

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 35652

---

ENTERED  
Office of Proceedings  
April 16, 2014  
Part of  
Public Record

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,  
CHERYL HATCH, KATHLEEN KELLY, ANDREW  
WILKLUND, AND RICHARD KOSIBA--  
PETITION FOR DECLARATORY ORDER

---

**REPLY OF GRAFTON & UPTON  
RAILROAD COMPANY TO "PETITION  
TO SUPPLEMENT THE REPLY  
PURSUANT TO 49 C.F.R. 1117.1"**

James E. Howard  
70 Rancho Road  
Carmel Valley, CA 93924  
831-659-4112  
jim@jehowardlaw.com

Linda J. Morgan  
Nossaman, LLP  
1666 K Street, N.W.  
Suite 500  
Washington, DC 20006  
202-887-1400  
lmorgan@nossaman.com

Attorneys for Grafton &  
Upton Railroad Co.

Dated: April 16, 2014

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 35652

---

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,  
CHERYL HATCH, KATHLEEN KELLY, ANDREW  
WILKLUND, AND RICHARD KOSIBA--  
PETITION FOR DECLARATORY ORDER

---

**REPLY OF GRAFTON & UPTON  
RAILROAD COMPANY TO "PETITION  
TO SUPPLEMENT THE REPLY  
PURSUANT TO 49 C.F.R. 1117.1"**

On March 27, 2014, the Petitioners filed a document which was dated March 24, 2014 and entitled "Petition to Supplement the Reply Pursuant to 49 C.F.R. 1117.1" (the "Supplement") in which they have requested authority to submit what they claim to be "new information" allegedly bearing on an issue in these proceedings. The "new information" is in documents released by the Massachusetts Department of Environmental Protection ("DEP") concerning a minor release of styrene that occurred during a transloading operation at the Grafton & Upton Railroad Co. ("G&U") rail yard in Upton, Massachusetts.

As explained below, the documents in question reflect certain confusion on the part of DEP and Clean Harbors Environmental Services ("Clean Harbors"), the contractor that took care of remediating the release on behalf of G&U. More specifically, the transloading is performed, and the successful cleanup of the release was overseen, by Grafton Upton Rail Care, LLC ("GU Rail Care"), as the subcontractor and agent of G&U

for purposes of transloading at the Upton rail yard, and not by any other "Dana company". Consequently, there is no "new information" bearing on any issue in these proceedings and, in particular, on the issue raised by the Petitioners--whether Dana Container, Inc. ("Dana Container"), or any Dana company other than GU Rail Care, has any involvement in the transloading activities at G&U's Upton rail yard. As explained below, and confirming the evidence offered earlier in these proceedings, only GU Rail Care provides transloading services, and those services are performed under the auspices and control of G&U.

#### FACTS

On December 18, 2013, employees of GU Rail Care were transloading styrene from a rail car to a truck when a pump, which was part of the GU Rail Care equipment used to transfer the styrene, malfunctioned. Verified Statement of Michael Polselli ("Polselli VS") submitted herewith at ¶ 5. Approximately 100 gallons of styrene were released onto the ground. At the direction of Jon Delli Priscoli, the owner of G&U, Michael Polselli, the terminal manager for GU Rail Care, promptly called DEP and the Upton Fire Department to report the incident and quickly thereafter called Clean Harbors to take care of the necessary cleanup and remediation activities. Verified Statement of Jon Delli Priscoli ("Delli Priscoli VS") submitted herewith at ¶ 2; Polselli VS at ¶ 6.

On the same afternoon, representatives of DEP, Clean Harbors, the Upton Fire Department, Mr. Polselli on behalf of GU Rail Care and Mr. Delli Priscoli met at the Upton yard to discuss the situation. Delli Priscoli VS at ¶ 3; Polselli VS at ¶ 8. The DEP representative handed Mr. Delli Priscoli, as the owner of G&U, a handwritten Notice of Responsibility, a copy of which is attached as Exhibit A to the Delli Priscoli VS, which

ordered G&U to abate the release, employ a Licensed Site Professional in accordance with DEP regulations, to perform cleanup services and submit a plan to remediate the release of styrene and dispose of any waste. Mr. Delli Priscoli told the DEP representative that G&U would comply with the notice and its requirements. Delli Priscoli VS at ¶ 3.

DEP made it absolutely clear to G&U and GU Rail Care that extremely prompt action was required to deal with the spill in order to ensure that there was no health or safety issue in the area and that any contaminated soil would be removed as promptly as possible. Polselli VS at ¶ 9; Delli Priscoli VS at ¶ 4. Clean Harbors responded immediately, and the cleanup and remediation steps were taken in a timely and effective manner that was acceptable to DEP. Polselli VS at ¶ 15 and Exhibit A to Polselli VS. The primary concern and goal of all involved, including G&U, GU Rail Care, Clean Harbors and DEP, were to complete the tasks at hand promptly and efficiently. Delli Priscoli VS at ¶ 4.

The efforts to remediate the spill have been substantially completed to the satisfaction of DEP. In its After Action Review/Improvement Plan dated March 28, 2014, a copy of which is attached as Exhibit A to the Polselli VS, DEP sets forth a full report of the release and the response actions by G&U, GU Rail Care and Clean Harbors.

