STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

AVERY T. DAY
ACTING COMMISSIONER

** Urgent Legal Matter -- Your Prompt Response Required **

NOTICE OF POTENTIAL LIABILITY and REQUEST FOR INFORMATION

Former Dow Air Force Base in Bangor, Maine

Certified Mail #
7011 1150 0001 7046 9405

October 13, 2015

Major Philip Winchester
101st Environmental Manager
Maine Air National Guard
Bangor, Me 04401

Dear Major Winchester:

The Maine Department of Environmental Protection ("DEP" or "Department") is seeking information from all Potentially Responsible Parties ("PRPs") regarding the release of hazardous substances at the former Dow Air Force Base ("Site") in Bangor, Maine, in order to facilitate the investigation and mitigation of the risks posed by this Site. Specifically, this inquiry concerns two locations on the Site which are commonly known as the "landfill" and the "Fire Training Area." It is the Department's understanding that the Maine Air National Guard ("MeANG"), a part of the military bureau under the Maine Department of Defense, Veterans, and Emergency Management, arranged for the transport and handling of hazardous substances that arrived at the landfill and at the Fire Training area. The boundaries of the Fire Training Area are not fully identified at this time. It is the Department's intent that this information request will assist in positively identifying the boundaries of the Fire Training Area. Based on information available to the Department at this time, it is possible that the Fire Training Area at least partially lies on land owned and operated by the MeANG. The DEP has, therefore, determined that the MeANG is a PRP under Maine's *Uncontrolled Hazardous Substance Site*s law, 38 M.R.S.A. §§ 1361–1371 ("Uncontrolled Sites Law") and the United States *Comprehensive Environmental Response, Compensation, and Liability Act*, 42 U.S.C. §§ 9601–9675 ("CERCLA").

SITE BACKGROUND

The DEP and the United States Army Corps of Engineers ("USACE") have been cooperatively investigating environmental issues associated with the Site, which is generally depicted on Figure 1, attached. Our current understanding is that the Site was operated by the United States Air Force from approximately 1947 to October of 1968, when it was transferred to the City of Bangor and the MeANG. The Site is currently operated as the Bangor International Airport and as a MeANG Facility.

Reports detailing the results of environmental investigations from 1988 to the present have identified multiple projects at the Site that required environmental remediation. Most of these projects have either been completed or are progressing under the direction of the USACE, as agent for the Department of Defense ("DoD") under the Maine Defense-State Memorandum of Agreement ("DSMOA"). However, at least two of the identified environmental projects associated with the base cannot be fully addressed under the DSMOA since civilian PRPs may have contributed to the releases at these operable units.

Multiple reports and laboratory analyses of groundwater samples have documented the presence of hazardous substances, pollutants and contaminants, as defined under CERCLA and the Uncontrolled Sites Law, at the so called Fire Training Area ("FTA") at the Site. Laboratory analysis of environmental samples taken from the FTA have detected levels of lead, cadmium, benzene, and trichloroethylene ("TCE") in soil and/or groundwater at concentrations that exceed risk based guidelines including Maximum Contaminant Levels ("MCL") for drinking water. Based on information obtained to date, the source of this contamination includes materials generated and/or transported to the FTA by the MeANG and, potentially, other PRPs.

Also within the Site, at the so called "landfill," laboratory analysis of environmental samples detected hazardous substances, pollutants and contaminants, as defined under CERCLA and the Uncontrolled Sites Law. Elevated levels of lead and arsenic in groundwater exceed MCLs at this operable unit. Based on information obtained to date, the source of this contamination includes materials transported and discarded by the MeANG and, potentially, by other parties.

LIABILITY UNDER MAINE LAW

Under the Uncontrolled Sites Law, DEP is authorized to investigate uncontrolled hazardous substance sites *(i.e.* sites where hazardous substances have come to be located), and to cleanup such sites, and /or mitigate threats or hazards posed by such sites.

Under 38 M.R.S.A. § 1362(2), the owner or operator of the uncontrolled site, any person who owned or operated the uncontrolled site from the time any hazardous substance arrived there, persons who arranged for transport or handling of hazardous substances which arrived at such a site, and persons who accepted hazardous substances for transport if the substances arrived at such a site, are responsible parties for the site.

