



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET, SUITE 1100  
BOSTON, MA 02114-2023

Superfund Records Center

SITE: Bay State P+P

BREAK: 11.09

OTHER: 596943

**URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY**  
**VIA FED-EX**

April 6, 2005

Bay State Plating and Polishing, Inc.  
W. Conrad Duffy  
4 Harley Lane  
Salem, NH 03079

Re: **NOTICE OF POTENTIAL LIABILITY AND INVITATION TO PERFORM OR  
FINANCE PROPOSED CLEANUP ACTIVITIES:  
Bay State Plating and Polishing Site, Lawrence, MA**

Dear Mr. Duffy:

This letter serves to notify you of potential liability regarding the Bay State Plating and Polishing Superfund Site ("Site"), as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a). 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.

**NOTICE OF POTENTIAL LIABILITY**

The United States Environmental Protection Agency ("EPA") has documented the release or threatened release of hazardous substances or pollutants or contaminants at the Site, which is located at Pacific Mills Industrial Complex, 300 Canal Street, Building #6, 3<sup>rd</sup> Floor in Lawrence, MA. The Site is owned by 300 Canal Street Trust and identified at the Lawrence Assessor's Office on Map 150, Lot 11 and also on a deed identified at the Essex County Registry of Deeds (Northern District) in Book 1954, Page 283.

Hazardous substances involved in the release or threat of release at the Site include, but are not limited to: strong acids, alkaline materials, cyanides and oxidizers. 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.



SEMS DocID 596943

**Notice of Potential Liability - Bay State Plating and Polishing, Inc.  
Bay State Plating and Polishing Superfund Site  
Page 2**

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Under Sections 106(a) and 107(a) of CERCLA, 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, liable parties may be obligated to implement response actions deemed necessary by EPA to protect public health, welfare, or the environment and may be liable for all costs incurred by the Government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to: expenditures for investigations, planning, response, oversight and enforcement actions.

Responsible parties under CERCLA include current and former owners and operators of the Site, persons who arranged for disposal or treatment of hazardous substances found at the Site (often called "generators"), and persons who accepted hazardous substances for transport to the Site (often called "transporters").

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 as operator of the property, you 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**

In accordance with CERCLA and other authorities, EPA has undertaken a removal preliminary assessment.

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) perform additional sampling, identification and characterization of hazardous materials; 2) perform air monitoring; 3) stabilize, consolidate, segregate and stage containers; 4) decontaminate RCRA-empty drums, vats and small containers; 5) assess and characterize any additional hazardous material discovered onsite; 6) dispose of hazardous materials at an EPA-approved disposal facility; and 7) perform Site restoration if necessary.

**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 an 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

**Notice of Potential Liability - Bay State Plating and Polishing, Inc.**  
**Bay State Plating and Polishing Superfund Site**  
**Page 3**

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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.

A Notice of Potential Liability has also been sent to 300 Canal Street Trust. You or your attorney may wish to discuss the matters set forth in this letter with such party or its attorney.

**PRP RESPONSE AND EPA CONTACT**

You should contact EPA within **seven (7) 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 ("EC") for the Site:

Mary Ellen Stanton, OSC  
U.S. Environmental Protection Agency  
Emergency Response & Removal Section I (HBR)  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
(617) 918-1256

**Notice of Potential Liability - Bay State Plating and Polishing, Inc.**  
**Bay State Plating and Polishing Superfund Site**  
**Page 4**

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Tina Hennessy, EC  
U.S. Environmental Protection Agency  
Emergency Response & Removal Section I (HBR)  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
(617) 918-1216

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

Michelle Lauterback, Enforcement Counsel  
U.S. Environmental Protection Agency  
Office of Environmental Stewardship (SES)  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
(617) 918-1774

**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 form the basis of EPA's decision on the selection of response actions for the Site. The administrative record files may be inspected and comments may be submitted by contacting the OSC for the Site, Mary Ellen Stanton 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.

**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 Site, to perform or oversee the response actions discussed above. This request is enclosed.

**PURPOSE AND USE OF THIS NOTICE**

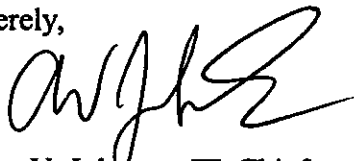
The factual and legal discussions contained in this letter are intended solely to provide notice and information. Such discussions are not intended to be, and cannot be, relied upon as EPA's final position on any matter set forth herein.

Due to the seriousness of the environmental and legal problems posed by conditions at the Site, EPA urges that you, or your representative, give immediate attention and provide a prompt response to this letter.

