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June 23, 2017

Jeffrey Stephens, R.S., CP-FS
Health Director
Health Department
55 Main Street
Westford, Massachusetts 01886

Re: 540 Groton Road, LLC ("540 Groton Road")/Newport Materials, LLC ("Newport Materials") at 540 Groton Road, Westford, MA (the "Site")

Dear Mr. Stephens,

I am writing to you to request that you grant the Hazardous Material Storage permit (the "Permit") to Newport Materials, LLC ("Newport") forthwith.

Newport's application demonstrates full compliance with Westford's Hazardous Materials Storage Bylaw in Chapter 61 of Westford's ordinances. The proposed storage detailed in the application meets or exceeds all applicable requirements. While the application itself thoroughly addresses Chapter 61's criteria, during your department's review of Newport's application, we have provided you with timely and detailed responses to any questions. We also are providing you in Attachment A with responses to questions that came up during the Board of Health public meeting on June 12, 2017, which we give in the spirit of cooperation and good faith though we note that many of the questions are either addressed in the application or are beyond the requirements of Chapter 61. In addition, in Attachment A, we also provide responses to more questions that came from your office on June 16, 2017. We appreciate your office's review of the application as shown in the questions presented.

Newport's application and its responses to relevant questions are thorough and detailed. Indeed, they go beyond what is required by Chapter 61's requirements. As such, pursuant to § 61.9 of the Bylaws (which provides: the permit "shall be granted") and the Settlement Agreement documents between Newport and the Town concerning this Project (which provide Newport "shall receive" this permit) you, as Director of the Westford Health Department, are required to grant Newport's Permit.

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Any failure to grant Newport's Permit because of some misplaced reliance on Metaxes Brown Pidgeon LLP's letter dated March 7, 2017 pertaining to the by-right fill operation at 540 Groton Road and/or while the DEP reviews the same operation, would be patently unlawful, a clear abuse of discretion, and an egregious breach of the Settlement Agreement with the Town.

As you know, my letter of March 16, 2017 (a copy of which is attached hereto for your convenience in Attachment B) addressed and resolved the points in the Metaxes letter. Moreover, anything to do with the by-right fill operation (which is scheduled to close in Fall 2017 per the Settlement Agreement absent a breach by you/the Town/the Board) has nothing to do with Newport's application and is beyond the scope of this particular Permit. Simply put, you have no authority to deny or fail to act on Newport's timely, detailed application and associated materials based on another agency's actions on a totally unrelated matter. Indeed, to do so would be arbitrary and capricious. By law, you cannot refuse to issue the Permit for reasons unrelated to the standards of the bylaw. *See Slater v. Board of Appeals of Brookline*, 350 Mass. 70 (1966)(holding that board may not refuse to issue a permit for reasons unrelated to the standards of the by-law for the exercise of its judgment). The Permit "shall" be granted under §61.9 if it meets the criteria listed therein, which Newport's application and associated materials do.

We wish to avoid any adversarial proceedings. Any delays, however, may present liability for unlawful actions, including liability for contempt (which is expressly provided for in the Settlement Agreement documents), legal fees, and costs for which Newport may seek recovery of its damages.

Very truly yours,



Robin L. Main

Enclosures

cc: Orestes G. Brown, Esq.
Rhiannon A. Campbell
Richard A. DeFelice
Jodi Ross, Town Manager
Andrea Peraner-Sweet, Board of Selectmen
Scott Hazelton, Board of Selectmen
Mark D. Kost, Board of Selectmen
G. Thomas Clay, Board of Selectmen
Elizabeth M. Almeida, Board of Selectmen
Michele Putoniak-Crawford, Board of Health
Susan Hanly, Board of Health
Stephanie Granger, Board of Health
Zac Cataldo, Board of Health
Joanne Belanger, Board of Health

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Douglas C. Deschenes, Esq.

Melissa Robbins, Esq.

Christopher J. Cunio, Esq.

Thomas F. Reilly, Esq.

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ATTACHMENT A



June 23, 2017

Westford Health Department
Town Hall, 55 Main Street
Westford, MA 01886

REF: Hazardous Material Permit Application
Supplemental Information
Asphalt Manufacturing Facility
540 Groton Rd.
Westford, MA

To Whom May Concern,

Please find enclosed supplemental information for the Application for a Hazardous Material Permit for 540 Groton Road. As requested, this information addresses relevant questions raised at the Board of Health meeting on June 12, 2017 and in Rae Dick's letter with additional questions that we received on June 16, 2017 (*LandTech responses are italic*). Please be advised that the majority of these items were addressed in the previously submitted application, and, as such, their location in the application and descriptions are included for convenience.

Board of Health Comments – June 12, 2017 Meeting

1. Pg 68 (Section D.1 - DD Letter dated 10-1-09) refers to drainage swale being lined – What will it be lined with?
Swales #2,#3,#4,#5,#6, and #7(shown in the Approved Site Plans provided in Appendix C) will be lined with a 40-MIL. Rigid/Impervious polyethylene barrier as shown in the Water Quality Swale Detail on Sheet DS1 of the Approved Site Plan provided in Appendix C. Please not that all references to Appendices in this letter refer to the Appendices to the application.
2. Tank construction – what standard are they designed to meet with respect to;
 - Earthquake – if so what level and provide clarification of what the various levels are
 - Blasting concerns
 - Hurricanes – if so what level hurricane
 - Wind/Tornado

The tanks are constructed of heavy quarter-inch plate, fully insulated, and are designed to meet applicable regulations for service, construction, and stability; specifically, the tanks are designed to meet the UL-142 standard for Aboveground Flammable Liquid Tanks. It should be noted that a license has been issued for the tanks from the Westford Board of Selectmen and the Westford Fire Department and that it was determined these tanks are of suitable construction.

