



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-831-5508

Mr. David Black
Vice President
Southern Union Company
d.b.a. New England Gas Company
100 Weybossett Street
Providence, Rhode Island 02903

November 23, 2005

Gerald Petros, Esq.
Hinckley, Allen & Snyder, LLP
1500 Fleet Center
Providence, RI 02903

RE: **Notice of Intent to Enforce**
Bay Street Neighborhood Study Area
Tiverton, Rhode Island
Case #2002-065(a)
OWM SR 2005-09

Dear Messrs. Black and Petros:

Enclosed please find a Notice of Intent to Enforce (“NOIE”) issued to Southern Union Company d.b.a New England Gas Company (“NEGAS”) as the Responsible Party in connection with the hazardous materials release within the Bay Street Neighborhood Study Area. The Bay Street Neighborhood Study Area, which is located in the Northwestern corner of the Town of Tiverton (“Tiverton”), encompasses approximately 100 residential properties and a few commercial private properties along with the abutting public roads and rights of way; otherwise identified as Tiverton Assessors Plats 8-6 Blocks 3, 5 (portion), 7 (Lot 3 and 4) and 8; Plat 8-7, Blocks 13 (Lot 3) and 14 (Lots 4 and 5), Blocks 15, 16, 17, 21 and 22, and Block 41 (Lot 35) (i.e. “the Site”). Said NOIE outlines NEGAS’s failure to comply with the Letter of Responsibility issued on March 17, 2003.

In accordance with the Letter of Responsibility (LOR) issued by the Rhode Island Department of Environmental Management (the Department) a complete Site Investigation Report (SIR) including remedial alternatives was required to be submitted for the Site.

As a result of NEGAS’s failure to comply with the requirements of the LOR, in addition to the July 6, 2005 correspondence which requested an SIR with remedial alternatives by no later than August 15, 2005, the Site is considered to be **out-of-compliance** with the LOR issued by the Department under the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the Remediation Regulations).

Also, please find attached a copy of the Department's comments and comments from Fuss & O'Neil on behalf of ENACT concerning the Supplemental/Phase II Site Investigation Report. The Department requests a written response to these comments on or before February 1, 2006.

Should further investigation work be necessary, the Department will require that this work be performed as part of a Limited Design Investigation within the draft Remedial Action Work Plan to be submitted for review and approval that shall address remediating the soil contamination within the Bay Street Neighborhood Study Area.

As stated in the NOIE, a written response is required by **January 4, 2006** stating NEGAS's intent to complete the required actions in accordance with the LOR and the Remediation Regulations. Failure to complete the shall result in an issuance of a formal enforcement action, including an administrative penalty.

If you have any questions regarding this matter please contact me by telephone at (401) 222-2797 extension 7102 or by e-mail at jeff.Crawford@dem.ri.gov.

Sincerely,

Jeffrey Crawford
Principal Environmental Scientist
Office of Waste Management

Enclosure

Cc: Terrence Gray, Assistant Director
Leo Hellested, Chief -Office of Waste Management
Dean Albro, Chief- Office of Compliance & Inspection
Kelly Owens, Supervising Engineer OWM
Tracey Tyrrell, Supervisor-Office of Compliance & Inspection
Robert Vanderslice, Chief RIDOH Risk Assessment
Louise Durfee, Town Council President, Tiverton
Town Manager, Town of Tiverton
Gail Corvello, E.N.A.C.T.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WASTE MANAGEMENT
Site Remediation and Restoration Program**

Mr. David Black
Vice President
Southern Union Company
d.b.a. New England Gas Company
100 Weybossett Street
Providence, Rhode Island 02903

Gerald Petros, Esq.
Hinckley, Allen & Snyder, LLP
1500 Fleet Center
Providence, RI 02903

RE: Bay Street Neighborhood Study Area
Tiverton, Rhode Island
Case #2002-065(a)
OWM SR 2005-09

Subject: Failure to Comply with the Letter of Responsibility issued to Southern Union Company/New England Gas Company dated March 17, 2003.

NOTICE OF INTENT TO ENFORCE

A. Introduction

You are hereby notified that, as a result of the release of hazardous materials and/or petroleum products as identified herein, the Director of the Department of Environmental Management (the "Director") has reasonable grounds to believe that the following Parties have violated certain provisions of the R.I. Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the "Remediation Regulations").

Prompt, complete and continuing compliance with this Notice of Intent to Enforce ("NOIE") is required if you wish to stay the commencement of administrative-legal action and/or the assessment of administrative penalties. If you have any questions regarding this NOIE, please contact Jeffrey Crawford at (401) 222-2797 extension 7102.

