially responsible parties ("PRPs") may be required to implement cleanup actions deemed necessary by EPA to protect public health, welfare, or the environment. PRPs may also be responsible for all costs incurred by the government in responding to any release or threatened release at the Site, unless the PRP can show divisibility or any of the other statutory defenses. Such actions and costs may include, but are not limited to: expenditures for investigations, planning, response, oversight and enforcement activities.

PRPs include current and former owners and operators of a Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the Site to which the hazardous substances were delivered.

Based on information gathered during investigations of the Site, EPA believes that you are a PRP under Section 107(a) of CERCLA with respect to the Site. Specifically, EPA has reason to believe that you, as the current owner and/or operator of the property located within the Site, have potential liability for the Site. You are urged to voluntarily perform or finance those response activities that EPA determines are necessary at the Site.

### **OUTLINE OF SITE RESPONSE ACTIVITIES**

To date, EPA has taken the following response action[s] at the Site under the authority of the Superfund Program including:

A Preliminary Assessment ("PA") and Site Investigation ("SI") in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site.

Due to the presence of hazardous substances at the Site, and in light of other conditions, EPA has determined that there is an imminent and substantial endangerment to public health, welfare, or the environment. In response, EPA plans to conduct the following immediate removal activities at the Site:

- 1) Take measures to prevent unauthorized access to the Site. These activities may include installing security fencing and posting appropriate signage;

- 2) Clear on-site vegetation and debris as needed to make room for Site activities;
- 3) Conduct erosion-control and dust suppression activities as needed;
- 4) Conduct air monitoring activities as appropriate;
- 5) Conduct a magnetometer survey, or other investigation-related activities, as appropriate, to facilitate the further characterization of the horizontal and vertical extent of contamination;
- 6) Collect and analyze samples as needed to further characterize the horizontal and vertical extent of contamination;
- 7) Conduct dewatering-related activities, as appropriate, to facilitate the excavation and consolidation of contaminated surface soils;
- 8) Excavate and consolidate surface soils and debris contaminated with hazardous substances, including, but not limited to, metals and PCBs;
- 9) Collect and analyze post-excavation confirmatory samples;
- 10) Backfill excavations with clean fill materials;
- 11) Package, stage, and remove contaminated materials for off-site disposal at EPA-approved disposal facilities; and
- 12) Repair response-related damage to areas disturbed by site activities.
- 13) Collecting and copying documents that may be relevant to response/removal/cost recovery activities; and
- 14) Taking, or evaluating the need to take, other response actions.

#### **INVITATION TO PERFORM SITE RESPONSE ACTIVITIES**

Before EPA spends public funds to undertake the removal action at the Site, EPA urges you to participate in removal activities or finance all the removal activities outlined above. Any such work performed by you in your capacity as a PRP may be conducted pursuant to administrative order and an EPA-approved workplan as authorized by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). Prior to final issuance of such an order, a draft order would be sent to you or your representative for review and comment. Enclosed is a copy of a summary of a generic Scope of Work. This document should provide an understanding of the types of plans and activities typically required by such an Order.

Be advised that even if you do not indicate a willingness to perform or finance necessary response actions, EPA explicitly reserves any rights it may have to order you to undertake such actions under Section 106 of CERCLA, 42 U.S.C. § 9606. Failure to comply with a Section 106(a) administrative order may result in a fine of up to \$32,500 per day under Section 106(b) or imposition of treble damages under Section 107(c) (3) of CERCLA. Further, you may be held liable under Section 107(a) for the cost of the response activities EPA performs at the Site and for any damages to natural resources. In addition, by virtue of Section 113 of CERCLA, 42 U.S.C. § 9613, other PRPs who agree to perform the necessary response action may seek contribution protection.

### **FINANCIAL CONCERNS/ABILITY TO PAY SETTLEMENTS**

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a Site may be substantially limited. If you believe, and can document, that you fall within that category, please contact John Hultgren, Enforcement Counsel, at (617) 918-1761, for information on "Ability to Pay Settlements." In response, you will receive a package of information about the potential for such settlements. You will be asked to fill out forms about your finances and to submit financial records including business and personal federal and state income tax returns.

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy.

### **PRP RESPONSE AND EPA CONTACT**

You should contact EPA within **ten (10) business days** after receipt of this letter to indicate your willingness to perform or finance the response activities outlined above. If EPA does not receive a response within that time, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response and that you have declined any involvement in performing response activities. Be advised, however, that liability under CERCLA is joint and several; therefore, each PRP is potentially liable for undertaking all response actions or reimbursing the government for the entire amount of its response costs.