Each tank will sit within a concrete containment area that is sized to hold 110% of the liquid volume of these tanks as well as the No. fuel oil tank, and the hot oil heater. The containment floor will be constructed to serve as the securing foundation for the tanks. The concrete structure

and the connections that secure the tanks to the structure are designed with load and resistance factors that account for extreme loads such as wind shear due to hurricane winds, seismic loading due to earthquakes, etc. as called for in State and local building codes.

The structural components of the tanks and tank farm will be designed in accordance with design factors given for the Town of Westford in Table 1604.10 Ground Snow Loads; Basic Wind Speeds; Earthquake Design Factors from Chapter 16 – Structural Design of the State Board of Building Regulations and Standards. These design factors include: Ground Snow Load , $p_g=55$ pounds per square foot; Basic Wind Speed (3 second gust speed), $V=100$ miles per hour; and Earthquake Design Factors (Earthquake response accelerations for the maximum considered earthquake), $S_s=0.03$ and $S_1=0.073$. These factors are used in Load Combination equations to find the most critical effect on the structures. It should be noted that seismic loading is not a limiting design factor for this site due to the low level of seismic activity in the area.

The standards and codes which these tanks are designed to comply with are further described in the Engineering Technologies Group, Inc. letter found in Section D.4 of Appendix D.

3. Pg 92 (Section D.5: Rolf Jensen & Associates, Inc. Review Package, Appendix C - RJA Letter to DD dated 2-3-10 & Appendix D – RJA answers) Appendix C presents 15 questions and it appears that Appendix D partially answers the questions. Please provide answers for question 7, 8 and 9 for example.

The 15 questions posed in the letter from RJA to Attorney Douglas Deschenes, found in Appendix C of the Rolf Jensen & Associates, Inc Review Package in Section D.5 of the application, are answered in Appendix D of Section D.5, although the number of each answer does not coincide with the number given to each question given the exchange of information at that time and the fact that some answers respond to several questions. For example, some of the responses answer multiple related questions; Question 1 is addressed in Answer 1, Questions 2 & 3 are both addressed in Answer 2, etc. Question 8 is not answered in this response letter; the following addresses the plan to control odor:

Odor control will be incorporated into the asphalt mix as described during Site Approvals with the Westford Planning Board. This includes adding liquid Ecosorb into the mix which is designed to help control odors in an environmentally friendly way (see attached Material Safety Data Sheets).

Ecosorb will be added to the process at a rate of 1 gallon of Ecosorb additive to 10,000 gallons of liquid asphalt. This would result in adding approximately 2 gallons of Ecosorb additive per day. The product will be stored in 5 gallon containers and is not regulated by the Town of Westford Hazardous Material Storage And Underground Tank Regulations.

4. Application, Section 3 – Generator Information - *Does your facility generate or process chemicals or hazardous waste? Why is this item checked No?*
The hazardous materials stored on-site and used in the manufacturing process are not used for the generation or processing of chemicals or hazardous waste. The No. 2 heating oil is used as fuel for burners that heat the liquid asphalt, which is combined with aggregates to produce

asphalt concrete mixes. The materials do not undergo any processes that generate other chemicals or hazardous wastes.

5. Application, Section 3 – Generator Information, Table 3. – *Safety Sensor System?* Why is this item blank?

The Application Packet for a Hazardous Materials Permit has been revised to indicate that the No. 2 fuel oil and liquid asphalt tanks do have safety sensor systems (See Attachment 1). The following further describes these systems and indicates where in the application additional information can be found.

All tank controls and piping are completely accessible at grade and include both manual shut-off valves as well as electronically and remotely controlled shut-off valves from the operator's control house. On loading the tank, liquid asphalt is delivered via truck in the heated form and off-loaded through a sealed, heated, and insulated pumping system from the truck to the tanks. Safety control and sensors are provided to control liquid temperature as well as overflowing of the tanks during filling. Each tank also has a shell and tube condensing unit for particulate and vapor recovery that discharges back into the tank. The containment area also will have leak detection and alarm.

The electronic sensor systems in place for the No. 2 fuel oil tank include an electronic level sensor, overflow safety controls, and a leak detection monitor within the cell of the tank farm enclosing the 10,000 gallon No. 2 fuel oil tank.

Other safety control systems are described in the Gencor Industries letter dated 11/19/2009 found in Section D.3 of Appendix D.

Please see the attached letter (Attachment 3) from Rolf Jensen & Associates, Inc. to Mr Ross Altobelli of the Town of Westford Planning Department, dated February 12, 2010, in which RJA states it has "no further recommendations regarding the proposed built-in process controls as it relates to the fire and life safety as it relates to the American Petroleum Institute Guide for Safe Storage and Handling of Heated Petroleum and NFPA 30 Flammable and Combustible Code," due to Gencor's confirmation that all standard and optional controls and safety interlocks will be provided.

6. Appendix B: Spill Response Plan – Facility Specific Requirements (Pg 18) – Why are there no Facility Specific Requirements listed?

