

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOUTHEAST REGIONAL OFFICE
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

DEVAL L. PATRICK
Governor

IAN A. BOWLES
Secretary

TIMOTHY P. MURRAY
Lieutenant Governor

LAURIE BURT
Commissioner

May 29, 2008

Mr. David Barney
BRAC Coordinator
Department of The Navy
Base Realignment and Closure
4911 South Broad Street
Philadelphia, PA 19112-1303

Re: **NOTICE OF NONCOMPLIANCE: NON-SE-08-7007**

Noncompliance with M.G.L. Chapter(s) 111, and 310 CMR 7.00

At: Noman's Land Island
U S Division of Fisheries & Wildlife (DFW) Refuge
Chilmark, MA 02535
Permit # 4F08006
FMF # 454166

2008 JUN - 3 A 7: 15
EFA NE
CODE EV2

Dear Mr. Barney:

Department of Environmental Protection ("MassDEP") personnel have determined that during the month of May 2008, activity occurred at the US DFW Noman's Land Island Refuge, located in Chilmark, resulting in noncompliance with one or more laws, regulations, orders, licenses, permits, or approvals enforced by Mass DEP.

Enclosed, please find a Notice of Noncompliance (NON), an important legal document describing the activities that are in noncompliance.

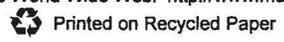
If you have any questions regarding this matter, please contact Mr. John Paino of this office at (508) 771-6056.

Sincerely,

Christopher Tilden P.E.
Regional Engineer for Waste Prevention

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD# 866-539-7622 or 617-574-6868.

DEP on the World Wide Web: <http://www.mass.gov/dep>



T/JP/re

Enclosure

CERTIFIED MAIL #7006 3450 0002 8414 2187

DEP-SERO

ATTN: J. Paino

L. Patriarca

cc: Town of Chilmark
P.O. Box 119
Town Offices
Chilmark, MA 02535

Town of Chilmark
Fire Department
P.O. Box 179
Cross Road
Chilmark, MA 02535

Chilmark Conservation Commission
P.O. Box 119
Town Offices
Chilmark, MA 02535

US Department of The Navy
Naval Facility Engineering Command Atlantic
6506 Hampton Blvd.
Norfolk, VA 23503-1278

US Department of The Interior
Fish and Wildlife Service
Great Meadows National Wildlife Refuge
Weir Hill Road
Sudbury, MA 01776

Tetra Tech EC, Inc.
133 Federal Street
Boston, MA 02110
ATTN: Mr. Brian Corbett

DEP-SERO
ATTN: Regional Enforcement Office

DEP-SERO
ATTN: D. Simpson



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NOTICE OF NONCOMPLIANCE

THIS IS AN IMPORTANT NOTICE. FAILURE TO TAKE ADEQUATE ACTION IN RESPONSE TO THIS NOTICE COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.

Based on the Department of Environmental Protection's ("MassDEP") investigation during May 2008, noncompliance occurred or was observed at The Noman's Land Island Wildlife Refuge in Chilmark, Massachusetts, in violation of one or more laws, regulations, orders, licenses, permits or approvals enforced by MassDEP.

This Notice of Noncompliance describes (1) the requirement violated, (2) the date and place on which MassDEP asserts the requirement was violated, (3) either the specific actions which must be taken in order to return to compliance or direction to submit a written proposal describing how and when you plan to return to compliance, and (4) the deadline for taking such actions or submitting such a proposal.

If the required actions are not completed by the deadlines specified below, an administrative penalty may be assessed for every day after the date of receipt of this Notice that the noncompliance occurs or continues. MassDEP reserves its rights to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including, but not limited to, criminal prosecution, civil action including court-imposed civil penalties, or administrative action, including administrative penalties imposed by MassDEP.

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NAME OF ENTITY(S) IN NONCOMPLIANCE:

United States Department of The Navy Base Realignment and Closure (BRAC)

LOCATION(S) WHERE NONCOMPLIANCE OCCURRED OR WAS OBSERVED:

Noman's Land Island (US Division of Fisheries and Wildlife Refuge)
Chilmark, MA 02535

DATE(S) WHEN NONCOMPLIANCE OCCURRED OR WAS OBSERVED:

May 7, 2008 Smoke Nuisance Condition; Excessive Smoke Drifted Into Populated Areas.

DESCRIPTION OF NONCOMPLIANCE:

The Department's investigation shows that the Department of The Navy had the following Non-Compliance:

Failure to exercise proper judgment with regard to the conductance of prescribed burn operations during a period of inadequate atmospheric ventilation, thus causing a condition of nuisance to surrounding communities. (Condition # 4 of permit # 4F08006)

Failure to exercise due diligence in the area of best smoke management practices with regard to adequately assessing weather conditions, (specifically the likelihood of wind direction variation), prior to commencement of burn operations. (Condition # 7 of permit # 4F08006)

A. Air Quality:

The Dept. of The Navy, failed to fully exercise adequate due diligence in the prevention of a nuisance condition of excess air quality emissions (occurring for smoke) following initiation of prescribed burn activities. (See above for details). These are in violation of applicable sections of MA air quality regulations [310 CMR 7.07 (3) (f) (g)] as well as Permit # 4F08006.

ACTION(S) TO BE TAKEN AND THE DEADLINE FOR TAKING SUCH ACTION(S):

The following action(s) to be taken have individual deadlines associated with them. Dept. of The Navy shall take the necessary steps to correct the violations within the specified deadlines as noted and shall return to compliance with the requirements described below. MassDEP's regulations at 310 CMR 5.09 presume that you receive this Notice of Noncompliance, if delivered by regular mail, three business days after it was issued (i.e., the date of the cover letter).

Furthermore, the Department of The Navy shall submit a written response within 15 days of the date of receipt of this Notice, acknowledging receipt of this Notice, describing the actions already taken, and describing actions intended to be taken in order to achieve and maintain compliance with the Regulations.

A. Air Pollution Control

1. Immediately upon receipt of this Notice of Noncompliance, the Department of The Navy, shall comply with the permit(s) / regulation(s) referenced above.

Please address your reply to this Notice of Noncompliance to Christopher Tilden at this office. If you have any questions or need additional clarification regarding this matter, please feel free to contact Mr. John Paino at (508) 771-6056.

DATE:

May 29, 2008

BY:



Christopher Tilden P.E.

Regional Engineer for Waste Prevention

T/JP/re