Please provide the name, address, and telephone number of a designated contact for future communications. Your written response, including any technical comments or questions concerning the proposed response activities, should be directed to the EPA On-Scene Coordinator ("OSC") or the Enforcement Coordinator for the Site:

Melanie Morash, On-Scene Coordinator  
U.S. Environmental Protection Agency  
Emergency Response and Removal Section II (HBR)  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
(617) 918-1298

Sharon C. Fennelly, Enforcement Coordinator  
U.S. Environmental Protection Agency  
Emergency Response and Removal Section II (HBR)  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
(617) 918-1263

Legal questions and all communications from counsel should be directed to:

John Hultgren, Enforcement Counsel  
U.S. Environmental Protection Agency  
Office of Environmental Stewardship (SES)  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
(617) 918-1761

#### **DECISION NOT TO USE SPECIAL NOTICE**

Under Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and the PRPs to conduct or finance response activities. The use of special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRPs are conducted.

Due to the exigencies posed by conditions present at the Site, removal activities must be conducted as expeditiously as possible. EPA has, therefore decided not to invoke the Section 122(e) special notice procedures with respect to CERCLA removal actions at this Site. Nonetheless, EPA is willing to discuss settlement opportunities without invoking a moratorium, but will continue the response action as planned unless such discussions lead expeditiously to a settlement.

#### **ADMINISTRATIVE RECORD**

Pursuant to Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA will establish an administrative record containing documents that serve as the basis of EPA's decision on the selection of a cleanup action for the Site. The Administrative Record files may be inspected and comments may be submitted by contacting OSC Melanie Morash at the above address.

The Administrative Record Files with corresponding index should be available for inspection at a repository near the Site within sixty (60) days of initiation of on-site removal activities, as well as the Superfund Records Center, U.S. E.P.A., One Congress Street, Boston, MA 02114 (617) 918-1440.

## **SITE ACTIVITY OUTSIDE EPA ACTIONS**

If you are already involved in discussions with state or other local authorities or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise or direct you to restrict or discontinue any such activities. However, you are advised to report the status of any such discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

## **CONSENT TO ACCESS**

EPA requests written access to the Property, to perform or oversee the response actions discussed above. This request is enclosed. You should return the signed access agreement within **ten (10) business days** of receipt of this letter to:

Melanie Morash, On-Scene Coordinator  
U.S. Environmental Protection Agency  
Emergency Response and Removal Section II (HBR)  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

For your convenience, a self-addressed envelope as been provided for your use.

## **RESOURCES AND INFORMATION FOR SMALL BUSINESSES**

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

## **PURPOSE AND USE OF THIS NOTICE**

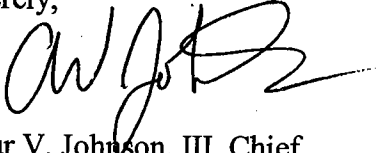
The factual and legal discussions contained in this letter are intended solely to provide notice and information. Such discussions are not intended to be, and cannot be, relied upon as EPA's final position on any matter set forth herein.

Please give these matters your immediate attention and consider consulting with an attorney. If you have any questions regarding this letter, please contact OSC Melanie Morash at the number listed above. Thank you for your prompt attention to this matter.

By copy of this letter, EPA is notifying the State of Rhode Island and the Natural Resources Trustees of EPA's intent to perform, or to enter into negotiations for the performance or financing of, response actions at the Site.

Thank you for your attention to this matter.

Sincerely,



Arthur V. Johnson, III, Chief  
Emergency Planning and Response Branch

Enclosures

cc: Joseph Fortin, Warren, RI  
Melanie Morash, EPA On-Scene Coordinator - HBR  
Sharon C. Fennelly, EPA Enforcement Coordinator - HBR  
John Hultgren, EPA Enforcement Counsel - SES  
Holly Inglis, EPA Administrative Records Coordinator - HBS  
Cheryl O'Halloran, CERCLIS Coordinator - HBR  
John Carlson, Contracts Management - HBS  
Joan Taylor, Rhode Island Department of Environmental Management  
Andrew Raddant, Regional Environmental Officer - U.S. DOI  
Ken Finkelstein, National Oceanic & Atmospheric Administration - NOAA

## **SUMMARY OF GENERIC SCOPE OF WORK**

**This summary of the Generic Scope of Work is provided for informational purposes only. More detailed provisions will be set forth in the site-specific Scope of Work. Provisions may vary from site to site.**

When EPA determines that a Potentially Responsible Party (PRP) has the ability to promptly and properly prevent, mitigate, or eliminate the threats posed by hazardous substances at the Site, EPA may issue an Administrative Order (Order) to such party (the Respondent) with an attached Scope of Work (SOW). The Order and SOW, among other things, compel the Respondent to develop a plan to clean up the Site. The components of the plan (also called a "deliverable") must be submitted to EPA for approval before implementation. Detailed instructions for generating each component shall be provided in the SOW. The plan shall consist of the components listed below.