Please find attached the revised Spill Response Plan (Attachment 2) that has been updated to list the following items in the sections regarding Facility Specific Requirements. The following facility specific requirements for spill prevention are described in the Spill Prevention section of the Emergency Plan found in the Hazardous Materials Application Explanation of Facility's Compliance with Chapter 61A in the Narrative of the previously submitted application.

Facility specific requirements for spill prevention include employee training, redundant manual shutoffs on both the No. 2 fuel oil and liquid asphalt tanks as required in the WRPOD Special Permit, and the closure of block valves on all pipe feeds fitted to storage tanks when the plant is not in operation or not attended by the personnel. In addition to these requirements, training for the Westford Fire Department and a foam cart, to be kept on-site, will be provided to aid in spill prevention.

7. Is this material (Liquid Asphalt & No. 2 Fuel Oil) heavier than Water?

The weight of these materials is given in terms of their specific gravity. Specific Gravity is defined as the ratio of the density of a substance to the density of a standard, in this case water. Substances with a specific gravity greater than 1 will be more dense or heavier than water, while substances with a specific gravity less than 1 will be less dense or lighter than water.

Liquid Asphalt has a specific gravity greater than 1, which is greater than the specific gravity of water (S.G. of Water is 1), as shown in Section 9. Physical and Chemical Properties (Typical) of the Material Safety Data Sheet for Asphalt Cement, All Grades, provided by CITGO Asphalt Refining Company are found in Attachment B.4 of Appendix B of the application.

No. 2 Heating Oil has a specific gravity of approximately 0.87, which is less than the specific gravity of water, as shown in Section 9. Physical and Chemical Properties of the Material Safety Data Sheet for No. 2 Heating Oil provided by Amerada Hess Corporation and also found in Attachment B.4 of Appendix B of the application.

Board of Health Review Letter dated June 16, 2017

1. Will there be any hazardous wastes or liquid wastes stored or generated because of your operation?
See response to question 4 under Board of Health Comments - June 12, 2017 Meeting.
2. Are the swale's, sediment forebay's, temporary basin's, or detention basin's lined with a barrier to prevent seepage into the ground? What is the product being used as the liner?
See response to question 1 under Board of Health Comments - June 12, 2017 Meeting.
3. You show a proposed well for this site on your plan. What kind of well is it? (Potable, Irrigation, etc.) Please apply for a well permit through our office.
The proposed well is to be permitted under the Town of Westford Board of Health's "Irrigation-Only" Well regulations and will not be connected to any other water supply lines. The purpose of the well is to be the dedicated water source for the fire cisterns required by the Westford Fire Department. An application for a well permit will be submitted to the Westford Board of Health.

Please note that the existing well on site services the existing off building on the property and is more than adequate to service water supply needs for personnel associated with both the commercial building and asphalt facility.

4. Will you have an emergency generator for the plant on site? If so, how will it be fueled?
There will not be an emergency generator on site. During the review of the WRPOD Special Permit, which included an extensive review of the facilities, there was no requirement for a generator on site as the system controls were adequate for shutting down the manufacturing process in the case of a power outage.

If there is a power outage during operation the entire system shuts down; more specifically and of most concern, the pumps which allow the flow of liquid asphalt and No. 2 fuel oil from their storage tanks to the burners. Upon power loss, manual shutoffs on the tanks and block valves on all feeder pipes will also be shut off, which is typical procedure when the plant is not in operation.

Power loss is not a concern at night due to the redundant manual shutoffs on both the No. 2 fuel oil and liquid asphalt tanks, as required in the WRPOD Special Permit, and the block valves on all pipe feeds fitted to storage tanks will be closed when the plant is not in operation or not attended by the personnel.

5. Your plan states that you have 3 manual gate valves to shut the system down in case of an emergency. Do you also have an electronic way to shut the system down?
See question 5 under Board of Health Comments - June 12, 2017 Meeting.
6. How many employees will be on site on an average day?
There will be between 5 and 7 employees on site on an average day.
7. The building structure appears to be a construction trailer in the plant area. Will the trailer be tied into the current septic system, or will there be porta-pottie toilets being brought onto the property? If so, a permit through the Health Department is required for a porta-pottie.
There will not be a bathroom located at the office trailer for the asphalt manufacturing facility. Bathrooms are provided at the adjacent building on Commerce Way.
8. Please explain your safety sensor system for the tanks.
See response to question 5 Board of Health Comments - June 12, 2017 Meeting.
9. Owners are required to maintain a written inventory, reconciled monthly, of purchase, sale, use, disposal or discharge of the stored material. What forms will you be using for your inventory and monitoring records?
A written inventory will be kept using the Hazardous Materials (Chemical Storage) Monthly Inventory Checklist for Containers Larger than 50 Gallons Liquid Capacity, provided by the Town of Westford Health Department. This can be found in Appendix B: Spill Response Plan.
10. Does the containment/dike system have an impervious chemical resistant base? Bylaw Section 6 #5(C)
The reinforced concrete structure serves as the impervious chemical resistant base, as is appropriate for the liquid asphalt and No. 2 fuel oil.
11. Are all piping and appurtenant structures stored in the containment/dike structure?
All piping and appurtenant structures associated with the storage tanks for hazardous materials are stored within the containment structure, including all filling and storage of liquid asphalt and No. 2 fuel oil.
12. Will there be any tank trailers or trucks that carry hazardous materials parked in an overnight parking area on site? If so, where on the site?
Tank trailers or trucks carrying hazardous materials will not park overnight on this site.
13. Is the containment/dike system able to contain the 110 percent for the largest tank?
The containment structure has been designed to contain 110% of the volume of the largest tank within the containment structure. Please refer to Table 4 Summary of Retention Volumes found in Section D.4: Engineering Technologies Group, Inc. Letter in Appendix D of the application.

