



**Rhode Island
Department of Environmental Management**

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Portsmouth Town Landfill

RIDEM's Response to Comments

Following the issuance of the Department's comment letter on the renewal, the Department has received responses from AP Enterprises (APE) and several comment letters from those representing neighbors (specifically from Deborah Cardoza on behalf of the Landfill Committee, Larry Fitzmorris on behalf of the Portsmouth Concerned Citizens ("PCC") and a letter and petition from Joseph Robicheau on behalf of area residents). This document is intended to address the major concerns raised in letters sent on behalf of residents.

Prior to responding to specific concerns, it is important to frame the current work that is being done in context. Contaminated soils with hazardous substances above Industrial/Commercial standards including arsenic were present at the surface of the landfill from the 1970's. During this time, motorcycles were routinely ridden over these contaminated soils causing dust to be released into the air. The closure plan resulted from actions issued to the property owner and the Town to bring about remediation of the problem at the APE property (where the majority of the fill is located). Placement of BUD material, that in all cases meets the Department's Industrial Commercial standards, over most of the site has mitigated these risks. Placement of the final cap, with material meeting the residential standards for all constituents will further mitigate these risks.

1. The closure has taken too long and needs to be expedited (all 3 letters).

All three letters emphasized that the closure has taken too long. They all expressed the opinion that an open ended renewal is not warranted as the closure has already taken longer than anticipated. The letter from Joseph Robicheau went into detail as to the problems with an open ended renewal as well as insisted that grading and seeding should happen now. The Department completely agrees with these comments. This was the reason the Department sent out its concerns both to APE and the community of interested parties. To that end, the Department has decided that final closure along the boundary must begin by September 20 and conclude by November 30, 2014. It has decided placement of BUD material in the limited areas not yet brought to grade can occur but only concurrent with grading and seeding at the boundary. It also sets a moratorium on any further renewals to the BUD so that closure will not be dragged out indefinitely.

2. The residents are exposed to unsafe levels of arsenic in excess of 7 mg/kg and the health risks of this have never been evaluated by the Departments of Health or Environmental Management (letter from Landfill Committee and PCC).

Two of the three letters claim unsafe levels of arsenic contaminated soils with levels as high as 42 mg/kg have been dumped at the site for the past 4 years. Firstly, the Department wants to make sure the facts are clear:

- The Department is not aware of **any** data to suggest soils with 42 mg/kg of arsenic have been received at the site. When contacted as to the evidence behind the assertion, one commenter asked the reference be removed and the other did not respond at all. The Department's preliminary review of sampling data indicates the following:
 - Our review of data indicates the highest sample received had 27 mg/kg of arsenic.
 - Most sources of soil received at the site had levels of arsenic less than 7 mg/kg for all samples.
 - Of those sources with elevated arsenic:
 - All met residential standards for all other contaminants and the arsenic present was believed to be naturally occurring.
 - These levels are similar to those found in uncontaminated soils and rocks in Rhode Island. Most notably those soils derived from the meta-sedimentary formations on Aquidneck Island.
 - All soils accepted had average levels of arsenic well below 20 mg/kg. This is significantly less than half of that allowed to be sold to homeowners and gardens (41 mg/kg) as Class A compost suitable for growing vegetables. As a manner of comparison, the Massachusetts standards for unrestricted, uncovered residential use, including homes, schools and playgrounds is 20 mg/kg.
 - In accordance with the BUD Amendment these soils were required to be covered within 14 days with soils containing arsenic levels below 7 mg/kg.

In its original review, the Department looked at this issue in great detail. As a result of the comments received during the BUD Amendment Public Comment Period, the Department responded to those comments in a 189 document that can be viewed at:

<http://www.dem.ri.gov/programs/benviron/waste/pdf/portsbud.pdf>

The relevant facts are summarized below:

Prior to revising its statewide arsenic management standards, the Department had been sharply and universally criticized across the spectrum (by industry, environmental groups, fair housing advocates, and consultants) for enforcing the 7 mg/kg arsenic standard in areas (most notably Aquidneck Island) where levels above that are naturally occurring. As recommended by the Legislative Commission, the Department proposed revised standards. The hearing for those revised arsenic standards were both well publicized and well attended. The notice of the meeting was read at the January 18, 2011 Town meeting in the presence of both the Portsmouth Town Council and the concerned citizens. At the hearing on the new standards, **all** of the diverse group of commenters either favored the new regulations or felt they were still too stringent. Not one comment was received during the comment period in favor of keeping the old arsenic management standards.

The management of soils containing arsenic at the site was significantly stricter than the Department's standards for management of arsenic soils at residential properties in the following ways:

- The Department requires all arsenic containing soils be covered within 14 days.
- The Department only allows soils with naturally occurring arsenic, whereas the standard applies to all soils with arsenic from any source.
- All sources are required to have an upper limit of 40 mg/kg for any sampling and must have an

- average concentration of less than 20 mg/kg.
- The Department requires 2 feet of final cover at the site whereas the Site Remediation Regulations for arsenic require between 4 and 6 inches.

Finally, the Portsmouth Concerned Citizens claimed that the Department has never considered the health implications and needs to do a site specific risk assessment at this property. The statute directing and authorizing the Department to create soil standards (RIGL 23-19.14) directs the Department to develop safe, consistent standards for hazardous constituents in soil and groundwater. The Legislative Commission referenced above included experts from the Department of Environmental Management, the Department of Health and outside experts. Furthermore, an exhaustive analysis of the risks and benefits of the arsenic standards included additional testimony from a wide variety of experts. The Department of Health's Risk Management expert, Dr. Vanderslice, did take the time to review the proposal and met with concerned citizens to discuss the issues. Dr. Vanderslice agreed with the Department that when soils are managed in accordance with the prescribed arsenic standards (or in this case, more strictly than those standards). As explained above, both Departments have exhaustively reviewed the health implications of the regulations, and the management of soils with elevated arsenic levels is more stringent than those requirements.

3. The Remedy, Beneficial Use Determination and BUD Modification were issued with little or no notification to the Town (the Landfill Committee).

The characterization of the site history presented here is misleading and gives the impression the Department kept the Town of Portsmouth and residents completely in the dark until closure activities began.

In March of 2010, APE submitted a revised Remedial Action Work Plan. In accordance with RIGL 23-18.9-16, the Department insisted that the proposal for soils used for grading and shaping material should go through a public notice and public hearing as part of a Beneficial Use Determination (BUD) in order to allow public input. The Town received a copy of the Revised Remedial Action Plan, the CRMC Category B Assent Application, as well as the Soil Erosion and Sediment Control Ordinance Application. Additionally, a notice was also placed in the Providence Journal. Furthermore the Town was notified of the public hearing and gave its permission for a public hearing to be held on Town Property on September 8, 2010. No comments were received at the public hearing. The Town also approved the Soil Erosion and Sediment Control Application in June and its representative voted to approve the CRMC Application in September, both of which extensively incorporated the BUD proposal.

Later that year, after work had begun, the proposed modification to allow the use of soils containing elevated levels of naturally occurring arsenic, covered with 2 feet of clean soil was received. The proposal coincided with the widely publicized revision of the Department's arsenic management standards.

Although the proposed management standards for the modified BUD were stricter than those proposed in the Site Remediation Regulations, the Department went above and beyond the requirements by requiring notice in the Providence Journal. It expected little opposition given the widespread criticism of the Department's 7 mg/kg arsenic standard explained above. The Department did err in not confirming that Town Officials receive notice **prior** to its publication in the Providence Journal. In early January, the Department was contacted with questions regarding the notice that appeared in the Providence Journal. It was the Department's representatives who suggested that if there are questions, there should be a public meeting and hearing to allow people to get information.

A detailed history of the project and full transcripts and response to comments received at the meeting are

posted at <http://www.dem.ri.gov/programs/benviron/waste/pdf/portsbud.pdf>.

- 4. Illegal dumping of waste such as oil, anti-freeze and asbestos have been dumped at the site during the closure (the Landfill Committee).**

The Department has done numerous inspections including sampling at the site. There is no evidence whatsoever that anti-freeze, oil and asbestos have ever been disposed of at the site as part of the closure.

- 5. Truck traffic and associated noise has created a nuisance in the area (Joe Robicheau and Landfill Committee).**

Grading and shaping material, clean fill, loam, seed all needs to be brought in to achieve the required closure. Were a BUD approval not given, the same volume of grading and shaping material would need to be brought in to achieve closure. As the vast majority of grading and shaping material has already been brought in, the trucks necessary to bring in the remainder are required. There is no reasonable way to transport and move these soils to where they are needed at the site. The Department has taken steps to ensure that street sweeping, the application of dust suppressants and water tanks onsite to wash trucks and wet the road all minimize impacts to the community.