



**Rhode Island
Department of Environmental Management**

235 Promenade St., Providence, RI 02908-5767 TDD 401.222.4462

CERTIFIED MAIL

October 24, 2014

Mr. Arthur Palmer
APE Enterprises, LLC c/o David Peter
Site Redevelopment Technologies
18 Shoreline Dr.
Foxboro, MA 02035

RE: Former Portsmouth Town Dump

Plat 20 Lots 1,2,13 and Plat 25- Lot 2
Portsmouth, Rhode Island

Dear Mr. Palmer:

On September 12 and September 29, 2014 the Department took confirmation samples of material deposited at the Portsmouth Town Dump accepted as part of the Beneficial Use Determination (BUD) renewed on September 20, 2014. Field Investigation Reports and analyses are attached. The results of these analyses show the material from the Omega Pond Fish Ladder Project differs substantially from that represented in the sampling results submitted to the Department.

Soil generated by the Army Corps of Engineers and originating from the Omega Pond Fish Ladder Project (East Providence) was received at the Portsmouth Landfill on September 12, 2014 and was sampled by the Department as it was deposited. The soil reportedly met residential standards for all constituents. The Department's sample however, contained arsenic at 8.5 mg/kg. In order to evaluate this discrepancy with arsenic, on September 29, 2014 a Department inspector returned to take additional samples. All of the 9 additional samples contained levels of arsenic above the 7.0 mg/kg standard (average of 18.7 mg/kg with a maximum of 22.7 mg/kg). While arsenic at these levels is allowed to be accepted, it can only be done so following notification, sampling and handling criteria specified in the BUD. Such special handling and notification did not occur.

Condition 17 of the Beneficial Use Determination requires the following for soils with elevated levels of arsenic:

As per the BUD Amendment of March 11, 2011, the AP Enterprises shall only accept soils with greater than 7 mg/kg under the following conditions:

- ◆ *This approval is only for soils with naturally occurring levels of arsenic and shall not include media that has been contaminated from a release as defined in the*

Department's Remediation Regulations.

- ◆ *Shall notify the Department 48 hours prior to the acceptance of the material. This notification should include the source and quantity of material.*
- ◆ *As described in your request of December 2010, all sources will have at least 10 samples collected during the assessment. No sample shall exceed 40 mg/kg of arsenic and the average arsenic level shall not exceed 20 mg/kg. The soils shall contain only naturally occurring arsenic and will be identified as such by the absence of any other contaminants above Residential Direct Exposure standards (organic or inorganic) within the sample.*
- ◆ *As described in the attached "Elevated, Naturally Occurring Arsenic Soil Handling Plan", of 3/1/2011, A.P. Enterprises shall execute the following:*
 - A) *Within 14 days of receiving elevated arsenic soils, the soils will be covered with at least 6 inches of soil cover with arsenic levels below 7 mg/kg; or*
 - B) *If the soils are not covered within 14 days, APE shall post financial assurance in the amount of two (2) dollars for each ton accepted in a mechanism as described in Solid Waste Regulation 1.5.10. Said assurance shall be required to ensure funds are available to complete the work in a timely manner.*

Specifically, APE did not comply with condition 17 of the BUD:

1. APE did not provide prior notification to the Department that they were accepting soils with elevated levels of arsenic from this source.
2. Ten (10) samples were not collected so as to quantify arsenic levels of the source material.
3. APE did not cover the material within 14 days with at least 6 inches of soil or post financial assurance for the material.

All soil that originated from the Omega Pond Fish Ladder Project (East Providence) shall be covered with six (6) inches of soil with arsenic levels below 7 mg/kg. This activity shall be completed within seven (7) days of receipt of this letter.

In the future, APE shall ensure all soils that are accepted at the Portsmouth Landfill are adequately characterized.

Feel free to contact Mark Dennen or myself at 401-222-2797 if you have any questions.

Sincerely,

Laurie Grandchamp, P.E.
Supervising Engineer

cc: Mark Dennen, OWM/WFM