The following comment was received on March 13, 2014 from Deb Debra Faber Cardoza on behalf of herself and area residents known as the Landfill Committee. The original plan and revised plans are posted at: HYPERLINK "http://www.dem.ri.gov/programs/benviron/waste/pdf/modrequest14.pdf" http://www.dem.ri.gov/programs/benviron/waste/pdf/modrequest14.pdf.
The Department's responses are indicated by "A." and shown in red.

In response to your email, dated February 10, 2014, with its request for comments and questions,
we submit the following points. Some of these comments have been submitted to me by surrounding landowners and Island Park residents.

The Current Proposal to Expand the Cap area:

AP Enterprises is purposing expansion of the cap area by about 15%-20%, we do not consider that a minor expansion. Has DEM requested AP Enterprises expand this project?

During 2013, APE notified the Department of their intent to conduct additional test pitting to delineate the boundaries of the landfill. They also applied for and received authorization from the Coastal Resources Management Council to conduct this test pitting. On July 16, 2013, the Department notified the interested parties of this activity as follows:

> *"We are sending this update regarding the former Portsmouth Town Dump. The owner has applied for and received permission from the Coastal Resource Management Council (attached) to perform exploratory test pitting in the northwestern portion of the landfill. This will allow them to more precisely delineate the areas of historic waste deposition, so that they meet cover requirements.*
>
> *Please contact me or CRMC with any questions or concerns."*
>
> Subsequently the Department and CRMC received a request to cap the areas where historic landfilling operations were found to occur. The request was received by the Department on January 7, 2014. On February 10, 2014, the Department notified interested parties, including area residents and the town, of the plan. On February 20, 2014, having heard no concerns from the residents, the Department expressed 3 concerns about the plan:
>
> > The plan inaccurately depicted some test pits as single points when they had been excavated as a series of pits.
> > The plan called for erection of new fences in the area of the salt marsh that could have unnecessary negative effects on wildlife and aesthetics of the area.

The proposed capping activity involved clearing and filling in a heavily vegetated area very close to residents of Russell and Highland Avenue. In trying to weigh the need for capping versus concerns for noise, dust and aesthetics, the Department asked that this capping be scaled back and that the vegetative barrier be preserved.

On March 6, 2014, APE submitted a revised plan to address the Department's concerns. The Department has reviewed this plan and found it addresses those concerns.

In the DiPrete Engineering maps contained in the proposal to expand the cap area, a number of homes located on Highland Avenue, Walnut Street and Russell Avenue are missing.

A. Agreed, however the plan accurately portrays the site boundaries and nearest abutters.

The property on the corner of Highland, Pine and Russell stated on the map as undeveloped, is currently being developed.

The Department was not aware that these roads were proposed for development. This is of concern because the undeveloped portions of Pine Street, Russell Avenue and perhaps Walnut Street are underlain by portions of the landfill that have not been studied or sampled. Its source is believed to be identical to landfill material on the APE property that contains hazardous materials. Construction of a road or buildings on fill material could create significant health concerns and we will contact the Town on this issue.

The homes on the North End of Russell Avenue (West side), are presently bordered by the cap on two sides, the West and South sides. When the cap is expanded, the homes shown on the map on the West side of Russell Avenue will be surrounded by hazardous waste on three sides by the landfill.

The Department's regulations require that all fill material be covered and closed as the landfill was found to have exceedences of the Department's standards for a number of contaminants. That residential properties are surrounded by this landfill speaks to how important it is to cap and close this site.

As the Department has repeatedly stated on many occasions that **hazardous waste** is legally defined and strictly regulated by both the United State Environmental Protection Agency and the Department's HYPERLINK "http://www.dem.ri.gov/pubs/regs/regs/waste/hwregs14.pdf" Hazardous Waste Regulations [the most recent version became effective 2/10/2014]. The USEPA also specifically defines the term but the state rules are more stringent. The

Department does not now, nor has it ever permitted hazardous waste to be accepted at the site (the original landfilling activities at the site pre-date the Department's existence). To dump hazardous waste at this or any other unpermitted site could result in significant civil and/or criminal penalties on both a state and federal level.

The Department has required extensive sampling as well as conducting its own split sampling of material accepted at the site to ensure no hazardous waste or soils in excess of its Site Remediation standards are accepted. There is no indication that hazardous wastes were ever accepted as part of the closure activities. This data has been published on the web site and interested parties were notified.

The West side of Russell Avenue will also be subjected to concentrations of any hazardous material from contaminated soils during construction. The area is downwind from the site with prevailing winds. Construction at the AP Enterprising cap site to date, has not effectively dealt with the blowing soil. The community is concerned about active children's playground on Highland Avenue.

As per our first response, this was a concern and the basis of the Department's comment that scaled back capping in this area.

AP Enterprises requested a BUD extension that was granted to complete this task. Now they seek to expand and extend this cap that is 90% complete. The project appears to be expanding into a permanent landfill for hazardous chemicals. This is NOT a licensed landfill facility. It was a small town dumpsite. When will this project be completed? Are further expansions and extensions anticipated?

Closure of the landfill limits, but does not preclude future non-residential construction activities at the landfill. Such activities must be in accordance with the Landfill Closure Program requirements. Any future uses or construction activities on the site may be subject to additional permitting requirements of the Department, the Town of Portsmouth and CRMC.