Under 38 M.R.S.A. § 1365 and other laws[1], responsible parties may be obligated to undertake and complete response actions deemed necessary by DEP at the site to protect the public health, safety, or the environment. Under 38 M.R.S.A. § 1367, each responsible party is also jointly and severally liable for all costs incurred by the DEP in responding to any release or threatened release of hazardous substances at the base. Such costs may include, but are not limited to, costs for the abatement, cleanup or mitigation of the threats or hazards posed or potentially posed by

[1] Other laws include, without limitation, DEP's general *Organization and Powers* authority, 38 M.R.S.A. §§ 341-349-B, and the Maine *Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §1301-1319-Y.

an uncontrolled site. In addition, responsible parties are liable for damages for injury to, destruction of, loss of or loss of use of natural resources, including the costs to assess such damages.

LIABILITY UNDER FEDERAL LAW

Pursuant to 42 U.S.C. § 9607(a)(1) "the owner and operator of a vessel or a facility … shall be liable for:

> **(A)** all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;
> **(B)** any other necessary costs of response incurred by any other person consistent with the national contingency plan;
> **(C)** damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and
> **(D)** the costs of any health assessment or health effects study carried out under section 9604 (i) of this title."

NOTICE OF YOUR POTENTIAL LIABILITY

By way of this letter, the DEP is notifying the MeANG of its potential liability with respect to this matter. According to information obtained by DEP, the MeANG may presently own that portion of the Site that includes the FTA, and operated and may have owned that portion of the Site that includes the FTA during times that hazardous substances arrived at the Site. DEP records also indicate that the MeANG arranged for the transport and handling of hazardous substances that arrived at the landfill and FTA. Although these areas of the Site may have been used by other parties, the DEP considers the MeANG to be a primary potentially responsible party for environmental contamination found at the landfill and FTA.

REQUEST FOR INFORMATION

The DEP is contacting all known potentially responsible parties to determine appropriate levels of responsibility, and to request that the parties provide any additional information that they may have regarding Site history and potential liability.

This investigation requires inquiry into the identification, nature, and quantity of substances that have been generated, stored, disposed or otherwise handled at or transported to the Site and into the nature and extent of discharge or threatened discharge of hazardous substances, pollutants, or contaminants at or from the Site. The DEP is also seeking information relating to the ability of responsible parties to finance or to perform necessary clean-up activities undertaken at the Site. As 38 M.R.S.A. § 1364(3) provides, in relevant part, "…During the course of the investigation, the Commissioner [of DEP] may require submission of the information or documents that relate

or may relate to the site under investigation … from any person whom the Commissioner has reason to believe may be a responsible party…"

PURSUANT TO THE AUTHORITY OF TITLE 38 M.R.S.A. § 1364(3), YOU ARE HEREBY REQUESTED TO RESPOND TO THE INFORMATION REQUEST ATTACHED.

Your response to this request must be submitted in writing to the following address within thirty (30) days from receipt of this notice:

Attn: David Wright, Director
Division of Remediation, BRWM
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Any questions regarding this letter should be directed to Christopher Swain, Project Manager, who may be contacted at the above address, by telephone at 207-485-3852, or by email at Chris.Swain@Maine.gov

Due to the seriousness of the conditions posed by the Site and the legal consequences of any failure to respond fully and properly, I strongly encourage you to give this matter your immediate attention and to respond to this information request within the time from specified above.

Thank you for your cooperation in this matter.

Sincerely,

Leslie Anderson
Director, Bureau of Remediation and Waste Management
Maine Department of Environmental Protection

Attachment

cc: David Wright, Maine DEP

Bangor International Airport
Bangor, ME
N
60478 - DOW AFB - FORMER LANDFILL
60479 - DOW AFB - FIRE TRAINING AREA
0 625 1,250 2,500 Feet
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF MAINE

FORMER DOW AIR FORCE BASE SITE
INCLUDING THE FIRE TRAINING AREA AND LANDFILL

Request for Information

Date: October 13, 2015

Instructions

1. Answer all questions fully and respond to each request.

2. Include in your response a notarized affidavit from a responsible official stating the following:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry with the person or persons who were directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. A diligent record search has been completed and there has been a diligent interviewing process with present and former employees who may have knowledge of operations, business relationships, contractual agreements, financial arrangements, chemical use, hazardous substance or waste transport, disposal, storage, treatment and/or other handling methods and locations of, such handling methods and any other knowledge of the Site and/or operations relating to this request. All information and documents responsive to the Maine Department of Environmental Protection's Request for Information have been forwarded to the DEP. All questions and requests have been responded to fully. I am aware that there are significant penalties, including the possibility of fine and imprisonment, for non-compliance with this request or for knowingly submitting false information or tampering with the information submitted."