14. In the case of a spill, where will cleanup materials be disposed of?

Mill City Environmental, a licensed handler of hazardous materials, will be the emergency spill responder and will dispose of any spilled hazardous materials at an appropriate, licensed, off-site facility.

15. A letter provided in your packet from February 12, 2010 states that the "oxygen and acetylene will be chained and stored properly". At what capacity and at what size are these substances stored? Where will they be stored on site?

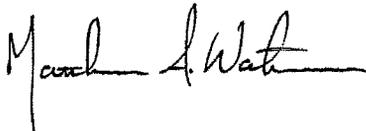
Acetylene and oxygen tanks for hand torches used for maintenance and fabrication on site are to be standard portable sizes of about 20 cubic feet for oxygen tanks and 10 cubic feet for acetylene tanks, which, respectively, have water capacities of roughly 0.9 gallons (3.5 liters) and 0.5 gallons (2.0 liters). These tanks are to be stored in existing maintenance trailers located across the access road that serves the site.

We have no issues with the recommended conditions of approval included in this letter and we look forward to your final approval of this application.

Should you have any questions or require additional information please do not hesitate to contact our office.

Sincerely,

LANDTECH CONSULTANTS, INC.



Matthew A. Waterman, P.E.
Senior Project Engineer

Cc: Attorney Doug Deschenes
Attorney Robin L. Main
Richard DeFelice

APPLICATION PACKET FOR A HAZARDOUS MATERIALS PERMIT

Note: Residential Applicants with Underground Fuel Storage Tanks must provide all applicable information including a hand-sketch of the lot showing location of the tank. Residential applicants do not have to provide an interior plan unless the tank is under the foundation.

Type of Application:

1. General Application Information

Is this an application for an underground residential fuel storage tank **ONLY**?:

Yes No

Legal Name of Facility or Establishment:

New port Materials

Name of Applicant:

540 Groton Rd LLC

Email Address: mwaterman@landtechinc.com

Site Address:

540 GROTON RD -
WESTFORD MA 01886

Map/Parcel: 48-11-234

Change Address

Mailing Address:

145 Temple Street
Nashua, NH 03060

Business Phone Number:

603-882-1700

Business Fax Number:

603-882-2784

Description of Business:

Materials Manufacturer. See Narrative and
Appendix E

Property Owner's Name(s):

Rick DeFelice

Phone #: 617-459-9775

Property Owner's Address:

145 Temple Street
Nashua, NH 03060

2. On-site Facility Contact Information

Facility Manager:

Jon Tucker

Title: Supervisor

Phone #:

603-494-9115

Emergency Contact Person 1:

Rick DeFelice

Home Address:

145 Temple Street
Nashua, NH 03060

24 Hour Phone:

617-459-9775

Emergency Contact Person 2:

Paul Routhier

Home Address:

145 Temple Street Nashua, NH 03060

24 Hour Phone:

978-580-1502

3. Generator Information

Does your facility store hazardous materials?

Yes No

Does your facility generate or process chemicals or hazardous waste?

Yes No

TABLE 1. List all chemicals used and stored at your facility stored in quantities greater than fifty (50) gallons liquid volume.

	Chemical Name & CAS#	Location of Storage	Number of Containers	Volume of Containers	Maximum Quantity Stored Monthly
1.	Fuel Oil #2	On-site	1 Tank	10,000 gallons	10,000 gallons
2.	Liquid Asphalt	On-site	2 Tanks	30,000 gallons	60,000 gallons

TABLE 2. List all wastes stored at your facility in quantities greater than 50 gallon liquid volume.

	Chemical Waste	Location of Storage	Number of Containers	Volume of Containers	Maximum Quantity Stored Monthly	Secondary Containment Present (Yes/No)

Does your facility have any underground or above ground storage tanks?

Yes No

TABLE 3. If yes, attach a copy of your Fire Department permit and complete the following table. See Appendix A

Residential applicants must complete this section but do not have to provide a Fire Department permit.

	Tank 1	Tank 2	Tank 3	Tank 4
Above Ground or Under Ground?	<input checked="" type="checkbox"/> Above <input type="checkbox"/> Under			
Date of Installation	n/a	n/a	n/a	-
Date of Last Tank Test	n/a	n/a	n/a	-
Tank Capacity	10,000	30,000	30,000	-
Material Stored	Fuel Oil #2	Liquid Aspha	Liquid Aspha	-
Type (Steel or Fibreglass)	<input checked="" type="checkbox"/> Steel <input type="checkbox"/> Fibreglass			
Safety Sensor System	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			

Attach a copy of your last tank test report

4. Hazardous Waste Disposal, Containment, and Training

A. Waste Disposal Company

Company Name: Mill City Environmenta
Address: 116 John St
 Lowell, MA 01852
Telephone #: 978-654-6741
24 Hour Emergency #: 978-654-6741
Email: bchapman@millcityenv.com
Website: www.millcityenv.con