B. Facts

1. The Bay Street Neighborhood Study Area is located in the Northwestern corner of the Town of Tiverton ("Tiverton") encompassing approximately 100 residential and a few commercial private properties along with the abutting public roads and rights of way; otherwise identified as Tiverton Assessors Plats 8-6 Blocks 3, 5 (portion), 7(Lot 3,4) and 8; Plat 8-7, Blocks 13 (Lot 3), 14 (Lot 4,5), Blocks 15, 16,17,21,22 and Block 41 (Lot 35)(i.e. "the Site").

2. The following Parties are responsible, in whole or in part, for the violations identified in this Notice:
 - (a) Southern Union Company -d.b.a. New England Gas Company (NEGAS)
3. The property became listed with the Department of Environmental Management (“RIDEM”) on or about August 2002 as a result of receiving complaints from residents in the neighborhood community off of Bay Street in Tiverton. The complaints stated that soil material that was possibly contaminated was being stockpiled along Bay Street as part of a sewer main installation, the Mount Hope Bay Sewer Interceptor Project for North Tiverton, Rhode Island. Complaints filed at RIDEM initiated an investigation by a member of the RIDEM hazardous materials response team at the corner of Judson and Bay Street and at the bottom of Last Street in Tiverton. The RIDEM field investigator observed stockpiled soils at both locations that the sewer contractor had placed there and that the stockpiled soil had a “blue” color associated with it, indicative of historic coal gasification waste material (i.e. cyanide).
4. On September 6, 2002, RIDEM’s Office of Compliance & Inspection (John Leo) received laboratory analyses from ESS Laboratory of the soil material . The analysis revealed the presence of cyanide and other hazardous substances including Semi-Volatile Organic Compounds (SVOC’s) and more specifically Polycyclic Aromatic Hydrocarbon’s (PAHs) and Total Petroleum Hydrocarbons (TPH) in the stockpiled soils were found which are jurisdictional under the RIDEM’s Remediation Regulations.
5. In November 2002, EA Engineering on behalf of Tiverton and Starwood Tiverton, LLC (“Starwood”) conducted a subsurface investigation beneath the portions of the public roads/streets inclusive of Bay, Judson, Hooper, Hilton, Canonicus, Chase, Foote as far north as State Avenue. Subsequent results reported by EA Engineering confirmed that soil contamination was more wide spread beneath the road/street areas of the neighborhood. The EA investigation also revealed the presence of Total Petroleum Hydrocarbons (TPH), Semi-Volatile Organic Compounds (SVOCs), total metals including Lead and Arsenic as well as total Cyanide.
6. On March 13, 2003, a public meeting was held at the Tiverton Town Hall at which approximately 125 residents expressed their concerns about the situation and provided information to RIDEM concerning historical activities in the Bay Street community.
7. At that meeting, documentation from a Town of Tiverton Planning Meeting (dated February 10, 1987) was presented and indicates that a former employee of Fall River Gas Company observed that “blue soil” was in the fill material (1-3 feet in depth) along State and Bay Street and that the disposal of this fill may have occurred over a ten-year period during the 1960’s and early 1970’s.
8. The suspected source of the contaminated fill material was stated to be the former Fall River Gas Company.

9. The former Fall River Gas Company is now owned by the Southern Union Company d.b.a New England Gas Company.
10. Additional information found in Individual Septic Design System (ISDS) records at RIDEM for a residential dwelling at the intersection of Hooper and Bay Street also identifies that there is approximately two (2) feet of fill material in the area.
11. On March 17, 2003, RIDEM issued a Letter of Responsibility (“LOR”) to Southern Union Company (Alan Fish) and New England Gas Company (Robert Young).
12. On March 19, 2003, New England Gas Company responded to the RIDEM’s LOR and contracted Vanesse Hagen and Brustlin Inc. (“VHB”) to prepare a Site Investigation Work Plan (“SIWP”), pursuant to the Remediation Regulations, for investigating 68 private properties thought to be abutting contamination discovered in the public road areas as part of the Tiverton’s investigation.
13. VHB, on behalf of NEGAS, began their investigation in June 2003 and the number of properties being investigated increased to 75 properties.
14. Also on or about March 19, 2003, the Town of Tiverton initiated a second round of field investigation, at the request of RIDEM, on the remaining public road/street areas not previously tested, to attempt to determine the extent of soil contamination beneath the public roads/streets and right of ways.
15. On or about October 31, 2003, NEGAS submitted the first Site Investigation Report (“SIR”) with attachments for sixty-seven (67) properties. VHB indicated to the Department that seven (7) property owners of the original 75 properties did not provide access.
16. On December 5, 2003, NEGAS submitted four individual Site Investigation Reports (“SIR”) with attachments for nine (9) properties (of the 67 properties investigated as part of the Site Investigation) that NEGAS segregated due to their belief that past owners and operators had caused the identified contamination.
17. On January 27, 2004, RIDEM issued formal comments to NEGAS, including copies of the public comments received on the first phase of the Site Investigation.
18. On February 17, 2004, NEGAS responded to RIDEM with an outline of their plan and a schedule for responding to RIDEM’s comments and conducting additional fieldwork.
19. As of the mailing of this NOIE, no formal response to RIDEM or public comments has been submitted by NEGAS.
20. On or about July 19, 2004, NEGAS submitted a proposed Supplemental and Phase II SIWP to further investigate the original properties investigated in 2003 and to investigate for the first time approximately 17 additional properties. These 17 additional properties to be investigated for the first time increased to approximately 25 between July 2004 and August 2005.