3. Provide a separate narrative response to each and every question and subpart of a question set forth in this Information Request.

4. Precede each answer with the number of the question to which it corresponds.

5. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the DEP. Moreover, should you find, at any time after the submission of its response, that any portion of the submitted information is false or misrepresents the truth, you must notify the DEP of this fact as soon as possible and provide the DEP with a corrected response.

6. For each document produced in response to this Information Request, indicate on the document or in some other reasonable manner the number of the question to which it responds.

Definitions

The following definitions shall apply to the following words as they appear in this Information Request:

1. The term "you" or "Respondent" of this Request shall mean the addressee of this Request, the Maine Air National Guard and the Maine Department of Defense, Veterans, and Emergency Management, and these entities' officers, managers, employees, contractors, trustees, partners, successors, assigns and agents.

2. The term "Person" shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State or any interstate body.

3. The terms the "Site" or the "Facility" shall mean the former Dow Air Force Base in Bangor, Maine, and includes, but is not limited to, the so called Fire Training Area ("FTA") and Landfill Area. A map generally depicting the Site, FTA and landfill area is attached as Figure 1.

4. The term "hazardous substance" shall have the same definition as that contained in 38 M.R.S.A. § 1362(l) of Uncontrolled Sites Law and includes any mixtures of such hazardous substances with any other substances including petroleum products. Note the State definition includes those contaminants defined as hazardous substances in 42 U.S.C. § 9601(14), which includes any mixtures of such hazardous substances with any other substances, including mixtures of hazardous substances with petroleum products or other nonhazardous substances.

5. The terms "pollutant" or "contaminant" shall have the same definition as that contained in 42 U.S.C. § 9601(33) and includes any mixtures of such pollutants and contaminants with any other substances including petroleum products.

6. The term "hazardous waste" shall have the same definition as that contained in 38 M.R.S.A. § 1303-C(15).

7. The term "solid waste" shall have the same definition as that contained in the *Resources Conservation and Recovery Act* ("RCRA"), 42 U.S.C. § 6903(27).

8. The term "materials" shall mean all substances that have been generated, treated, stored or disposed of or otherwise handled at or transported to the Site including, but not limited to all hazardous substances, pollutants or contaminants, hazardous wastes and solid wastes as defined above.

9. The term "hazardous material" shall mean all hazardous substances, pollutants or contaminants and hazardous wastes as defined above.

10. The term "nonhazardous material" shall mean all material as defined above excluding hazardous substances, pollutants or contaminants and hazardous waste.

11. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number and present or last known home address and home telephone, number and present or last known job title, position or business.

12. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form (*e.g.*, corporation, partnership, etc.), organization, if any, corporate officers, if any, and a brief description of its business.

13. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number (invoice or purchase order number), the identity of the author, addresser, and/or recipient and the substance or the subject matter.

14. The term "discharge" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, releasing, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discharging of drums, barrels, containers and other closed receptacles containing any hazardous substance, pollutant, or contaminant.

15. The terms "document" and "documents" shall mean any object that records, stores, or presents information and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like of it, (c) drafts, (d) attachments to or enclosures with any document and (e) every document referred to in any other document.

16. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information that might otherwise be construed to be outside its scope.

17. The term "arrangement" means every separate contract or other agreement between two or more persons.

18. The terms "transaction" or "transact" mean any sale, transfer, giving, delivery, change in ownership or change in possession.

19. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions, to bring within the scope of this Information Request any information that might otherwise be construed to be outside its scope.

20. All terms not defined herein shall have their ordinary meaning unless such terms are defined in 38 M.R.S.A. §§ 1301–§1319-Y, 38 M.R.S.A. §§ 1361–1371, and Chapters 850–857 and 860 of the DEP's Rules, in which case the statutory or regulatory definitions shall apply.

Questions

1. Identify the Respondent.

2. Identify the person(s) answering these questions on behalf of Respondent.

3. List the U.S. EPA RCRA identification number(s) of the Respondent that are related to the Site, if any.

4. For each and every question contained herein, identify all persons consulted in the preparation of the answer.

5. For each and every question contained herein, identify all documents consulted, examined or referred to in the preparation of the answer or that contain information responsive to the question and provide true and accurate copies of all such documents.