#### ARGUMENT

The Petitioners have asked for permission to submit certain documents generated by DEP or Clean Harbors referring to Dana Container as a party having a role in the transloading operations at G&U's rail yard in Upton. As explained below, the references to Dana Container were mistaken and incorrect. Consequently, there is no factual basis

to support the contention by the Petitioners that there is any new evidence indicating that the G&U transloading facility in Upton is actually a Dana Container enterprise. To the contrary, as demonstrated in G&U's earlier filings in this proceeding, the Upton rail yard is a G&U facility at which the only Dana company involved in the transloading operations is GU Rail Care, as the agent of G&U and the contractor pursuant to the Terminal Transloading Agreement.

Exhibit 3 submitted by the Petitioners is a Notice of Responsibility, which was dated December 20, 2013 and which was directed to Dana Container. This was the first reference by DEP to Dana Container, and it came 2 days after the Notice which was addressed to G&U. Delli Priscoli VS at ¶ 3 and Exhibit A. The Notice of Responsibility to Dana Container was inconsistent with the DEP Release Log Form (Exhibit 1 attached to the Supplement), which was issued 2 days earlier and correctly identified G&U as the party reporting the incident and as a potentially responsible party/person performing the response actions. The Notice stated that Mr. Polselli had called DEP on behalf of G&U to report the incident. Mr. Polselli accepted the Notice, believing that he was acting on behalf of G&U and GU Rail Care and not noticing at that time that Dana Container was incorrectly listed. Polselli VS at ¶ 9. Although only DEP can explain why it incorrectly named Dana Container, the error may have come from Clean Harbors' invoicing practices, as described below.

The Petitioners place great emphasis on the Release Notification Form (Petitioners' Exhibit 4) and the Immediate Response Action Plan (Petitioners' Exhibit 5), which were prepared by Clean Harbors and which name Dana Container as the party submitting the documents to DEP and performing the response actions. Included with

these documents is a letter from Mr. Polselli, on Dana Container letterhead, to Clean Harbors authorizing it to file documents concerning the remediation with DEP and assuring Clean Harbors that it was not acting as a responsible party.

As explained by Mr. Polselli, Clean Harbors, on its own initiative and without consulting with Mr. Polselli, quickly determined that the cost of performing the remediation work would exceed the credit limit of Suttles Trucking, the Dana company originally listed by Clean Harbors, again on its own and without input from Mr. Polselli, as the "customer". Polselli VS at ¶¶ 10, 12. Consequently, Clean Harbors unilaterally chose another Dana company--Dana Container--as its "customer", because Dana Container, based upon work done for it by Clean Harbors at other locations, had sufficiently high credit limits to satisfy Clean Harbors that it could provide emergency services on credit. Polselli VS at ¶¶ 10, 12 From the perspective of Clean Harbors, its "customer", not only for billing and but for all purposes, became Dana Container. Clean Harbors drafted the February 10, 2014 letter for signature on behalf of Dana Container and, without consulting with Mr. Polselli, drafted the Release Notification Form and the Immediate Response Action Plan dated February 17, 2014 on behalf of Dana Container. Polselli VS at ¶ 11.

Mr. Polselli was surprised to see that Clean Harbors was acting as if Dana Container were the customer, because Mr. Polselli was proceeding on the assumption that the cleanup work being done at the G&U rail yard in Upton was for the account of GU Rail Care, as G&U's transloading subcontractor. Polselli VS at ¶¶ 9, 11. In hindsight, it would have been serendipitous to have caught the clerical error in the paperwork sooner, but the parties involved in the remediation work--GU Rail Care, Clean Harbors and

DEP--were much more concerned with getting the work done quickly and properly than they were about proofreading documents. While the mistakes probably could have been discovered earlier, they were clearly inadvertent and caused no harm to anyone or to the successful completion of the remediation process.

In any event, the clerical errors have now been pointed out to Clean Harbors and DEP and have been corrected. Polselli VS at ¶¶ 13-14. Clean Harbors understands that its customer for purposes of the remediation work at G&U's Upton rail yard is GU Rail Care, and DEP understands that Clean Harbors is performing the work on behalf of GU Rail Care and G&U. Polselli VS at ¶¶ 13-14 and Exhibit A to Polselli VS.

More importantly, for purposes of this proceeding, there is no evidence, as the Petitioners contend, that Dana Container had or now has any role in the transloading activities at the G&U rail yard in Upton. This point was made clearly in earlier filings on behalf of G&U, and it has been reaffirmed unequivocally by Mr. Delli Priscoli and Mr. Polselli in the verified statements that are being submitted with this Reply. Delli Priscoli VS at ¶ 5; Polselli VS at ¶ 4. While there were human clerical errors that may have been confusing to the Petitioners, those errors were inadvertent, were made primarily by Clean Harbors and DEP and did not affect the substance of the relationship between G&U, as the provider of rail services at Upton, and GU Rail Care, as G&U's subcontractor for purposes of transloading at Upton.

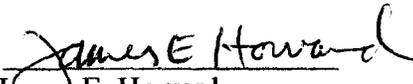
#### CONCLUSION

As demonstrated above, there is no "new information" bearing on any issue in this proceeding. The only Dana company involved in the operations at G&U's rail yard in Upton is GU Rail Care. Dana Container has no role, and GU Rail Care is not a "sham",

as alleged by the Petitioners. G&U respectfully requests the Board to deny the relief requested by the Petitioners in the Supplement and renews its request that the Board find, for the reasons set forth in the evidence and argument previously submitted by G&U, that preemption applies to prevent the Petitioners from relying on State and local zoning and preclearance regulations in their attempt to frustrate G&U's operations at its rail yard in Upton.