By copy of this letter, EPA is notifying the State of Massachusetts 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

Enclosure

cc: Paul Jiddings - MA DEP  
Andrew Raddant, Regional Environmental Officer - U.S. DOI  
Ken Finkelstein, National Oceanic & Atmospheric Administration - NOAA

**Notice of Potential Liability - Bay State Plating and Polishing, Inc.**  
**Bay State Plating and Polishing Superfund Site**  
**Page 6**

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Mary Ellen Stanton, EPA On-Scene Coordinator - HBR

Tina Hennessy, EPA Enforcement Coordinator - HBR

Michelle Lauterback, EPA Enforcement Counsel - SES

Holly Inglis, EPA Administrative Records Coordinator - HBS

Cheryl O'Halloran, CERCLIS Coordinator - HBR

James M. Bowers, Esq., 261 Common Street, Lawrence, MA

Daniel A. McCarthy, Esq., 261 Common Street, Lawrence, MA

## 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:** Bay State Plating and Polishing Site

**Site Address:** 300 Canal Street, Building 6, 3<sup>rd</sup> Floor  
Lawrence, MA

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 above-referenced property for the following purposes:

- Taking soil, water, groundwater, and air samples as may be determined necessary.
- Sampling any solids or liquids stored or disposed of on-Site.
- Conducting response actions, or overseeing potentially responsible parties performing response actions, to mitigate the hazards posed by hazardous substances found at the Site.
- Collecting and copying documents that may be relevant to response/removal/cost recovery activities.
- 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.

\_\_\_\_\_  
Signature of Property Owner or  
Owner's Authorized Representative

\_\_\_\_\_  
Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_



## U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

**The National Environmental Compliance Assistance Clearinghouse** provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

**Pollution Prevention Clearinghouse**  
<http://www.epa.gov/opptintr/library/ppicindex.htm>

**EPA's Small Business Ombudsman Hotline** can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:  
(800) 368-5888

**Emergency Planning and Community Right-To-Know Act**  
(800) 424-9346

**National Response Center** (to report oil and hazardous substance spills)  
(800) 424-8802

**Toxics Substances and Asbestos Information**  
(202) 554-1404

**Safe Drinking Water**  
(800) 426-4791

**Stratospheric Ozone and Refrigerants Information**  
(800) 296-1996

**Clean Air Technology Center**  
(919) 541-0800

**Wetlands Helpline**  
(800) 832-7828

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

**EPA's Home Page**  
<http://www.epa.gov>

**Small Business Assistance Program**  
<http://www.epa.gov/ttn/sbap>

**Office of Enforcement and Compliance Assurance**  
<http://www.epa.gov/compliance>

**Compliance Assistance Home Page**  
<http://www.epa.gov/compliance/assistance>

**Office of Regulatory Enforcement**  
<http://www.epa.gov/compliance/civil/Index.html>

**Office of Site Remediation Enforcement**  
<http://www.epa.gov/compliance/cleanup>

**Innovative Programs for Environmental Performance**  
<http://www.epa.gov/partners>

**Small Business Ombudsman**  
[www.sba.gov/ombudsman](http://www.sba.gov/ombudsman)



## Compliance Assistance Centers

In partnership with industry, universities, and other federal and state agencies, EPA has established national Compliance Assistance Centers that provide Internet and "faxback" assistance services for several industries with many small businesses. The following Compliance Assistance Centers can be accessed through the Center's gateway at <http://www.assistancecenters.net> or by calling the phone numbers below and at their respective websites:

### Metal Finishing

(1-800-AT-NMFRC or [www.nmfrc.org](http://www.nmfrc.org))

### Printing

(1-888-USPNEAC or [www.pneac.org](http://www.pneac.org))

### Automotive Service and Repair

(1-888-GRN-LINK or [www.ccar-greenlink.org](http://www.ccar-greenlink.org))

### Agriculture

(1-888-663-2155 or [www.epa.gov/agriculture](http://www.epa.gov/agriculture))

### Printed Wiring Board Manufacturing

(1-734-995-4911 or [www.pwbrc.org](http://www.pwbrc.org))

### The Chemical Industry

(1-800-672-6048 or [www.chemalliance.org](http://www.chemalliance.org))

### The Transportation Industry

(1-888-459-0656 or [www.transource.org](http://www.transource.org))

### The Paints and Coatings Center

(1-800-286-6372 or [www.paintcenter.org](http://www.paintcenter.org))

Three new centers are under development for the auto salvage sector, the construction industry, and U.S. Mexican border waste issues.

## State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information. For assistance in reaching state agencies, call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental Homepage at <http://www.smallbiz-envioweb.org/state.html>.

## Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: The Audit Policy (<http://www.epa.gov/compliance/incentives/auditing>) and the Small Business Policy (<http://www.epa.gov/compliance/incentives/smallbusiness>).

These do not apply if an enforcement action has already been initiated.

## Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community because the regulated community previously commented on its activities.

## Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

***EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) or related provisions.***