6. For each and every question contained herein, if information or documents responsive to this Information Request are not in your possession, custody or control then identify the persons from whom such information or documents may be obtained.

7. Provide a general historic overview of how hazardous substances were typically used, handled, and disposed of at the Site prior to, during, and after the time that you operated the Dow Air Force Base, with an emphasis on locations that do not qualify for environmental restoration funding under Maine's Defense-State Memorandum of Agreement (DSMOA), such as, but not limited to, the Fire Training Area, and the Landfill.

8. Identify any legal or equitable interest that you now have, or previously had in the Site. Include information regarding the nature of such interest; when, how, and from whom such interest was obtained; and when, how, and to whom such interest was conveyed. In addition, submit copies of all instruments evidencing the acquisition or conveyance of such interest.

9. Did you acquire or operate the Site or any portion of the Site after the disposal or placement of hazardous substances on, or at the Site? Describe all of the facts on which you base the answer to the preceding question. If the answer is yes, then answer a, b, and c as follows:

    a. At the time you acquired or operated the Site, did you know or have reason to know that any hazardous substance was disposed of on, or at the Site? Describe all investigations of the Site you undertook prior to acquiring the Site and all of the facts on which you base the answer to the preceding question.

    b. Identify all owners of the Site subsequent to the release of hazardous substances at the Site. For each subsequent owner, further identify:

        i. The dates of ownership;

        ii. All evidence showing that they controlled access to the Site; and

        iii. All evidence that a hazardous substance, pollutant, or contaminant, was released or threatened to be released at the Site during the period that they owned the Site.

c. Identify all operators of the Site, including lessors, of the Site that were subsequent to the release of hazardous substances at the Site. For each such operator, further identify:

i. The dates of operation;

ii. The nature of their operations at the Site;

iii. All evidence that they controlled access to the Site; and

iv. All evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from the Site and/or its solid waste units during the period that they were operating the Site.

10. Describe all arrangements that the Respondent had with the persons to whom it conveyed the Site to, and subsequent owners, regarding the handling of hazardous substances that were at the Site at the time of transfer.

11. Identify all key persons, including Respondent's employees and former employees, who have knowledge, information or documents about the generation, use, purchase, treatment, storage, disposal or other handling of materials at or transportation of materials to the Site during the time that the Respondent owned or operated the Site.

12. Describe the waste handling and disposal history of the Site, for all facilities and all operations, including but not limited to transportation, shipping and/or receiving, storage, manufacturing, research, quality control, waste containment, and waste disposal facilities during the time that the Respondent owned or operated the Site. This description is to include the names, addresses and activities of waste disposal contractors, and copies of all supporting documents (manifests, invoices, contracts, *etc.*).

13. During the time that that the Respondent owned or operated the Site did the Respondent cede control of the handling of hazardous substances to another entity that caused or threatened to cause a release? Describe all of the facts on which you base the answer to the preceding question. If the answer is yes, then answer a through f as follows:

a. Identify such person and the nature of their operation at the Site;

b. Describe the portion of the Site owned, operated, leased or otherwise controlled by each such person and state the dates during which each portion was owned, operated, leased or otherwise controlled;

c. Describe the type, condition, number and all markings on any containers in which materials were contained when they were handled by this entity;

d. Describe the type and quantity (weight and volume) of material released by the entity, the dates of release, and the location of the release;

e. Describe the type and quantity (weight and volume) of material released by the entity, and the dates of release at the FTA or Landfill; and

f. Provide copies of all documents including, but not limited to, invoices, receipts, manifests, shipping papers and contracts that may reflect, show or evidence the type and quantity (weight and volume) of material released by the entity, the dates of release, and the location of the release.

14. Describe all leaks, spills, discharges or threats of discharges of any kind into the environment of any hazardous materials that have occurred or may occur at or from the Site including, but not limited to:

    a. every date when such discharges occurred;

    b. how the discharges occurred;

    c. what hazardous materials were discharged;

    d. where such discharges occurred;

    e. the quantity (weight and volume) of the discharge;

    f. any and all activities undertaken in response to each discharge, including the results on any soil, water, or air testing that was undertaken and any reporting to a governmental entity; and

    g. all persons with information relating to subparts a through f of this question.