21. RIDEM concurred with the Supplemental and Phase II SIWP on or about August 25, 2004. VHB initiated obtaining access agreements with residents shortly thereafter.
22. Supplemental and Phase II Site Investigation activities commenced in early September 2004.
23. On July 6, 2005, RIDEM corresponded to D. Tomka, Project Manager for NEGAS concerning NEGAS's request for an extension (dated June 21, 2005) for the SIR submission until September 30, 2005. In the correspondence, NEGAS was informed that the complete SIR with remedial alternatives must be submitted by August 15, 2005.
24. On July 19, 2005, RIDEM corresponded to NEGAS concerning analytical data that had been provided to the Department by legal counsel to the owners that indicated that soil contamination existed on a specific private property on Judson Street. RIDEM further requested that the information and property be included in the Site investigation submission and proposed remedial alternatives for remediating the neighborhood contamination.
25. On August 15, 2005, RIDEM received the Supplemental and Phase II SIR with attachments for review and approval. In the submission and cover letter from NEGAS, the company claims that the SIR is incomplete due to lack of time to complete listed items and that submission of remedial alternatives for remediating the Site is premature.
26. At this time, Respondent NEGAS has failed to respond to the requirements in the RIDEM LOR issued to them on March 17, 2003, and the Site remains out of compliance with the Remediation Regulations

C. Potential Violations

Based on the circumstances set forth above, the release of hazardous materials at the site and your inadequate response thereto potentially constitute violations of the following statutes and/or regulations:

- (1) R.I. Gen. Laws Sections 46-12-5(a) and (b) and 46-12-28, prohibiting the discharge of pollutants to surface waters and groundwater's of the State;
- (2) R.I. Gen. Laws Sections 23-19.1, from which the Remediation Regulations were promulgated prohibiting the unpermitted release of hazardous materials.

D. Required Actions

The following actions are required in order for you to comply with the above- mentioned statutes and/or regulations:

1. Submit a minimum of three (3) Remedial Alternatives for remediating all soil contamination in the Bay Street Neighborhood Study Area to meet

RIDEM's Method 1 Residential Direct Exposure Criteria as outlined in the Remediation Regulations on or before January 4, 2006;

2. Submit any outstanding site investigation sampling results and laboratory analysis, completed after the August 15, 2005 SIR submittal, for the remaining properties by January 4, 2006;
3. Conduct Public Notice to all residents of the Bay Street Neighborhood Study Area within 14 days of receipt of the RIDEM's Program Letter.

E. Assessment of Penalty

This NOIE constitutes a notice of intent to assess an administrative penalty pursuant to R.I. Gen. Laws Chapter 42-17.6, in the event that you fail to comply with this NOIE in a timely and satisfactory manner. If the Parties promptly and satisfactorily comply with the requirements of this NOIE, RIDEM may not assess an administrative penalty. However, continued noncompliance will result in the issuance of a Notice of Violation and Order, which will include the assessment of an administrative penalty that may be as high as \$25,000 per violation for each and every day that violation continues to exist.

Within seven (7) days of receipt of this NOIE, you must notify this office in writing of your intent to comply with the above-required actions in the time frame indicated.

FOR THE DIRECTOR:

Leo Hellested, P.E., Chief
Office of Waste Management

Date: __day of November 2005.

Approvals:

Project Manager

Date

Section Supervisor

Date