

Massachusetts

Good Neighbor Policy

The Commonwealth of
Massachusetts

William F. Weld
Governor

Argeo Paul Cellucci
Lt. Governor

Scott Harshbarger
Attorney General

Executive Office of
Environmental Affairs

Trudy Cox
Secretary

Department of
Environmental Protection

David B. Struhs
Commissioner

April 19, 1996

Dear Local Official:

We are pleased to present you with a copy of the Commonwealth's Good Neighbor Policy on groundwater contamination migrating from the Massachusetts Military Reservation (MMR). Jointly developed by the Department of Environmental Protection (DEP) and the Office of the Attorney General, this Policy is intended to address concerns raised by residents of Bourne, Falmouth, Mashpee and Sandwich about the potential effects of the contamination plumes on local property values.

Our state Superfund Law — M.G.L. Chapter 21E — establishes strict joint and several liability for the cleanup of oil and hazardous materials released to the environment. This means that even people who have played no role whatever in their property becoming contaminated may be held legally liable for cleanup costs. Typically, however, the Commonwealth does not pursue these property owners when the contamination can be clearly traced to an upgradient source and the party responsible has not only agreed to clean it up but has the financial resources to do so. This is the case with the MMR contamination plumes.

The Good Neighbor Policy makes it clear that the Commonwealth expects only those who directly caused or contributed to the MMR groundwater contamination to accept financial responsibility for cleanup. In other words, neither DEP nor the Attorney General intend to hold the owners or operators of property overlaying the MMR groundwater contamination plumes responsible for that contamination.

A number of individuals and groups have asked for legislative action to address this issue. We are currently working together to develop legislation that would extend the assurances contained in the Good Neighbor Policy by statute — not only to the residents of the four Cape Cod towns affected by groundwater contamination from MMR, but to all homeowners in Massachusetts who are dealing with similar situations.

Department of Environmental Protection
One Winter Street
Boston, MA 02108

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please prominently display the Good Neighbor Policy in your offices and make copies available to the residents of your community. Should you have any comments or questions about the Policy, please do not hesitate to contact James Colman, DEP's Assistant Commissioner for Waste Site Cleanup, at (617) 292-5648.

Sincerely,



David B. Struhs
DEP Commissioner



Scott Harshbarger
Attorney General

enclosure: Good Neighbor Policy

MODEL REQUEST LETTER
PURSUANT TO DEP POLICY WSC-96-603

[date]

Regional Director
Department of Environmental
Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347

Re: Request for Advisory Ruling Regarding Property located at

Dear Regional Director:

I, _____ hereby request that the Department of Environmental Protection (the "Department") make an advisory ruling pursuant to G.L. c. 30A, § 8 with respect to the Department's exercise of its enforcement discretion pursuant to G.L. c. 21E. Specifically, I request that the Department consider the facts set forth below and determine the applicability of Policy WSC 96-603 to my operation of or ownership of property as described below:

— I own property located at _____ in the town of _____ ("Property"), one of the municipalities affected by the contamination in groundwater migrating from the Massachusetts Military Reservation ("MMR").

— I operate a property located at _____ in the town of _____, one of the municipalities affected by the contamination in groundwater migrating from MMR.

— I did not cause or contribute to the contamination in groundwater migrating from MMR.

I would like to record or register the Statement of Advisory Ruling issued by the Department regarding the Property, with the Barnstable County Registry of Deeds and/or Land Registration Office of the Barnstable County Registry District, title to such property being in me pursuant to a deed dated and recorded or registered at Book _____, Page _____ and/or Certificate of Title Number _____ issued to me by said Land Registration Office.

I request that the Department review my specific situation and render an advisory ruling with respect to whether the facts set forth here are consistent with Policy WSC-96-603, such that the Department will exercise its enforcement discretion in accordance with the Policy.

Statement of Advisory Ruling

This Statement of Advisory Ruling responds to your letter dated _____, to the Department of Environmental Protection ("the Department"). You requested that, pursuant to Policy WSC-96-603, a copy of which is attached (the "Policy"), the Department make a determination, based upon the facts set forth in your letter, that the Policy is applicable to you. The Policy describes how the Department determines, upon its review of specific facts, how the Commonwealth will exercise its enforcement discretion with respect to those property owners and operators who may be or may become potentially liable under G.L. c. 21E, § 5(a)(1) or § 5(a)(2) solely because of the presence of contamination underlying their property that has migrated or may migrate in groundwater from the Massachusetts Military Reservation ("MMR") and who did not otherwise cause or contribute to the contamination.

The facts asserted in your letter indicate that the property you [own] [operate] is located at _____ in _____, one of the municipalities affected by the contamination in groundwater migrating from MMR and that you neither caused nor contributed to the contamination in groundwater migrating from MMR. [The current deed is [recorded in the Barnstable County Registry of Deeds at Book _____, Page _____] [registered in the Barnstable County Registry of Deeds, Certificate Number _____].] Assuming the facts asserted in your letter and restated here are true, the Department has determined that your circumstances are consistent with those described in the Policy. Issuance of this Statement of Advisory Ruling does not in and of itself indicate that contamination in groundwater migrating from MMR has come to be located at the property identified above.