B. Emergency Spill Responder

Company Name: Mill City Environmenta
Address: 116 John St
 Lowell, MA 01852
Telephone #: 978-654-6741
24 Hour Emergency #: 978-654-6741
Email: bchapman@millcityenv.com
Website: www.millcityenv.con

C. List the spill containment materials and equipment present on site and where in the facility the items are stored:

See Appendix B, C & D

List the spill containment location of the spent containment materials:

See Appendix B, C & D

D. Using the checklist provided, check off all of the potential spill pathways that apply to the business:
 (If other, please list)

- | | | |
|--|---|---|
| <input type="checkbox"/> Floor Drains | <input type="checkbox"/> Dry Wells | <input type="checkbox"/> Cracked Pavement |
| <input type="checkbox"/> Loading Docks | <input type="checkbox"/> Abnormal Gradients | <input checked="" type="checkbox"/> Other: Lined Swales |

E. Does your facility have an oil/water separator? Yes No

F. Describe the training provided to employees for handling, using, accumulating, and storing hazardous materials or waste and by whom:



G. Attach a copy of your Emergency Contingency Plan: See Appendix C

If you have previously submitted an Emergency Contingency Plan to the Health Department and there are no changes, check here

Date Plan Submitted:

5. Authorization

I hereby certify that the above information is correct, and I fully understand that any deviation from the above without prior permission from the office may nullify this approval.

Spill Response Plan

Name of Business Newport Materials

Address 540 Groton Road. Westford, MA 01886

Facility Phone (978) 392 - 1540

Types of Work or Hazardous Substances Used: Asphalt manufacturing plant.
Hazardous material on site is fuel oil #2 and liquid asphalt.

This spill plan is designed to handle the requirements for this system and associated hazardous substances. The spill plan should be updated if the hazardous substance inventory changes.

Spill Prevention

The following are general requirements for any hazardous substances stored or used at this facility.

General Requirements

- Ensure all hazardous substances are properly labeled.
 - Store, dispense, and/or use hazardous substances in a way that prevents releases.
 - Provide secondary containment when storing hazardous substances in bulk quantities (~55 g).
 - Maintain good housekeeping practices for all chemical materials at the facility.
 - Routine/Daily checks in the hazardous substance storage area to be performed by
-
- Monthly inspections of the hazardous substance storage area, secondary containment, and annular space (interior cavity of double wall tank) on any Above-ground Storage Tanks (AST) or Underground Storage Tanks (UST) need to be logged in this plan. See Appendix A - Inspection Log.

Facility Specific Requirements

- Employee & Westford Fire Department training, redundant manual shutoff valves No.2 fuel oil & liquid
- asphalt tanks, closure of block valves on all pipe feeds when plant is not in operation or attended by personnel, on-site foam cart.

Spill Containment

The general spill response procedure at this facility is to stop the source of the spill, contain any spilled material and clean up the spill in a timely manner to prevent accidental injury or other damage. Small spills will be contained by site personnel if they are able to do so without risking injury. Spill kits are located at the following location(s). See attached site map:

Personnel will properly characterize spill cleanup materials before disposal.

For questions about disposal refer to MassDEP Emergency Response Program, www.mass.gov and the local Board of Health Office.

Emergency Procedures:

- Immediately call **911** in the event of injury, fire or potential fire, or spill of a hazardous substance that gives rise to an emergency situation.
- If a spill has occurred, contact the following persons immediately:

Rick DeFelice	(Primary)	(617) 459-9775
Paul Routhier	(Secondary)	(978) 580-1502
	(After Hours Emergency Contact)	() -
- **In the event of a large spill, a properly trained employee should:**
 - Assess the area for any immediate dangers to health or safety (i.e. a wrecked car on fire). If any dangers are present, move away from the area, **call 911**.
 - Notify the primary and/or secondary contact from the list above and then continue your spill response. The primary contact should assess additional notification requirements (i.e. notify local Board of Health, etc. see Spill Reporting below).
 - Retrieve the spill kit from the closest location.
 - Assess the size of the leak and any immediate threat of the spill reaching the floor/storm drains or permeable surfaces in the area. If there is an immediate threat and there are no safety concerns, then attempt to block the spill from coming in contact with the floor/storm drain or permeable surface. If no drain covers are available, then try to use absorbent (cat litter) and/or sock booms or rags to stop the spill from getting into the drains or to any permeable surfaces.
 - If the spill can be contained with absorbent booms, deploy them around the spill. Use the booms to direct the spill away from any immediate hazards (i.e. a wrecked car).
 - If there is no immediate threat to the floor/storm drains or permeable surfaces, or after controlling the spill, try to plug or stop the leak, if possible. If applicable, put on protective gear (gloves, goggles, protective clothing, etc.) and plug the leak.
 - Once the spill has been contained and any immediate threat to storm drains or permeable surfaces has been minimized, contact the spill cleanup contractor and dispatch them to clean up the spill or commence spill cleanup procedures.

Spill cleanup for large spills should be handled by the Spill Cleanup Contractor

Company Name Mill City Environmental 24-Hour Phone (978) 654-6741

Spill Reporting

If a hazardous substance spill exceeds 25 gallons or if any amount has been released to soil, surface water, or storm drains, notify the following agencies:

MassDEP Spill Hotline	(888) 304-1133
Westford Board of Health	(978) 692-5509
Westford Fire Department	(978) 692-5542
Clean Harbors	(800) 645-8265
National Response Center (NRC)	(800) 424-8802

Plan Management

The primary contact or designee shall administer this plan and will be responsible for updating and including any required documentation.