15. Identify all persons, including you, who may have transported or cause to have transported materials to the Site. Such persons will hereinafter be referred to as "Transporters." For each such Transporter further identify:

    a. In general terms, the nature and quantity of all non-hazardous material(s) that they transported to the Site;

    b. The nature of the hazardous material(s) they transported to the Site including the chemical content, characteristics, concentrations, chemical and trade names and physical state (*e.g.*, solid, liquid);

    c. The persons from whom the Transporters accepted hazardous materials(s);

    d. Every date on which they transported the hazardous materials to the Site;

    e. The owners of the hazardous materials that were accepted for transportation by the Transporter;

    f. The quantity (weight and volume) of hazardous materials brought by the Transporter to the Site;

g. All tests, analyses, analytical results and manifests concerning each hazardous material accepted for transportation to the Site;

h. The precise locations at the Site to which each hazardous material was transported;

i. Who selected the location to which the Transporter would take each hazardous material;

j. Who selected the Site as the location to which the Transporter would take each hazardous material;

k. The amount paid to each Transporter for accepting the hazardous materials for transportation, the method of payment and the identity of the persons who paid each Transporter;

16. For the persons identified in subpart i. above who intended to have such hazardous materials transported to the Site, provide:

    a. All evidence of their intent;

    b. All locations at which such hazardous materials were trans-shipped through or were stored or held at prior to their final treatment or disposal;

    c. What was done to the hazardous materials after they were transported to the Site including, but not limited to, segregation, treatment and commingling activities;

    d. The final disposition and location of such disposition of each of the hazardous materials brought to the Site;

    e. The measures taken by the persons who gave the hazardous materials to the Transporters to determine what the Transporters would actually do with the hazardous materials they accepted; and

    f. The markings on, type and number of containers in which the hazardous materials were contained when they were accepted by the Transporters and when they were transported to and arrived at the Site.

17. Describe all instances where the Site accepted substances which could be considered off-spec. "Off-spec" is intended to mean a substance that in its current form is not useful for its intended purpose. Off-spec materials are often experimental products and/or substances which did not live up to expectations; or product and/or substances which did not meet the level of quality required for its intended purpose, *i.e.* a contaminated batch of solvents. Your response is to include the following:

    a. a description of the substances sent to the Site;

    b. the types and quantity of the substances sent to the Site;

    c. the name of the person or company who transported the substances to the Site;

d. the name of the person or company who sent the substances to the Site;

e. the names of the person or company who originated the waste sent to the Site,

f. the date(s) such substances were sent to the Site;

g. the state (*i.e.*, liquid, solid, or gaseous) of the substances sent to the Site, and the manner in which the substances were stored or disposed (*i.e.*, drummed or uncontained, placed in lagoons, landfilled, placed in piles, *etc.*);

h. a description of what the Site Operator would do with the substances once received;

i. the reason which led you to believe that the substances received were off-spec in the form received by the Site.

j. Identify all customers who would receive a finished product which was composed of any substances described in this question.

18. Identify all persons including you who may have:

a. Disposed of or treated materials at the Site;

b. Arranged for the disposal or treatment of materials at the Site; or

c. Arranged for the transportation of materials to the Site (either directly or through transshipment points) for disposal or treatment.

Such persons shall hereinafter be referred to as "Generators".

19. For each and every instance in which a Generator performed any of the actions specified in parts a through c of the previous question:

a. Identify the Generator;

b. Identify the persons with whom the generator made such arrangements;

c. Identify all persons who may have directly or indirectly transported or otherwise brought any materials to the Site;

d. State every date on which each such Generator made such arrangements;

e. Identify the hazardous materials by name and quantity (weight and volume), if known, and describe what was done to the hazardous materials once they were brought to the Site;

f. Describe the final disposition of each of the hazardous materials involved in each arrangement; and

g. Describe all markings, type, condition and number of containers in which the hazardous materials were contained when they were disposed, treated or transported for disposal or treatment.

20. Describe the acts or omissions of any persons other than your employees, agents or those persons with whom you had a contractual relationship that may have caused or contributed to the discharge or threat of discharge of hazardous substances at the Site and damages relating therefrom and identify such persons. In addition:

    a. Describe all precautions that you took against foreseeable acts or omissions of any such third parties and the consequences that could foreseeably result from such acts or omissions; and

    b. Describe the care you exercised with respect to the hazardous substances found at the Site. In general terms, describe any additional known information or activities relating to the placing or handling of hazardous materials on or at the Site.

21. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question contained herein or who may be able to provide additional responsive documents, identify such persons and the additional information or documents they may have.

End of First Request for Information