Therefore, the Department will exercise its enforcement discretion in these circumstances and will not seek reimbursement of response costs from you, nor seek to secure such costs by placement of a lien on your property, nor require you to perform response actions necessary to address groundwater contamination underlying your property that has migrated or may migrate in groundwater from MMR. This Policy does not apply to contamination in groundwater that has not migrated from MMR, or to other circumstances not covered by this Policy.

Regional Director, Southeast Region
Massachusetts Department of
Environmental Protection

Date

Property Owner
(Sign here if you wish
to record or register this document)

Date

Policy of the Department of Environmental Protection and the Attorney General Regarding Property Owners and Operators in Municipalities Affected by Contamination in Groundwater Migrating from Massachusetts Military Reservation ("MMR")

This policy and guidance is intended to inform property owners and operators in Bourne, Sandwich, Falmouth and Mashpee and to provide guidance to Department of Environmental Protection (the "Department") personnel about the specific circumstances under which the Commonwealth of Massachusetts (the "Commonwealth"), acting through the Attorney General and the Department, intends to exercise its enforcement discretion with respect to: persons who own or operate property (owners and operators) in the above municipalities and who may be or may become potentially liable under M.G.L. c. 21E § 5(a)(1) or § 5(a)(2) solely because of the presence of contamination that has migrated or may migrate in groundwater from MMR and who did not cause or contribute to that contamination.

The Department recognizes that groundwater contaminated with oil and/or hazardous materials is migrating from MMR and has caused widespread concern in the municipalities identified above. The Department believes that several factors associated with this situation are sufficiently unusual so as to merit consideration, as follows:

- * MMR is known to be the source of the contamination in groundwater migrating from MMR;
- * most of the contaminated groundwater underlying these municipalities lies at depths in excess of one hundred feet;
- * clean-up actions at MMR are funded and conducted by the United States Department of Defense;
- * there is a significant amount of clean groundwater overlying the contamination;
- * where the contaminated groundwater is not at great depth, the United States Department of Defense is responsible for effectively minimizing the potential for exposure.

Therefore, as an exercise of its enforcement discretion, the Commonwealth will not seek to recover any costs it has incurred or may incur responding to MMR groundwater contamination from the owners or operators who may be or may become potentially liable parties under G.L. c. 21E § 5(a)(1) or § 5(a)(2) solely because of the presence of contamination in groundwater migrating from MMR, and who have not caused or contributed to the contamination. This


Policy does not apply to contamination in groundwater that has not migrated from MMR, or to other circumstances not covered by this Policy.

The Department is providing notice of this policy to Boards of Selectmen and Boards of Health in the affected municipalities, in addition to the MMR Information Repositories and to the public.

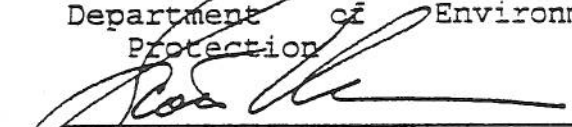
The Department also understands that owners or operators may wish to obtain a specific determination of the applicability of this Policy to their individual circumstances. Therefore, any owner or operator of any property in one of the affected municipalities as described in this Policy may request an advisory ruling pursuant to G.L. c. 30A, § 8 as to the applicability of this Policy to their individual situation. To expedite the Department's review, a request should be made on the attached form. If you intend to record the Statement of Advisory Ruling ("Advisory Ruling") issued by the Department, after an Advisory Ruling is made, please provide the relevant book and page number or registered land certificate number as indicated in the form.

Upon making such an Advisory Ruling in reliance upon the truth of the facts asserted in the request, the Department will issue the attached statement to the requesting owner or operator.

April 12, 1996
Date


David B. Struhs
Commissioner
Department of Environmental
Protection

April 23, 1996
Date


Scott Harshbarger
Attorney General



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

**Department of
Environmental Protection**
Southeast Regional Office

William F. Weld
Governor
Argeo Paul Cellucci
Lt. Governor

Trudy Cox
Secretary
David B. Struhs
Commissioner

May 2, 1996

RE: Massachusetts Military
Reservation/MMR
Good Neighbor Policy

Dear Home and Property Owners:

Attached please find information regarding the Massachusetts Good Neighbor Policy.

The policy was developed in response to concerns raised by people on Cape Cod relative to groundwater contamination in the area of the Massachusetts Military Reservation (MMR). Basically the policy states that property owners will not be held liable for cleanup costs associated with MMR, providing they have not caused nor contributed to the contamination.

Together with the Air Force Center for Environmental Excellence (AFCEE), the National Guard Bureau (NGB), and the Environmental Protection Agency (EPA), DEP and our Executive Office of Environmental Affairs will continue to address the complex issues associated with the cleanup at MMR.

Here in the DEP, Southeast Region, staff currently involved in the MMR Superfund project include Lenny Pinaud, project manager and Ellie Grillo, public involvement coordinator. Please feel free to contact them with any questions or comments you may have at 508) 946-2700.

Thank-you for your continued interest in protecting the natural resources of Cape Cod.

Very truly yours,

Paul Taurasi
Regional Director

cc:

Andrea Papadopoulos
Lenny Pinaud
MMR Mailing List
MMR Information Repositories
Doug Karson - MMR Public Affairs
Johanna Hunter - EPA Community Relations