

Orr Block Project has PAH Contamination and the impact to Adjacent Abutters (Down-gradient Property)

Good Evening chairman, council members, fellow Newtonites and concerned parties. My name is James Pacheco. I reside in Newton Highlands on Circuit Ave. I'm a retired Engineering Consultant with over 40 years experience.

There are PAH, Polycyclic Aromatic Hydrocarbons, contamination discoveries at the Orr Block Project in Newtonville. Now that this discovery has been made, Those that are an abutter, can require the State environmental agencies to be involved. I highly recommend all the adjacent abutters file the Mass DEP form for their protection and their liability limitations, and have the personal assurance that the Orr Block Project may comply with the State safety requirements and regulations. This action will be beneficial to the abutters and all of Newtonville's inhabitants and visitors. This discovery was made public in a recent Local Tab article, "*Developer to address low-level contamination at Newtonville's Orr block*" 29July2016, by Jonathan Dame, <http://newton.wickedlocal.com/news/20160729/developer-to-address-low-level-contamination-at-newtonvilles-orr-block>

For each abutter, I believe there is a one year window to file this form in order not to be liable for the cleanup issues. As an adjacent abutter it is necessary to file as a down-gradient property to the PAH discovery.

Here are the links, below, and some excerpts from this Massachusetts DEP web-site: <http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/downgradient-property-status-fact-sheet.html>

This link has an on-line form: <https://edep.dep.mass.gov/DEPlogin.aspx>

Welcome to eDEP, a secure site for submitting environmental permits, transmittals, certifications, and reports electronically to the Massachusetts Department of Environmental Protection (DEP). With eDEP, you can fill out your forms online; save your work and return to it later; submit your forms and payments to DEP electronically; "sign" your submittals; and print out receipts of your transactions.

- [eDEP Help & Instructions](#)
- [What forms can I file in eDEP?](#)
- [eDEP Contacts & Feedback](#)

In my review of the contamination article, I found that these concentrations of all the contaminants in the MassDEP Report appear to be far in excess of any safe limit, as identified in ATSDR website.(The concentration percentages in the soil are in some cases more than an order of magnitude greater than designated safe levels). There are decades of this contaminated soil leaching into other property and now it is being or will be exposed for this new construction. –

- What is the impact of this discovery ?
- When can the State of Massachusetts get involved to ensure adequate safeguards are in place before work is started and while the work is in progress and provide State certification that this property and abutter properties are safe?

- Orr Block Project needs a plan to deal with this issue. When will they disclose this plan to the adjacent abutters and to Newton’s city government?

Regarding this site’s contamination issue, here is where this government regulations comes from (Mass. Chapter21E section 8), and eligibility for claiming down-gradient property status.

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section8>

I have also attached that portion of Massachusetts Chapter 21E (Section 8) below in my Detailed References below.

I would to see the counselors that the lead in ensuring that all abutters are aware of their right to petition for this down-gradient property designation.

I would also like to see our counselors take the lead with a petition to the Mass DEP to be involved, and to ensuring that the DEP Regional Office assign a local coordinator or oversee this cleanup process within our city. Once this site becomes Tier Classified and starts going through the comprehensive phased MCP cleanup process, we want to petition Mass DEP for this project to be designated as a Public Involvement Plan (PIP) Site. We understand that we have a right as a community to submit the extended PIP petition at any point in the cleanup process following Tier Classification, up until the site reaches closure by submitting a Permanent or Temporary Solution Statement

Thank you for hearing my concerns.

James Pacheco

Retired Consultant Engineer

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Other References:

"Down-Gradient Properties"

<http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/downgradient-property-status-fact-sheet.html>

Massachusetts Oil and Hazardous Material Release Prevention Act

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E>

Risk Assessments:

<http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/310-cmr-40-0000-mcp-subpart-i-risk-characterization.html>

Detail Reference(s) –:

Section 8. For the purpose of the administration and enforcement of this chapter and for the protection of public health, safety, or welfare, or the environment, authorized personnel, agents and contractors of the department may enter any site, any vessel, or any location to be investigated as a possible site at reasonable times and upon reasonable notice, to investigate, sample and inspect any records, conditions, equipment, practice or property. Where necessary to ascertain facts relevant to, or not available at, such location, site or vessel where oil or hazardous material is or might be located, any person shall, upon request of any officer, employee or duly authorized representative of the department, furnish information relating to said oil or hazardous material and shall permit said officers, employees or authorized representatives to have access to, and to copy, all records relating to said oil or hazardous materials. In the event that the department reasonably determines as a result of such investigation, sampling or inspection that there has been a release or that there is a threat of release of oil or hazardous material from or at such location, site or vessel, the department and its authorized personnel, agents, representatives or contractors may enter such location, site or vessel and areas proximate thereto and undertake such actions pursuant to section four and the Massachusetts Contingency Plan relative to the assessment, containment and removal of oil or hazardous material as it reasonably deems necessary. The authorized agents or contractors of a person who is, or who is potentially, a person described in paragraph (a) of section five, may, with the approval or on the order of the department, and subject to any terms, conditions and requirements that the department may impose on such approval or order, enter any site, any vessel, or any location to be investigated as a possible site not owned or operated by him for the purposes of performing response actions in accordance with the Massachusetts Contingency Plan and an order or approval of the department.

In the event that it has reason to believe that an owner or operator of a site or vessel, a fiduciary, a city or town, a redevelopment authority, a redevelopment agency, a community development corporation, an economic development and industrial corporation, an eligible person or secured lender that has title to or possession of a site or vessel, an eligible tenant that acquires occupancy or possession of a site or a portion thereof, or a person asserting down-gradient property status pursuant to section 5D has made fraudulent representations to the department or has destroyed or concealed evidence relating to a release or threat of release or to the assessment, containment, or removal of a release or threat of release, the department may seize any records, equipment, property, or other evidence it deems necessary. During the course of any assessment, containment, and removal actions, the department may restrict and deny entry to the site or vessel and proximate property to protect the public health, safety, welfare and the environment and to provide for the efficient, expeditious and safe conduct of such actions; such restriction and denial shall not preclude access by an owner or operator of such site or vessel, fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation, eligible person or secured lender that has title to or possession of such site or vessel, eligible tenant that acquires occupancy or possession of a site or a portion thereof, or person asserting down-gradient property status pursuant to section 5D that acquires occupancy or possession of a site or a portion thereof; provided, however, that such owner, operator, fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation, eligible person, secured lender, eligible tenant or person asserting down-gradient property status pursuant to section 5D complies with all safety and operational protocols and requirements imposed by and to the satisfaction of the department; and provided, further, that such owner, operator, city or town, fiduciary, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation, eligible person, eligible tenant, secured lender or person asserting down-gradient property status pursuant to said section 5D does not interfere with the efficient, expeditious and safe conduct of the department's assessment, containment and removal actions.