Training

All personnel who may respond to any spill, need to be trained on the contents and procedures in this plan. Trained personnel will add their names and dates of training to the Training Log (see Appendix D). Only persons trained on this plan shall respond to a spill. If you are not trained and witness a spill, call or notify the primary and secondary contacts listed on Page 2 of this plan.

Spill Tracking

Any spills must be entered into the Spill Log (see Appendix C). If a large catastrophic spill occurs, attach additional pages to describe the event. Include known or possible causes, areas affected, and effectiveness of the cleanup. Include a review of the cleanup contractor and their procedures. For small spills, it is sufficient to fill out the Spill Log, and to take measures to prevent a repeat occurrence.

Facility Inspections

Routine inspections will be conducted daily during regular business hours. Daily inspections will include, at a minimum, a visual inspection of the hazardous substances containers and the area immediately adjacent to it for signs of a spill or leak. These inspections do not need to be logged unless a spill or leak is detected. Ideally, these inspections will be conducted by a manager or by regular employees.

Full site inspections will be conducted monthly by the primary contact or designee and, at a minimum, will include those items on the inspection form in Appendix B. If any item on the inspection form is found unacceptable, the inspection form will be attached to this plan. If all items are deemed acceptable; it is sufficient for the inspector to log only the inspection and the results in the Inspection Log (Appendix A).

**Town of Westford
Health Department
55 Main Street
Westford, MA 01886
(978) 692-5509 FAX (978) 392-2558**

Guide for Using Health Department Sample Tables

The Town of Westford Health Department has provided templates for three sample tables that Hazardous Materials and Hazardous Waste permit holders can use to collect information that will comply with the Health Department's Regulations.

If you store Hazardous Materials (Chemicals) in containers that are larger than 50 gallons you can use **Table A, Hazardous Materials (Chemical Storage) Monthly Inventory Checklist for Containers Larger than 50 Gallons Liquid Capacity.**

This Table should be filled out monthly and the tables should be maintained with other permit records. This Table can be shown to the Health Department inspector upon request and will provide evidence of compliance with record-keeping requirements.

- Column 1: Date of inspection
- Column 2: Provide identification of each container that you inspect, for example "Degreasing solvent holding container".
- Column 3: Approximate amount of material present in the container at the beginning of the inspection period. For the first inspection, this will be the amount in the container. For subsequent inspections, it will be the amount in Column 9 from the previous inspection period.
- Column 4: How much material was purchased and added to the container?
- Column 5: How much material was used during the period?
- Column 6: If applicable, how much material was sold?
- Column 7: How much material was disposed of during the period?
- Column 8: How much material that was present at the end of the previous period cannot be accounted for?
- Column 9: For inspection periods AFTER the first period, ADD Column 4 to Column 3, and then SUBTRACT the sum of Columns 5, 6, 7, and 8. This is the amount present at the end of the period.
- Column 10: Initial the form each month.

Appendix B Inspection Form

Acceptable Unacceptable

- Lids and Labels?**
Have all lids and caps been returned to their proper place?
Do all the containers still have labels?

- Evidence of Spills?**
Is there any indication that a spill might have occurred? If so, was the spill properly cleaned up? Was there any spill kit materials used? Was the Spill Log filled out for that incident? Any housekeeping issues?

- For Tanks with alarm systems only* Any Alarms or Sensor issues?**
Have there been any alarm conditions in the past month? If alarms have occurred, has the monitoring system been serviced by the manufacturer or an authorized service company? Is the system up and working at this time? Is the sensor working? Did you conduct a test of the alarm and the sensor? When was the last time the sensor was serviced?

- New Hazardous Substances?**
Have any new chemical products been purchased? Do you have the MSDS for new products? Have you assessed how to store and handle this new product safely? Have you added the new hazardous substance to the inventory sheet in this plan? Is the container properly labeled?

- Spill Kit Complete?**
Have any items been used from the spill kit? If items are missing, is there an associated entry in the Spill Log? Are there any items missing that are currently on order? Is the spill kit stored where it is supposed to be stored? Is there a sufficient supply of daily cleanup materials?

- Storm Drains?**
Is there a buildup of sediment in the drain traps? Is there any evidence of drain clogging? Are the drain filters still intact? Any need replacing? Have they been replaced?

- Items Fixed?**
Have all deficiencies previously noted been fixed or made acceptable?

List any issues, deficiencies, or failures in detail:





1661 Worcester Road
Suite 501
Framlingham, MA 01701-5401 USA
www.rjainc.com
+1 508-620-8900
Fax: +1 508-620-0908

February 12, 2010

VIA EMAIL

Mr. Ross Altobelli
Town of Westford Planning Department
Town Hall
55 Main Street
Westford, MA 01886

**WEST ASPHALT FACILITY
FIRE PROTECTION ENGINEERING SERVICES
FACILITY REQUIREMENTS**

Dear Mr. Altobelli:

Rolf Jensen & Associates, Inc. (RJA), reviewed the proposed building process controls, as it relates to fire and safety, to the American Petroleum Institute Guide for Safe Storage and Handling of Heated Petroleum (reaffirmed 2008) and NFPA 30, Flammable and Combustible Code (2008).

Gencor has added a number of interlocks for proper safety as part of their standard equipment. With the exception of the interlock for conveyor belts, which was an option, the remainder of the safety interlocks that are provided for the Westford Asphalt Facility are standard equipment. Gencor has confirmed that the proposed asphalt facility incorporate all standard and optional controls and safety interlocks Gencor provides.