Respectfully submitted,

GRAFTON & UPTON  
RAILROAD CO.

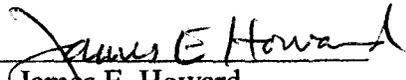
  
James E. Howard  
70 Rancho Road  
Carmel Valley, CA 93924  
831-659-4112

Linda J. Morgan  
Nossaman, LLP  
1666 K Street, N.W.  
Suite 500  
Washington, DC 20006  
202-887-1400

Dated: April 16, 2014

Certificate of Service

I hereby certify that I have, as of the 16th day of April, 2014, served the foregoing "Reply of Grafton & Upton Railroad Company to Petition to Supplement the Reply Pursuant to 49 C.F.R. 1117.1" and the accompanying Verified Statements of Jon Delli Priscoli and Michael Polselli by causing copies to be sent electronically to all parties of record.

  
\_\_\_\_\_  
James E. Howard

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 35652

---

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,  
CHERYL HATCH, KATHLEEN KELLY, ANDREW  
WILKLUND, AND RICHARD KOSIBA--  
PETITION FOR DECLARATORY ORDER

---

**VERIFIED STATEMENT OF  
JON DELLI PRISCOLI**

1. My name is Jon Delli Priscoli, and I am the owner and chief executive officer of Grafton & Upton Railroad Co. ("G&U"). I am familiar with all of the business operations of G&U. In particular, I am familiar with the transloading operations that G&U performs at our yard in Upton, Massachusetts, with a release of styrene that occurred on December 18, 2013 during the transfer of styrene from a rail car to a truck and with the actions taken after the release in order to remediate the problem to the satisfaction of the Massachusetts Department of Environmental Protection ("DEP"). I have reviewed the "Petition to Supplement the Reply Pursuant to 49 C.F.R. 1117.1" filed by the Petitioners in this proceeding on March 27, 2014.

2. On December 18, 2013, I received a telephone call from Michael Polselli, who is the terminal manager and person in charge of the transloading operations performed by Grafton Upton Rail Care, which is G&U's transloading subcontractor at Upton. Mr. Polselli advised me that there had been a malfunction of a pump that was being used by Grafton Upton Rail Care employees to move styrene from a rail car to a truck. I told Mr.

Polselli to notify DEP and the Upton Fire Department and to get in touch with Clean Harbors in order to contain the spill and begin the cleanup process.

3. After speaking with Mr. Polselli, I immediately went to the yard in Upton, where I met with Mr. Polselli and representatives from DEP and the Upton Fire Department. I reported that Clean Harbors was en route to the site, and the DEP representative handed me a field Notice of Responsibility, a copy of which is attached as Exhibit A, directing G&U to abate the release, employ a Licensed Site Professional, as required by DEP regulations, to perform cleanup services, submit a plan to remediate the release of the styrene and dispose of any waste as a result of the release. I told the DEP representative that G&U would do so.

4. In accordance with the Terminal Transloading Agreement between G&U and Grafton Upton Rail Care, I directed Mr. Polselli to have Grafton Upton Rail Care take charge of the details of the cleanup and remediation efforts. My principal and overriding goal was to make sure that Grafton Upton Rail Care, using Clean Harbors, would take all necessary steps as soon as possible to control the spill and perform the remediation. DEP made it very clear that we should move as promptly as possible to accomplish the cleanup and remediation work.

5. Based upon my review of the Petition to Supplement, I understand that the Petitioners believe that Dana Container, Inc. was performing the transloading of the styrene and the subsequent cleanup and remediation. This is absolutely incorrect. G&U has no relationship, contractual or otherwise, with Dana Container, Inc. or any other entity that might be described as a "Dana company" other than Grafton Upton Rail Care pursuant to the Terminal Transloading Agreement. Mr. Polselli is submitting a verified

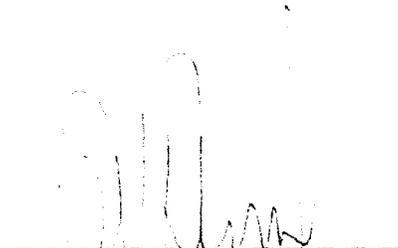
statement describing the communications between and among himself, Clean Harbors and DEP and explaining why there may have been misunderstandings on the part of Clean Harbors and DEP, but G&U was not privy to any prior relationships or communications relating to the styrene spill between or among Clean Harbors, DEP and any Dana companies. From the perspective of G&U, Grafton Upton Rail Care, as the contractor and agent of G&U, was handling the transloading and the remediation of the styrene release at the Upton rail yard.

6. On February 6, 2014, I attended a meeting at the Upton Fire Department headquarters to discuss the styrene spill and the steps that had been taken to remediate the environmental issues. The meeting was attended by representatives of G&U, Grafton Upton Rail Care, the Town of Upton, Clean Harbors and DEP. The matters discussed at the meeting are described in an "After Action Review/Improvement Plan" drafted by DEP and dated March 28, 2014, a copy of which is attached as Exhibit A to Mr. Polselli's verified statement. The document describes the steps taken by G&U and Grafton Upton Rail Care to respond to the spill, to remove contaminated soil and to make changes, such as the replacement of all transfer pumps so that they would have manual shut off valves, in order to reduce the possibility of future releases. It is my understanding that DEP has been satisfied with the actions taken by G&U and Grafton Upton Rail Care and by Clean Harbors on our behalf.