APE is not responsible for closure of properties it does not own. Previous investigations show the landfill boundaries extend beyond the APE properties to the west, north and east. As a result, the Department anticipates that at some point in the future, other properties may undergo closure as well.

Outstanding Issues:

The Portsmouth Town Council issued their comments and concerns about the hazardous waste material delivered to this old dumpsite that was closed in early1970's, only to have

DEM lower the standards and ignore the Town Council's request to cease and desist. To our knowledge, this request and concern remains unanswered. Is that correct?

Work has not ceased at the site. The Department has required extensive sampling as well as conducting its own split sampling of material accepted at the site to ensure no hazardous waste or soils in excess of its Site Remediation standards are accepted. There is no indication that hazardous wastes were ever accepted as part of the closure activities. This data has been published on the web site and interested parties were notified. We have also met with Town officials to make sure they are kept apprised of all developments at the site. The Department feels it has adequately addressed the town's concerns.

The Portsmouth Town Council made several formal requests to the Director of the Department of Health, Dr. Vanderslice to address the health risks from the hazardous waste materials received from Massachusetts and Rhode Island and deposited in a densely populated residential area. Has there been an analysis performed on the health risks to humans?

This issue was dealt with extensively in the approval process. As a clarification, Dr. Vanderslice is not the Director of the Department of Health but is the expert at the Department of Health we consult on matters related to risk assessment. Doctor Vanderslice was consulted on the activities at the site and met with area residents regarding their concerns.

This Community is deeply concerned with their quality of life and health and the spread of hazardous contamination on their properties by the prevailing winds and threats of the special flood hazards. How will DEM address the residence health risk rights and their properties rights?

Health risks and property rights are paramount in oversight of site closures. This was also the basis of the Department's requested modifications to the current plan discussed above. Flood hazards are a major part of the CRMC review and the Department will continue to coordinate with the council as necessary.

Many members of the community throughout the years brought AP Enterprise violations to the attention of DEM only to have them dismissed as erroneous and or without further action.

The most recent complaints from 2013 dealt with dust control issues on Park East Drive and odor issues related to soils with high organic content. Both of these complaints were investigated and APE was required to modify their procedures to address these issues. The Department has never ignored complaints, although some complaints, such as soils violating hazardous waste transportation rules for arsenic and highly contaminated lead

material being received from a site in Fall River, were investigated and found to be based on erroneous information.

Instead of the protection of the environment and the health of the residence in the densely populated area, DEM has lowered the standards of arsenic levels from 7 ppm to 42 ppm.

DEM has also failed to adequately evaluate the arsenic risk to the residential population in the vicinity of the landfill cap.

This issue was extensively considered and the Department's findings were posted on the website at: HYPERLINK "http://www.dem.ri.gov/programs/benviron/waste/portsmouthlf.htm" http://www.dem.ri.gov/programs/benviron/waste/portsmouthlf.htm. No new information is presented here.

Has the DEM imposed handling procedures on AP Industries to reduce the E.coli bacteria risks from soil excavated from sewer line repairs on Wellington Avenue in Newport and other toxics including heavy metals such as mercury, lead, PCB's, pesticides, petroleum hydrocarbons and other harmful chemicals that may very well be harmful to humans, animals and plants.

All incoming material is sampled for RCRA 8 metals, semi-volatile organic compounds, volatile organic compounds and PCB's. The Department has received analytical data, as part of quarterly reports that contains thousands of pages of analytical data. The Department has provided this data at no cost to anyone who requests it.

According to the EPA, industrial discharges, toxic pullulates are believed to a pose a direct risk to human health and contaminated sediments that are currently buried could pose a threat if disturbed through dredging and other disturbances are a concern as these material deposited here.

We remain concerned about the digging and disturbance within the old dump site which is not permitted in the BUD and has been documented to have occurred.

The Department has not been given any evidence to that effect.

It also appears throughout this project, different smells and texture of the waste materials dumped at this site do not reflect the test results. We request DEM diligence in these matters and when possible save the residential soils near homes.

The Department agrees and has had this discussion with APE representatives on this issue.

We have also noted that a flourishing population of deer, cottontail rabbits, foxes, hawks,

barn owls and numerous wildlife have disappeared. It is a dry and barren waste land filled with hazardous industrial waste in a densely populated area. This has all been done without an adequate evaluation conducted by CRMC.

Unfortunately, it is not possible to cap the landfill without clearing the vegetation. The comment regarding CRMC is completely inaccurate as the original plan and the subsequent modifications, including this one, have gone through the complete application and permitting process with CRMC as appropriate.

The community would like to ensure the chain link fence remains securely in place as required by DEM in the BUD.

The original plan called for perimeter fencing for all the new areas. While we agree that this is necessary regarding areas that are in the proximity of residential properties, we have a concern doing so in areas adjacent to the salt marsh unnecessarily disturbs the habitat (an issue the commenter notes above). In addition to fragmenting the habitat, it impacts aesthetics of the area for kayakers. To that end, the Department does not believe an 8 foot chain link fence in the area that borders the salt marsh on the Levesque property is necessary.