RJA has no further recommendations regarding the proposed built-in process controls as it relates to fire and life safety as it relates to the American Petroleum Institute Guide for Safe Storage and Handling of Heated Petroleum and NFPA 30 Flammable and Combustible Code.



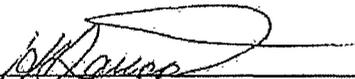
WESTFORD ASPHALT PLANT
FIRE PROTECTION ENGINEERING
CONSULTING SERVICES – FACILITY REQUIREMENTS

B49720 Page 2
February 12, 2010

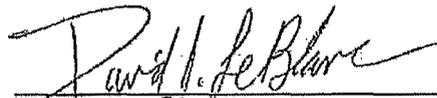
Please feel free to contact me if you have any questions regarding this letter.

Sincerely,
ROLF JENSEN & ASSOCIATES, INC.

Reviewed by:



Hossein Davoodi, P.E.



David J. LeBlanc, P.E.

HD/mk

ATTACHMENT B



HINCKLEY
ALLEN

100 Westminster Street, Suite 1500
Providence, RI 02903-2319

p: 401-274-2000 f: 401-277-9600
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Robin L. Main

Direct Dial 401-457-5278
rmain@hinckleyallen.com

March 16, 2017

VIA FEDERAL EXPRESS

Michele Pitoniak-Crawford
Susan M. Hanly
Stephanie D. Granger
Joanne Belanger
Zac A. Cataldo
Westford Board of Health
55 Main Street
Westford, MA 01886

Orestes G. Brown, Esq.
Metaxes Brown Pidgeon LLP
900 Cummings Center, Suite 207T
Beverly, MA 01915

Re: 540 Groton Road, LLC ("540 Groton Road")/Newport Materials, LLC ("Newport Materials") at 540 Groton Road, Westford, MA (the "Site")

Dear Sirs/Madams:

The purpose of this letter is to demand that the Board of Health ("BOH") immediately withdraw in writing the cease and desist letter dated March 7, 2017 (the "Cease and Desist") that the BOH's attorney, Orestes Brown, issued to me as counsel for Newport Materials and 540 Groton Road concerning the soil already on Site and being brought to the Site for quarry and gravel pit reclamation under the Administrative Consent Order ("ACO") with the Massachusetts Department of Environmental Protection ("DEP"). Please see attached Cease and Desist. **Undersigned counsel for Newport Materials and 540 Groton Road will be at the March 21, 2017 Board of Selectmen meeting at 8:10 pm to address the issues with the Cease and Desist as such issues are relevant and related to the agenda item: Joint meeting with Board of Health for update on the status of legal funds and next steps regarding Newport Materials.**

The Cease and Desist is void on its face. The BOH admitted this in a shocking discussion among BOH members and the Health Director at its Monday, March 13, 2017 meeting. At that meeting, the Health Director and BOH members discussed this matter out of order of the agenda and explicitly stated that Chapter 61, which is Westford's Hazardous Material Storage Permit bylaw, is not "geared toward what we want and that the bylaw needs to be rewritten to include "dirt." The BOH then struggled with whether they could or should use some of the substantial

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\$37,000 left of the \$50,000 provided to them from the Board of Selectmen for paying Attorney Brown to rewrite the bylaw to “affect change in the future” especially if others come in so that they [the BOH] will be better equipped to handle it. The link to watch the video of this discussion is posted at: <http://www.westfordcat.org/watch-online/government/meetings-coverage/board-of-health/episode/3-13-2017>

If the Cease and Desist is not withdrawn immediately, the Town of Westford will subject itself to liability and significant damages for, among other actions, the interference with Newport Materials’ and 540 Groton Road’s contracts with customers that rely on the Site for the placement of their soil during their development excavations and the fees and costs incurred in defending against this baseless Cease and Desist. Moreover, failure to withdraw the Cease and Desist and persisting in pursuing its meritless course of action may interfere with the settlement agreement between the Town and Newport Materials and 540 Groton Road, which provides that soil can be brought on the Site through September 2017. The simple fact is that the BOH Director and members know that the Cease and Desist is unfounded. They had an obvious intent to injure Newport Materials and 540 Groton Road with the Cease and Desist and now the BOH Director and BOH members may have subjected themselves to personal liability by acting outside the scope of their authority by sanctioning such a letter. At its core, this is an abuse of authority and a reckless act by government officials.¹

As the BOH knows but seems to care nothing about, the Cease and Desist is based on a fundamental misunderstanding of the applicability of the permitting requirements in Chapter 61 of Westford’s Ordinance on Hazardous Material Storage Permits, a completely erroneous claim that the soils at issue are “special waste” under Chapter 61, and a complete lack of any data or other evidence to support that the soils qualify as “solid waste.” In addition, Newport Materials and 540 Groton Road believe that the BOH meeting on February 13, 2017, to discuss issuing the Cease and Desist apparently in executive session may have been done in violation of the Open Meetings Act M.G.L. c. 30A, §§ 18-25, as any consideration of the Cease and Desist does not fall under any exceptions to the Open Meetings Act.²

While Chapter 61 is wholly inapplicable on its face to the activities under the ACO, as addressed in detail below, one only needs to consider that the soils are not “solid waste” or “waste” as defined under Chapter 61 and that therefore Chapter 61 is not applicable for that reason alone. Indeed, for the BOH to claim that the activities under the ACO fall under Chapter 61 is an