## VERIFICATION

I, Jon Delli Priscoli, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 15, 2014



Jon Delli Priscoli

# **EXHIBIT A**



Massachusetts Department of Environmental Protection  
Bureau of Waste Site Cleanup

BWSC116

Release Tracking Number

**NOTICE OF RESPONSIBILITY**  
(Pursuant to M.G.L. Chapter 21E)

2-19074

TO:

1. Name of Organization: Gratton & Helen RR Co.

2. Individual or Contact First Name: Fabrizio Jew 3. Last Name: Delli Priscelli

4. Street: 929 Boston Post Rd 5. Title: OWNER

6. City/Town: Marlboro 7. State: MA 8. ZIP Code: 01752

9. Telephone: 508-481-6095 11. Ext.: \_\_\_\_\_ 12. FAX: \_\_\_\_\_

On 12/18/13 at 3:20  AM  PM, the Massachusetts Department of Environmental Protection (MassDEP)

responded to a release or threat of release of oil and/or hazardous material at \_\_\_\_\_ (the site) in \_\_\_\_\_ Massachusetts. MassDEP has determined that there has been a release or threat of release at the site for which an Immediate Response Action (IRA) is required by the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000.

Preliminary indications are that, pursuant to M.G.L.c. 21E, § 5, \_\_\_\_\_ is/are a potentially responsible party (PRP) for assessment, containment and removal actions necessitated by this release or threat of release. Liability under M.G.L. c. 21E, § 5, is strict, meaning it is not based on fault. It is also joint and several, meaning that you may be liable for all response action costs incurred at the site, regardless of the existence of other liable parties.

By taking the actions checked below in compliance with the MCP, you may avoid liability for response action costs incurred by MassDEP contractors in performing these actions and any sanctions which may be imposed under M.G.L. c.21E, M.G.L. 21A, § 16, or other laws for noncompliance with the MCP:

- Hire a spill cleanup contractor having experience, equipment and ability acceptable to MassDEP to immediately assess and eliminate, abate or mitigate the release, threat of release and/or site conditions as required by the MCP and/or MassDEP. Note: Depending on the outcome of these actions, MassDEP may require additional response actions for which a Licensed Site Professional is required. For this reason you may want to hire a spill cleanup contractor with whom a Licensed Site Professional is affiliated.
- Submit a completed Release Notification Form to MassDEP in accordance with 310 CMR 40.0300 within 60 days of the date of release or threat of release notification, or the date of service of this notice, whichever comes first.
- Engage or employ a Licensed Site Professional to perform services required by 310 CMR 40.0000. Required services must ultimately result in a Response Action Outcome Statement (310 CMR 40.1000).
- Submit either an IRA Plan (310 CMR 40.0420), an IRA Completion Statement (310 CMR 40.0427) or a Response Action Outcome Statement (310 CMR 40.1000) to DEP within 60 days of the date of release notification, or the date of service of this notice, whichever comes first.
- Within 60 days of completion of the Immediate Response Actions as required by MassDEP, submit an IRA Completion Report providing an accurate description of the release or threat of release, response actions taken relative thereto, and conditions at the site.
- Dispose of any Remediation Waste as defined by the MCP, including, without limitation, Contaminated Soil and/or Debris generated at the location in accordance with 310 CMR 40.0030. Any Bill of Lading accompanying such waste must bear the seal and signature of a Licensed Site Professional.
- Other: 50 yd<sup>3</sup> Vacuum packed styrene

You should notify MassDEP on or before \_\_\_\_\_, if you intend to perform the above checked actions. Depending on the outcome of the above checked actions, MassDEP may require additional response actions.

The MCP requires responsible parties to take the necessary response actions at Sites where there is or has been a release or threat of release of oil and/or hazardous material. If you do not take the necessary response actions, or fail to perform them in an appropriate and timely manner, MassDEP is authorized by M.G.L. c. 21E to perform the work. By taking such actions, you can avoid liability for response action costs incurred by MassDEP and its contractors in performing these actions and any penalties or other sanctions which may be imposed for noncompliance with the MCP.

You may be liable for up to three (3) times all response action costs incurred by MassDEP. Response action costs include the costs of direct hours spent by MassDEP employees arranging for response actions or overseeing work performed by PRPs or their contractors, expenses incurred by MassDEP in support of those direct hours, and payments to MassDEP's contractors. (For more detail on cost liability, see 310 CMR 40.1200: Cost Recovery.)

MassDEP may also assess interest on costs incurred at the rate of twelve percent (12%), compounded annually. To secure payment of this debt, the Commonwealth may place liens on all of your property in the Commonwealth. To recover the debt, the Commonwealth may foreclose on these liens or the Attorney General may bring legal action against you.

In addition to your liability for up to three (3) times all response action costs incurred by MassDEP, you may also be liable to the Commonwealth for damages to natural resources caused by the release. Additional liability may also be imposed under M.G.L. c. 21E, § 11, and other laws for each violation of M.G.L. c. 21E or other laws, or under M.G.L. c. 21A, § 16 for violations of M.G.L. c. 21E, the MCP, and other statutes, regulations, orders or approvals.