**1) Site Security** - The Respondent shall provide on-site security service. Site security shall be maintained until EPA determines the threats posed by conditions at the Site are eliminated or substantially mitigated.

**2) Notification of Contractor Selection** - The Respondent shall notify EPA of the proposed cleanup contractor selected to perform work required under the Order.

**3) Site-Specific Health and Safety Plan (HASP)** - The Respondent shall develop and implement a HASP for all activities to be conducted at the Site. The HASP shall be developed to protect all on-site personnel and must comply with all applicable health and safety regulations.

**4) Quality Assurance Plan (QAP)** - The Respondent shall develop a QAP to be utilized in conducting all field and laboratory analysis. The QAP shall ensure that analytical results generated are of known quality.

**5) Site Assessment Plan (SAP)** - The Respondent shall develop a SAP specifying the overall strategy of the field investigative work necessary to characterize site contamination.

**6) Site Assessment** - A Site Assessment shall be conducted following EPA approval of the SAP.

**7) Site Assessment Report and Cleanup Plan (SAR/CP)** - Following completion of the Site Assessment, the Respondent shall develop a SAR/CP that summarizes the Site Assessment and proposes cleanup methods necessary to substantially mitigate and/or eliminate the threats posed by hazardous substances present at the Site.

**8) Site Cleanup** - The Site Cleanup shall be conducted according to the EPA approved Cleanup Plan.

**9) Completion of Work Report (CWR)** - Upon completion of the Site Cleanup, the Respondent shall submit a CWR summarizing the work performed under the Order and SOW and outlining any remaining contamination.

At any time prior to or after the completion of the work specified in this SOW, EPA may determine that additional tasks are necessary in order to achieve the objectives of the Order, the SOW and CERCLA.



## **CONSENT FOR ACCESS TO PROPERTY**

**Site Name:** Birch Swamp Road

**Site Address:** Birch Swamp Road, Warren, Bristol County, Rhode Island

**Site Description:** The Site includes property owned by Amilio Zompa, identified by Warranty Deed in Book 103, Page 566, which describes the property as approximately 15.8 acres at Lot 4 on Tax Map 22 on file at the Warren Town Clerk's Office (the "Property"). The Site also includes adjacent property under different ownership identified as Lot 175 on Tax Map 22.

I consent to the officers, employees, agents, contractors, subcontractors, consultants, and other authorized representatives of the United States Environmental Protection Agency ("EPA") entering and having continued access to the Property under my ownership and described above for the following purposes:

- Take measures to prevent unauthorized access to the Site. These activities may include installing security fencing and posting appropriate signage;
- Clear on-site vegetation and debris as needed to make room for Site activities;
- Conduct erosion-control and dust suppression activities as needed;
- Conduct air monitoring activities as appropriate;
- Conduct a magnetometer survey, or other investigation-related activities, as appropriate, to facilitate the further characterization of the horizontal and vertical extent of contamination;
- Collect and analyze samples as needed to further characterize the horizontal and vertical extent of contamination;
- Conduct dewatering-related activities, as appropriate, to facilitate the excavation and consolidation of contaminated surface soils;
- Excavate and consolidate surface soils and debris contaminated with hazardous substances, including, but not limited to, metals and PCBs;
- Collect and analyze post-excavation confirmatory samples;
- Backfill excavations with clean fill materials;
- Package, stage, and remove contaminated materials for off-site disposal at EPA-

approved disposal facilities;

- Repair response-related damage to areas disturbed by site activities;
- Collecting and copying documents that may be relevant to response/removal/cost recovery activities; and
- Taking, or evaluating the need to take, other response actions.

I realize that these actions by EPA are undertaken pursuant to EPA's response and enforcement authorities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

I give this written permission voluntarily with knowledge of my right to refuse without threats or promise of any kind.

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Signature of Property Owner or  
Owner's Authorized Representative

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Date

Name:

Title:

Address:

Telephone Number: