

## M E M O R A N D U M

**TO:** Douglas W. Heim, Arlington Town Counsel

**FROM:** Thomas G. Fiore, Esq.

**DATE:** July 13, 2022

**RE:** **Status of Response Actions – AHS Portion of 51 Grove Street Site**

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I write to provide an update on the status of the environmental investigation and remediation affecting a portion of the Arlington High School (AHS) property, including upcoming steps that will need to be taken by the Select Board, potentially within the next few months, with regard to the AHS property.

### Site Background and History

A release of gasoline associated with two USTs at the DPW Yard at 51 Grove Street was first reported in 1992. Subsequent investigations also discovered contamination associated with a former manufactured gas plant (MGP) and a former saw blade chroming operation in an area comprised of the DPW Yard, a portion of the AHS property, and certain adjacent properties (the “Site”).

For more than twenty years, the Town has been working with Honeywell and National Grid (the “Industrial Parties”), as the successors to the operators of the MGP and the chroming operation, to address contamination associated with the DPW Yard and these former operations. In 2001, the Town and the Industrial Parties entered into a Settlement Agreement that spelled out the roles of the various parties in performing the investigation and remediation work required by Chapter 21E. Under the settlement, the Industrial Parties took the lead on completing the necessary investigation and remediation work. The settlement also contained two provisions relating to future land use.

- Paragraph 6.1 of the Agreement provides, “The Parties hereby agree that the Response Actions may include any one or more design features or land use restrictions as part of an AUL in the form of a Notice of Activity and Use Limitation<sup>1</sup> under the MCP regarding

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<sup>1</sup> An AUL is a document recorded at the Registry of Deeds to provide notice to current and future property owners and other interested parties about: (1) the nature and location of contamination remaining on a property, (2) the appropriateness of certain uses and activities, and (3) a property owner's obligations to ensure that the requirements of the AUL continue to be met. The form of a Notice of Activity and Use Limitation is prescribed by regulation and includes sections specifying Activities and Uses Consistent with Maintaining No Significant Risk Conditions, Activities and Uses Inconsistent with Maintaining No Significant Risk Conditions, and Obligations and Conditions

any or all portions of the Site, and each Party consents to the filing and recordation of any such AUL on any portion of the Site that it owns.”

- Paragraph 6.4 of the Agreement provides, “Each Party which owns a portion of the Site hereby agrees that simultaneously with the execution of an AUL on its property, such Party will execute and deliver to the Industrial Parties a private grant of easement, to be prepared by the Industrial Parties, as is necessary for the Industrial Parties to fulfill their rights and obligations herein (the "Grant of Easement").”

The Town’s participation in the settlement was ratified by a Town Meeting vote on May 2, 2001. The vote authorized the Board of Selectmen, Town Manager and Superintendent of Schools, as appropriate, to sign the Settlement Agreement, “which includes, inter alia, the execution of activity and use limitations and grants of private easement on the Peirce and adjoining fields and Department of Public Works Yard on Grove Street...”

Following the 2001 Settlement Agreement, a remedy was implemented that included relocation of critical utilities, and implementation of the groundwater remedy, via in situ groundwater treatment. Impacted soils were excavated from various locations throughout the Site and consolidated under the Baseball, Football and Soccer Field Engineered Barriers (EBs). Additional EBs were constructed in the AHS Driveway Area in the area of the Basketball Courts and in a crawl space beneath one wing of the AHS building. Soil and/or pavement Direct Contact Barriers were constructed on the AHS Grove Street Parking Area and portions of the Soccer and Baseball Fields.

Following completion of remedial activities in 2007, a Condition of No Significant Risk<sup>2</sup> was achieved for soil on the AHS property. At that time, however, a Permanent Solution<sup>3</sup> was not achieved for groundwater due to Upper Concentration Limit (UCL) exceedances for hexavalent and dissolved chromium in groundwater in a localized area beneath an EB. Subsequently in April 2007, the remedial actions at the AHS portion of the Site were transitioned to Remedy Operation Status (ROS) for long term groundwater monitoring.<sup>4</sup>

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for Maintaining No Significant Risk. It is executed by the owner of the property and recorded in the Registry of Deeds after notice has been given to any holders of record interests. The AUL contains a legal description of the overall property and the portion of the property subject to the AUL, and also cross-references to a recorded plan depicting both the overall property and the portion constituting the AUL area.

<sup>2</sup> “No Significant Risk means a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time.” 310 CMR 40.0006.

<sup>3</sup> “Permanent Solution means a measure or combination of measures which will, when implemented, ensure attainment of a level of control of each identified substance of concern at a disposal site or in the surrounding environment such that no substance of concern will present a significant risk of damage to health, safety, public welfare, or the environment during any foreseeable period of time.” 310 CMR 40.0006.

<sup>4</sup> “Remedy Operation Status applies to disposal sites in Phase V where a Comprehensive Remedial Action that relies upon Active Operation and Maintenance of a remedial system or program and meets the requirements of 310 CMR 40.0893 is being conducted for the purpose of achieving a Permanent Solution.” 310 CMR 40.0893(1).

## Regulatory Status

The Licensed Site Professional overseeing the investigation and cleanup has now determined that groundwater concentrations meet applicable standards and that the portion of the Site on which AHS is located can be closed out as long as an AUL is implemented for the portion of the AHS property that is within the Site boundary. The AUL restricts property uses and activities to prevent potential exposure to impacted soils and groundwater. It also sets out inspection and maintenance procedures to protect the integrity of the barriers that are necessary to maintain a Permanent Solution. The AUL will not prohibit any current uses within the AUL area including outdoor recreational uses, town athletic activities, events, and institutional functions.

The Town's legal and technical representatives have provided comments on a draft of the AUL to the Industrial Parties. Once the Industrial Parties finalize the AUL and supporting documents and, subject to final review and approval by the Town's representatives, the Grant of Easement contemplated by paragraph 6.4 of the Settlement Agreement will also be prepared. The Grant will reflect essentially the same terms as the AUL. The final AUL and Grant will then be presented to the Select Board for execution. Following recording of the AUL and Grant, a Partial Permanent Solution Statement with Conditions will be filed with the Department of Environmental Protection, documenting that a Permanent Solution has been achieved for the AHS portion of the Site, subject to the requirements of the AUL.

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