Please direct all communications regarding this matter to the Emergency Response/Notification Section at the CERO

Regional Office: Worcester, Massachusetts, telephone: 508 849 4631

Name and Title of DEP Official: Name: Dino Delle Chiaie Sincerely,  
Title: EA

On 12/18/13 at 4:20  AM  PM I, Dino Delle Chiaie  
of the above MassDEP Office served Dino Delle Priscelli  personally  by certified mail,  
a copy of the above "Notice of Responsibility".

Person on scene  agrees  does not agree, to take response actions deemed necessary by MassDEP.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

Finance Docket No. 35652

---

**DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,  
CHERYL HATCH, KATHLEEN KELLY, ANDREW  
WILKLUND, AND RICHARD KOSIBA--  
PETITION FOR DECLARATORY ORDER**

---

**VERIFIED STATEMENT OF  
MICHAEL J. POLSELLI**

1. My name is Michael J. Polselli. I am the Terminal Manager for Grafton Upton Rail Care, LLC (“GU Rail Care”), and as such I am responsible for the management and operation and the transloading activities that are performed by GU Rail Care for Grafton & Upton Railroad (“G&U”) at G&U's rail yard in Upton, Massachusetts. I spend approximately 90 % of my time at the Upton rail yard. In the balance of my time I also continue to serve as the New England Regional Manager for the Dana Companies.<sup>1</sup>

2. I have reviewed the Petition to Supplement filed in the above-captioned proceeding on March 27, 2014, by certain residents of the town of Upton who are the Petitioners in this proceeding. I previously submitted Verified Statements in support G&U in this proceeding, and I am providing this Verified Statement in support of the Reply to Petition to Supplement being filed by G&U.

---

<sup>1</sup> The “Dana Companies” is not a separate legal entity. The Dana Companies are a group of companies involved primarily with transportation, equipment leasing and logistics services, including GU Rail Care.

3. In this Verified Statement, I want to provide additional information regarding the spill that took place in December 2013, and to clarify the roles of various parties regarding the transloading activities at G&U's Upton rail yard, the spill and the cleanup.

4. Contrary to the suggestions of the Petitioners, and as I and all of the other witnesses for G&U have stated in these proceedings, all of the transloading at the Upton rail yard is handled by GU Rail Care as the agent for G&U. No other Dana Company provides any transloading services at the G&U rail yard, or any other services for G&U.

5. The spill that is the subject of the documents submitted by the residents occurred while styrene was being transloaded from a rail tank car PROX 23349 (owned by Procor Limited) to tank trailer no. 8903 (owned by Liquid Transport). The shipment was for Total Petrochemicals. At the time of the transfer, the tank trailer was not connected to a Liquid Transport cab and no Liquid Transport driver was present. Rather the trailer had been left for GU Rail Care to spot, load and place for later pick up. The styrene spill occurred when a GU Rail Care pump, which was being operated by GU Rail Care personnel for the transload, malfunctioned.

6. The spill was immediately reported by me to MassDEP. I reported the spill on behalf of G&U as the owner of the property, and in my role as the on-site manager for GU Rail Care. The MassDEP Release Log Form (Exhibit 1 to the Petition to Supplement) correctly notes that the report was made on behalf of G&U (although the address shows the wrong town), that I made the report, that Jon Delli Priscoli was the owner/contact for G&U, and that Clean Harbors Environmental Services, Inc. ("CHES") would be performing the response actions.

7. I also immediately contacted CHES on behalf of G&U to handle the cleanup and the coordination with MassDEP. Various Dana Companies had used CHES at other locations throughout the country, although GU Rail Care, which does business only at G&U's Upton rail yard, had not used them previously. (This was the first spill at the rail yard in over 10,000 previous rail-to-truck transloadings, so there had not previously been a need for cleanup services from anyone.) I now understand from discussions with CHES that CHES initially treated my call as being made on behalf of Suttles Truck Leasing ("Suttles") of North Grafton, Massachusetts, which is a Dana Company. (I had previously had occasion to work with CHES related to a small spill by Suttles at a facility in Leominster, Massachusetts in 2007.) I never indicated to CHES that I was calling on behalf of Suttles Truck Leasing or any other Dana Company; rather I indicated I was calling on behalf of G&U.

8. On the day of the spill, Mr. Delli Priscoli, the owner of G&U, and I met at the railyard with representatives of MassDEP, CHES, the Upton Fire Department and the regional Hazardous Materials Response Team. The purpose was to review the spill and to determine the immediate response that was necessary and the necessary clean up actions. My major concern was, and continues to be, to make sure the spill was cleaned up quickly and efficiently, and in compliance with all MassDEP requirements. I never indicated to any of the parties at the site on the day of the spill or subsequently that I was present or acting in any capacity other than as the terminal manager of GU Rail Care. I do not know why the MassDEP Release Amendment Form (Exhibit 2 to the Petition to Supplement) refers to me as being "of Dana;" however, that general reference is not incorrect as I am the Northeast Regional Manager for the Dana Companies. While I

spend approximately 10% of my time on work for the Dana Companies generally, I never identified myself or the transload operator as being Dana Container. There is no reference in either the Release Log Form or the Release Amendment Form to “Dana Container Inc.,” “Dana Container” or “DCI.”

