



**RHODE ISLAND**  
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
235 Promenade Street, Providence, RI 02908-5767  
Rhode Island Relay 711

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file

April 25, 2011

Joseph Robicheau, President  
Portsmouth Town Council  
2200 East Main Road  
Portsmouth, RI 02871

RE: Council Resolution of 3/28/2011 regarding Portsmouth Town Dump

Dear Mr. Robicheau:

I am writing you regarding the resolution #2011-03-07. Specifically the resolution expresses Town Council concerns about the proposed levels of arsenic in materials proposed for grading and shaping material to be used under the cap at the Portsmouth Town Dump site.

The Department first promulgated standards in our *Remediation Regulations* in 1996 to establish consistent standards that are both protective of human health and reasonably achievable. Since the original promulgation of these regulations, concerns have been raised about the arsenic standard. This is not only because arsenic is so common, both as a contaminant and as a naturally occurring component of soils, but also because our standard of 7 mg/kg was inconsistent, and more stringent, than the standard established in Massachusetts. Property owners and developers repeatedly argued that this made the clean up and reuse of properties more difficult without a demonstrated benefit of protecting public health or the environment. This was a major concern of housing advocates and developers.

The Rhode Island House of Representatives convened a "Special Legislative Commission to Study Naturally Occurring Arsenic in Soil" to investigate and evaluate the issues and challenges related to naturally occurring arsenic, particularly on Aquidneck Island. A number of the Commission members and concerned citizens that testified before the Commission (including the Town of Middletown) took issue with the Department's Remediation standard of 7 mg/kg. They felt that this standard was inconsistent with other standards (as discussed below) and was unrealistic and unreasonable.

The commission found that the cleanup standard of 7 mg/kg had a negative economic, environmental and quality of life impact that disproportionately affected the residents of

Aquidneck Island. As a result of the Commission's findings, the Department reviewed its regulations and proposed a revised approach in its Remediation Regulations. Draft regulations were released for public comment in December of 2010. This revised approach allows for the presence of arsenic in residential soils (either naturally occurring or from man-made sources) at a level up to 43 mg/kg with clear, straightforward soil management requirements as explained in Rule 12.04 of the draft regulations (6" of clean soil and some notification- though not necessarily an Environmental Land Use Restriction or soil blending). Levels above 43 mg/kg are considered acceptable with 2 feet of cover and an Environmental Land Use Restriction. This approach is consistent with the approach adopted years ago by the RI Department of Health to address the lead contamination prevalent in the properties around our older houses.

The Department's decision on the closure of the former Portsmouth Town Dump site is consistent with this approach.

Understanding that concerns about arsenic remain high, the Department specifically noted the changes proposed to the Site Remediation Regulations in the administrative record of the hearing in Portsmouth on the modification of the Beneficial Use Determination associated with the closure and clean up plan for the site. This provided the opportunity to either object to the new standards or explain why that regulatory standard, and the findings of the Commission it was based on, should not apply to this site. The only specific comment received on this issue was from Representative O'Neil (District 59), Co-Chair of the Special Legislative Commission to Study Naturally Occurring Arsenic in Soil. Representative O'Neil made it clear that the Department's consideration of the BUD did not deviate from the recommendations of the Commission except to the degree that it is more stringent than what the Commission recommended. This was because the Department required type 3 standards (2 feet of soil with an ELUR) while only allowing the applicant to bring in soils that meet the type 2 contaminant levels (15-43 mg/kg).

Again while these changes to the Site Remediation regulations are new, the levels and approach are also consistent with the long-standing Compost Regulations (Solid Waste Regulation #8). These set a limit of 41 mg/kg in Class A compost, which is acceptable for unrestricted use. Class A compost is considered safe enough that it can be (and is) sold or given to homeowners for gardening, lawn application and landscaping and is regularly applied to public parks. Class B compost, with levels of arsenic up to 75 mg/kg can be used in more limited applications such as agricultural uses or public lands, provided certain time limits are met between application and public access

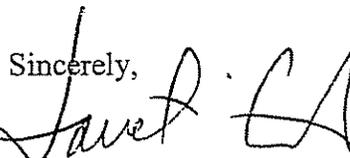
That being said, as a result of public concern, DEM required as an additional protective measure at the Portsmouth Town Dump requiring the soils with arsenic levels above 7 mg/kg to be covered within 14 days with soils containing less than 7 mg/kg of arsenic unless a bond is posted. This condition was specifically added to address public concerns about dirt and dust blowing off the site.

In reviewing sampling data of the soils in Newport that were the original subject of the request, and what are currently being managed at the site, 15 of the 16 samples are below 20 mg/kg, with one sample at 25 mg/kg. We are confident our conditions and monitoring of the closure activities will result in improved, and safe, environmental conditions on and around the site.

The resolution also expressed concern about storm water issues. The Department and Coastal Resources Management Council (CRMC) share this concern. To that extent, the regulations of both agencies require that the plan submitted must not alter drainage so that a larger percentage of rainfall runs toward the neighborhood (or Park Avenue) than current conditions. APE's CRMC application addresses this issue in great detail. Regarding hurricane surges, the Department has taken a major role in working on disaster recovery preparedness with a number of other state and federal agencies regarding coastal vulnerabilities, especially those involving waste issues. The Island Park Area, as it is within the 100 year flood plain, is vulnerable both to flooding and storm surges. The placement of the 2 feet of clean soil above grading and shaping material will prevent the solid waste and contaminated soils, currently at or near the surface, from being transported throughout the neighborhood in a storm event. Our discussions with the Emergency Management Agency confirm our belief that the topography of the finished cap, with its moderate top slope of 3-5% will not significantly alter the affects of a major storm on the area either positively or negatively.

The Portsmouth Town Dump site requires remediation and closure to address existing threats to the environment and public health. DEM is confident that the work approved, that is currently moving forward, will result in a cleaner, safer environment.

Be assured we are keeping on top of this important issue. Feel free to contact Mark Dennen at (401) 222-2797 x7112 or via e-mail at [mark.dennen@dem.ri.gov](mailto:mark.dennen@dem.ri.gov) if you have any questions or concerns.

Sincerely,  
  
Janet Coit, Director

cc:

Leo Hellested, Chief, RIDEM/ Office of Waste Management  
Terrence Gray, Assistant Director, RIDEM  
Laurie Grandchamp, RIDEM/ Office of Waste Management  
Mark Dennen, RIDEM/OWM