



## ENVIRONMENTAL FORENSICS

**ENVIRONMENTAL FORENSICS:** Environmental Forensics is the term used for the application of scientific principles to distinguish among different contaminant sources, causes, events, and/or conditions performed to answer litigious questions.

Pursuant to M.G.L. Chapter 21E (*Massachusetts Oil and Hazardous Material Release Prevention and Response Act*), the following parties are wholly and severally responsible for the costs of environmental cleanup at a release site, without regard to fault: “(1) the owner or operator of a vessel or a site from or at which there is or has been a release or threat of release of oil or hazardous material; (2) any person who at the time of storage or disposal of any hazardous material owned or operated any site at or upon which such hazardous material was stored or disposed of and from which there is or has been a release or threat of release of hazardous material; (3) any person who by contract, agreement, or otherwise, directly or indirectly, arranged for the transport, disposal, storage or treatment of hazardous material to or in a site or vessel from or at which there is or has been a release or threat of release of hazardous material; (4) any person who, directly or indirectly, transported any hazardous material to transport, disposal, storage or treatment vessels or sites from or at which there is or has been a release or threat of release of such material; and (5) any person who otherwise caused or is legally responsible for a release or threat of release of oil or hazardous material from a vessel or site....”

**IDENTIFICATION OF POTENTIALLY RESPONSIBLE PARTIES BY THE STATE:** Pursuant to the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000, the above liable parties and the following additional parties are responsible to notify the Massachusetts Department of Environmental Protection (MassDEP) upon identification of a Reportable Condition or release: “(6) any fiduciary who holds title to or possession of a site or vessel from or at which there is or has been a release or threat of release of oil and/or hazardous material; (7) any secured lender who holds title to or possession of a site or vessel from or at which there is or has been a release or threat of release of oil and/or hazardous material; (8) any agency of the Commonwealth or any public utility company that owns a right of way that is a site from or at which there is or has been a release or threat of release of oil and/or hazardous material; and (9) any person otherwise required to notify the Department of a release or threat of release pursuant to M.G.L. 21E.” Notifying parties are identified by the MassDEP as Potentially Responsible Parties (PRPs) unless specifically excluded. Current property owners typically are considered the primary PRP in the absence of other specific information.

**DO YOU FEEL THAT YOUR WERE UNJUSTIFIABLY NAMED AS A PRP?** M.G.L. Chapter 21E assigns responsibility without regard to fault. Accordingly, owners of properties that are determined to be contaminated may not have been owners at the time the contaminant release occurred and may have no other connection to the contamination. As a result, they may feel that they have been unfairly targeted and punished.

**ARE THERE WAYS TO REDUCE OR EVEN ELIMINATE SUCH LIABILITY?** As identified in M.G.L. 21E and the MCP, more than one party may qualify as a PRP. The liability of any individual PRP therefore can be reduced by spreading the total liability among multiple parties. Specific exemptions to liability also are provided in the law and regulations that may exclude or minimize liability — the most common of which is the claim of Downgradient Property Status when contamination is demonstrated to migrate in water to a property from an upgradient source.

**HOW CAN CLEAN PROPERTIES HELP YOU WITH LIABILITY ISSUES?** Environmental liability involves both environmental and legal considerations. *Clean Properties, Inc.*, has teamed with Bennett & Belfort, P.C., to merge proven skills in each field. *Clean Properties* has extensive experience tracing property-use history and ownership to help identify PRPs, environmental forensics to help identify contaminant release sources and timing, and assessing site conditions to evaluate coverage by private insurance or government programs such as M.G.L. Chapter 21J (*Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund*) and filing claims. *Clean Properties* LSP Marcia Berger is experienced in conducting PRP negotiations with the MassDEP and serving as an Expert Witness for legal proceedings. The law offices of Bennett & Belfort are experienced in negotiating financial settlements among PRPs (often without litigation), establishing cooperative PRP response committees, preparing cooperative contracts, and litigation.