9. The first reference to Dana Container of which I am aware in the DEP documentation is in the handwritten Notice of Responsibility (Exhibit 3 to the Petition to Supplement). I do not know why MassDEP addressed the handwritten notice to Dana Container, or why it was completed differently than the Release Log Form or the Release Amendment Form. Although I accepted service of the Notice of Responsibility, I did not at that time notice the incorrect name--Dana Container-- of the organization listed by MassDEP. I accepted the Notice and agreed to take the response actions required by MassDEP; in so doing, I intended to do so on behalf of GU Rail Care. As I explained above, my primary concern was to make sure that the response and remediation work was done quickly and to the satisfaction of MassDEP, which was imposing very tight deadlines and urging us to act as promptly as possible.

10. The other documents filed with MassDEP (Exhibits 4 – 6 of the Petition to Supplement) were all prepared by CHES. Based upon recent conversations with CHES, I understand that CHES indicated that those documents were being prepared for Dana Container, Avenel, New Jersey, because that was the billing information shown in the CHES system. CHES did not consult with me about the proper identity of the entity for which the work was being done prior to preparing and filing these documents with MassDEP, and I was surprised to see references to Dana Container in the documents filed by the Petitioners in the Petition to Supplement. I have subsequently learned in

conversations with CHES that it is their policy to draft reports and do filings with regulatory agencies on behalf and in the name of the customer that is being billed, whether or not that customer is the party actually responsible for or receiving the services that are being provided by CHES. As described below, CHES was billing and had been assured of payment by Dana Container, so CHES had no reason to look further into the question which Dana Company was requesting services at G&U's Upton rail yard.

11. Just prior to the due date for the initial filings with MassDEP in February, CHES prepared a form of authorization letter for Dana Container to sign, and I signed it without asking why it was from Dana Container or its specific purpose. My concern at the time was making sure that the required clean-up got done quickly and efficiently and that all necessary MassDEP filing deadlines were met. In signing the letter I merely thought I was authorizing CHES to make filings with MassDEP and to do any additional cleanup work; I did not realize at the time that the filings by CHES would indicate that they were being made on behalf of Dana Container or that Dana Container would be listed by CHES as a potentially responsible party. As described above, I believed that the work being done and the reports being filed were on behalf of GU Rail Care.

12. I learned after discussion with CHES that CHES initially set up the matter internally with Suttles as the client and the party requesting its services. When MassDEP indicated how much work it wanted done, and how quickly, the CHES field agent determined that the scope of work would exceed Suttles's credit limits with CHES. Accordingly, CHES determined, without any consultation with me, that the internal billing should be changed to an affiliated Dana Company, Dana Container, with a billing address in Avenel, New Jersey. Like Suttles, Dana Container was also an existing

customer of CHES for work done previously at locations other than Upton, and one with a higher credit limit.

13. We have had CHES correct their records and GU Rail Care has now been set up as the customer for the cleanup services at the G&U yard in Upton. All remaining bills will be sent directly to GU Rail Care.

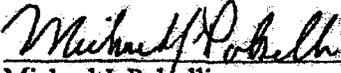
14. I have pointed out the errors in the identification of parties to CHES and they have notified MassDEP of the errors. I also directly informed MassDEP of the errors in the reports. MassDEP and CHES now understand that Dana Container had no involvement in any aspect of the styrene spill at G&U's rail yard in Upton.

15. The March 28, 2014, After Action Review / Improvement Plan issued by MassDEP, a copy of which is attached hereto as Exhibit A, accurately reflects GU Rail Care as the operator of the transload facility at the G&U rail yard. As noted in the After Action Review, the cleanup work is substantially completed, although follow up status reports are due on April 16, 2014, and every six months thereafter until the case is officially closed out by MassDEP.

**VERIFICATION**

I, Michael J. Polselli, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 14, 2014

  
Michael J. Polselli

# **EXHIBIT A**

# **After Action Review / Improvement Plan**

## **Styrene Spill - Dec. 18, 2013 - Upton MA**

---

**From:** Nicholas J. Child, Chief Emergency Response, MassDEP CERO  
**To:** File 2-0019074 – Upton – Styrene Release  
**Thru:** Attendees listed below  
**Date:** March 28, 2014

### **Brief**

On December 18, 2013, a release of 100 gallons of liquid styrene monomer occurred at the Grafton & Upton / Grafton Upton Railcare LLC trans-load yard at 25 Maple Street, Upton MA. The release was to the ground between the off-loading railroad tracks roughly at the center of the property. Styrene monomer is classed as a flammable liquid with an extremely pungent odor. The release is believed to have occurred due to a mechanical malfunction of the transfer system. This release necessitated the notification of local, state, and federal officials. A cleanup contractor was called and is the process of closing out response actions. An After Action Review was requested to bring together all the involved parties to discuss the situation and identify improvements that could be made in the future. This was conducted on February 6, 2014 at the Upton Fire Headquarters.

### **In Attendance**

- Blyth Robinson, Upton Town Administrator
- Aaron Goodale, Upton Fire Chief
- Brian Kemp, Upton Emergency Management Director
- Michael Bradley, Upton Police Chief
- Richard Desjardins, Upton Board of Health Chairman
- Jeff Thompson, Upton Dept. of Public Works Director
- Michael Polselli, Facility Manager, Grafton Upton Railcare LLC
- Jon Delli Priscoli, Owner, Grafton & Upton Railroad
- Eric Moffett, President, Grafton & Upton Railroad
- Stan Gordon, General Counsel, Grafton & Upton Railroad
- Jason Puglielli, Foreman, Clean Harbors
- Tony Deltufo, Licensed Site Professional, Clean Harbors
- Beth Eisenmann, Operations Manager, Clean Harbors
- Thomas Kelley, General Manager, Clean Harbors
- Nicholas Child, Emergency Response Chief, MassDEP CERO
- Dino DelleChiaie, Emergency Response, MassDEP CERO

### **Background**

The Grafton & Upton Railroad, in partnership with Grafton Upton Railcare LLC operates a trans-load facility at 25 Maple Street, Upton MA. Both hazardous materials and non-

## After Action Review / Improvement Plan Styrene Spill - Dec. 18, 2013 - Upton MA

---

hazardous materials are transferred between tanker truck and railcar. No gasses are transferred.

Existing safety measures at the facility were discussed. Mr. Polselli summarized existing safety measures at the facility. The ground surface of the yard is a near-impervious flowable fill material and all surface run-off is directed to an on-site detention basin. They use double braided mesh Teflon hoses, rated for significantly higher pressures than actually used at the facility. They do annual pressure testing of the hoses and equipment. They also do an aggressive hose replacement program to rotate out older hoses before they wear out. Mr. Polselli explained their normal procedure for transferring product from railcars to road tankers. Product is typically transferred at 300 gallons per minute. He explained that they have a "closed loop transfer" where the vapors from the product transfer are captured and returned to the source vessel in a loop during the delivery. He stated that this is not required but is better for reducing air emissions which is better for their workers, the neighborhood, and the environment.

Also discussed were the design and build of the product transfer gantries. These are engineer designed and significant improvements have been noted since the opening of the facility. Three types in operation: One for styrene, one for acids, and one for oils. At my request, Mike Polselli summarized the trans-loading volume by MassDOT hazard class this facility in 2013.

- \* Flammables = 29,190,020 pounds.
- \* Corrosives = 11,165,140 pounds.
- \* Non-Hazardous Oils = 10,669,600 pounds.
- \* Hazardous Waste = 3,757,880 pounds.
- \* Wood Pellets = 1,000,000 pounds.

As reference, the 100 gallons of styrene would weigh approximately 756 lbs. As discussed during the initial response site meeting, Mr. Polselli noted that they have conducted a total of 10,000 rail-to-truck styrene transfers error free. This is the first spill event. We discussed how this would have manifested if it had happened in August instead of December. All agreed it would have been significantly more problematic for vapor control issues as well as odor. Fire Chief Goodale stated they would have taken vapor control measures, but that would have likely made cleanup more difficult.

We discussed the general categories of chemicals based on chemical information voluntarily provided by G&U and Grafton Upton Railcare LLC to local public safety for emergency planning. As with any railroad, they can carry any material approved for transportation and requested by a customer. At this time, the G&U / Grafton Upton Railcare LLC Container facility typically manages 15 chemicals that would be placarded

## After Action Review / Improvement Plan Styrene Spill - Dec. 18, 2013 - Upton MA

---

as oil/hazardous material. According to Emergency Response Guide Book, the initial protective distances for all these chemicals is the same, which facilitates Upton's ongoing emergency planning.

### **The Spill**

As part of Grafton & Upton Railroad/Grafton Upton Railcare LLC Container's Responsible Care Quality Program and at the request of local/state officials, a root cause analysis for the release was requested. Mr. Mike Polselli, facility manager for Grafton Upton Railcare LLC Container, provided an overview of the spill and the results of the analysis. Due to unusually cold weather that night, a hydraulic valve failed to completely close. This allowed for the 100 gallon styrene spill when the transfer hose was disconnected. To prevent this from happening again, a manual turn valve has been added onto all transfer pumps.

### **The Response**

According to Mr. Polselli, the release happened at 01:50 pm. Grafton Upton Railcare LLC employees shut down the transfer gantry. All employees were alerted and directed to evacuate to a common staging area at the Maple Street entrance for accountability check.

MassDEP received a call from Mr. Polselli at 02:20 pm. Upton Fire Department was notified at 02:35 pm. This was discussed and agreement that the first call for any spill should be to 911/local public safety. Discussion about installing a hazmat call box r pull station in the rail yard was also discussed, particularly considering known cell phone coverage problems in the area.

G&U railroad was also notified by Grafton Upton Railcare LLC. They called for a stop of all train service, including the main line, in the area. It was confirmed that Upton Fire Department has been provided with the ability to speak directly to the train crews by radio.

Chief Goodale explained that he called for a MassDFS Tier 1 hazmat team. This is a limited response specifically for providing technical advice to an incident commander. A discussion of purpose of MassDFS regional hazmat teams and role of support to incident command followed.

It was felt by both Upton Fire and MassDEP that the Clean Harbors supervisor did not have the authority he needed to participate in the command structure. Particularly during the initial response, he had to check in with Clean Harbors headquarters and their health & safety officer continually. It was recommended that a more senior supervisor or the health & safety officer should have responded in addition to the foreman and cleanup crew. In Foreman Puglielli's defense, I relayed that in close to 25 years covering 85

## After Action Review / Improvement Plan Styrene Spill - Dec. 18, 2013 - Upton MA

---

cities and towns as MassDEP Emergency response, I have been to maybe four styrene incidents, so they are very rare and far between. We rely on the expertise of the manufacture and company that regularly handles the product. We would like to see a greater role for Grafton Upton Railcare LLC in this respect. Chief Goodale concurred and again stated that was why he activated the MassDFS Hazmat team for technical support. Chief Goodale stressed the need for all responders to have Incident Command basic training to understand their roles and responsibility in the overall response team.

The neighborhood and political sensitivity of this location was also discussed. I specifically stressed the need for air quality data. We discussed that the odor threshold for styrene is well below the detection and health levels. I explained that the initial air screening at the spill area was good for directing the cleanup, but additional perimeter monitoring was needed earlier on in the incident. Also discussed was that the Upton Waste Water Plant is directly down gradient/downwind of the rail yard and smelled the product before being told about it. This facility is considered a piece of critical infrastructure and cannot be left unmanned for an extended period of time. A fire alert horn triggered by Upton dispatch or tied into a pull box alarm was discussed and will be looked into by Upton Fire.

LSP Deltufo explained that Clean Harbors better understood our concerns from the field meeting held on day 2 of the incident and installed five perimeter air monitors by 21:00 hours on Friday. Two were installed on the eastern side of the property adjacent to Maple Avenue. One was installed to the north adjacent to Depot Street. One was installed to the west on top of the old Upton Landfill. The last one was installed to the south adjacent to the Sewer Treatment Plant. The 24 hour period following Clean Harbor's departure found the readings of 0.0 to the east and south. Readings of 0.1 to the north and west. There was a prevailing wind out of the SSW that likely pulled air from around the four remaining containers that created this reading of 0.1 to the west and north. I discussed the value of having an onsite weather station that could be accessed by emergency responders through a web application before entering the property. This would also allow tracking of wind speed and direction to better plan out vapor/odor travel. Grafton Upton Railcare LLC will look into this further.

Scene security was raised by police Chief Bradley, fire Chief Goodale, and Mr. Delli Priscoli. Mr. Delli Priscoli explained the G&U plan to fence the whole property with the exception of a challenging piece of back terrain to prevent unapproved access. All regular access will be through the main access gate on Maple Street, but a second emergency services gate will still be available as needed. This is an ongoing project waiting on better weather to move a weigh station, then G&U have ability to proceed with fencing project.

## After Action Review / Improvement Plan Styrene Spill - Dec. 18, 2013 - Upton MA

---

Cleanup options and disposal costs were discussed. The cost's of digging and off-site disposal of the raw styrene is significant and Clean Harbors wanted to explore other options. LSP Deltufo explained that this was confounded because they are still not getting good spill management information from the styrene manufacturer. This caused a delay in response actions. I stressed that this is a good example of why a chemical specific annex to the facility spill plan including disposal options should be done before an incident. Clean Harbors will look into this further and work with Grafton Upton Railcare LLC on product specific pre incident waste characterization. Grafton Upton Railcare LLC will follow up with us on this.

I explained that one of the residents had made a formal Freedom of Information Act request for details on this incident. I explained that we contributed to this by a data entry error into our electronic records by entering Uxbridge instead of Upton. It took two weeks to fix, but made it difficult for concerned citizens to see out records online. This triggered the FOIA request, which we are directed to run by the Governor's office, adding additional delays and processing. ER has corrected this and is resolving the issue now.

The cleanup is being conducted under rules of Chapter 21E and the Massachusetts Contingency Plan. Grafton Upton Railcare LLC/G&U have hired a cleanup contractor, Clean Harbors, and a Licensed Site Professional, Tony Deltufo as required. Response actions to date have been developed cooperatively between MassDEP and LSP Deltufo. The first regulatory deadline was submittal of a Release Notification Form and written Immediate Response Action plan within 60 days. (This was received by MassDEP on February 17, 2014). The next deadline is April 16, 2014 for the next status report, and then every 6 months. It is hoped that the case can be closed out with a full Response Action Outcome by mid-year.

### **Summary of Improvements and Recommendations:**

- 1) Maintaining dialog between local, state, facility, and railroad officials.
- 2) Install a call box down at the yard – Upton Fire will discuss the mechanics of this with G&U over the next few weeks.
- 3) Replace all transfer pumps with a manual shut of twist gate valve. Grafton Upton Railcare LLC has already done this.
- 4) Alerting system (horn) at the WWTP based on activation of call box. This will require public education to go with this so citizens understand what the alarm means. This product will be considered after a call box system is figured out.

**After Action Review / Improvement Plan  
Styrene Spill - Dec. 18, 2013 - Upton MA**

---

- 5) Fencing to maintain scene security as well as normal operations security. G&U awaiting better weather to move weigh station then will proceed.
- 6) Continue aggressive maintenance and testing program of pumps, hoses, and piping systems. Grafton Upton Railcare LLC and G&U have committed to this as ongoing business practice.
- 7) MassDEP recommends adding chemical specific appendices to the facility emergency response plan. MassDEP provided examples of product specific quick reference guides and chemical incident sheet we use for our own staff.
- 8) Recommended that this quick reference include a spill cleanup/ chemical specific waste precharacterization for disposal.
- 9) Recommendation that Grafton Upton Railcare LLC and G&U consider installing an onsite weather station that can provide internet/web access to information. MassDEP provided information on weather station we are considering.

Additional meetings will be held as necessary, but all participants agreed in value of regular communication and value in airing concerns together as a working group.