¹ At the appointed time on the March 13 BOH agenda for this matter, undersigned counsel appeared before the BOH and asked to be heard on the Cease and Desist that she had received just one business day prior to the BOH meeting. The immediate reaction of the BOH was to deny her the opportunity to speak at the public meeting on a topic on the agenda. Despite the agenda reflecting “Discussion on ...response letter from, Metaxas, Brown & Pigeon LLP”, the Chair denied that the matter was on the agenda. After some discussion, the BOH reluctantly allowed counsel to speak and berated her for not calling Attorney Brown about the matter first and for not giving prior notice that she would appear, which is not even required. Despite counsel’s arguments as to why the Cease and Desist should be withdrawn, the BOH took no action to right their known wrong by withdrawing it.

² The Cease and Desist is also procedurally defective as it was not sent to the agents for service of process for the entities at issue but rather only to Hinckley Allen.

artificial construct and an obvious attempt to thwart Newport Materials' and 540 Groton Road's business at the Site as shown below:

- By way of background, the activities at issue under the ACO are governed by DEP's 2015 Interim Policy on the Re-use of Soil for Large Reclamation Projects (the "Reclamation Soil Policy"). The Reclamation Soil Policy represents DEP's intent to issue site-specific approvals, in the form of ACOs like we have here, to ensure that the re-use of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of releases of oil or hazardous materials. The soil management plan that is attached to the ACO for the Site establishes the acceptance criteria for the soil. Under the acceptance criteria, re-use of soil that is under RCS-1 standards is allowed at the Site. In other words, the type of soil being brought to the Site is soil that would be suitable for residential use. This soil is being used to level the topography at the Site. This soil is not waste.
- Pulled from thin air and without any data or evidence for support, the Cease and Desist in a conclusory and inaccurate claim states that the soils at issue under the ACO are special wastes as defined under Chapter 61. For a material to qualify as special waste under the definition in Chapter 61, the material must be a "solid waste" or "waste." Neither "solid waste" nor "waste" is defined under Chapter 61. As such, we look to other authority, including state law, for guidance. Under state law and the very terms of the ACO, the soils are not solid waste:
 - First, to be solid waste or waste, the soil needs to be useless, unwanted or discarded solid material resulting from industrial, commercial or other operations. *See* 310 CMR 16.02. Here, the soils are not useless, unwanted or discarded. Also, as stated above, the soils meet RCS-1 standards.
 - Second, the ACO clearly supports the fact that the soils are not solid waste or waste. Under paragraph M of the ACO, the soil brought to the Site may contain incidental, randomly disbursed, *de minimis* quantities of solid waste. If DEP viewed the soil itself as solid waste, it would not refer to *de minimis* quantities of solid waste being allowed in the soil. In other words, such reference to solid waste would be superfluous.
- While the fact that the soils are not solid waste or waste³ mandates that the Cease and Desist be withdrawn immediately, other flaws in Attorney Brown's reasoning that Chapter 61 applies here are readily apparent from a review of Chapter 61 itself:

³ The soils are not hazardous wastes or hazardous materials though, admittedly, Attorney Brown does not claim that they are.

- Section 61.4 “Permits” – non-residential regulates: “ industrial, commercial . . . establishments that maintain tanks, containers or storage facilities with an individual capacity to hold more than 50 gallons liquid volume used for storage, use, processing or generation of hazardous materials, hazardous waste or special waste shall apply for a permit from the Health Department and the Fire Department, if applicable.” This section of Chapter 61 establishes that permitting requirements only apply to certain types of materials of liquid volume that are being stored, use, or processed. At the Site, as stated above, only soils – not liquids -- are being brought and put at the Site permanently. Simply put and to state the obvious, Section 61.4 applies to totally different types of activities than what is going on at the Site.
- Other sections of Chapter 61 prove this same point on the liquid nature of the materials that the chapter regulates. For example, Section 61.4 requires that a permit application *shall* provide the capacity and contents of the tank or storage facility and a description of leak detection methods. These requirements are completely meaningless if the Chapter were to regulate the type of soil activity at the Site.
- Indeed, the exceptions to the permit requirements under Chapter 61 all speak to materials that are liquid in nature or stored in tanks including septic, diesel fuel, hydraulic oil, cleaners, heating oil in above ground fuel tanks, and liquified petroleum gas. *See* Section 61.6.
- As another example of the inapplicability of Chapter 61 here, Section 61.8, prohibits discharges and those in charge of the regulated facility must report any discharge, leaking tanks or abnormal loss of hazardous materials or wastes or special waste to the BOH and the Fire Chief within twelve hours of knowledge.
- Similarly and to further illustrate the absurdity that Chapter 61 applies to the soils at the Site, Section 61.9 states that permits for storage shall be granted by the BOH only if certain criteria are met. The criteria includes adequate discharge prevention safeguards and the fact that hazardous materials or hazardous waste stored above ground shall be stored in product tight containers or on an impervious, chemical resistant surface, undercover and sheltered from the weather unless otherwise specified by the BOH. The criteria further requires secondary containment for the above ground structure. Again, none of this is applicable to the type of activity at the Site and subject to the Cease and Desist.
- While there should be no doubt at this point that Chapter 61 is inapplicable and that the Cease and Desist should be withdrawn immediately, the absurdity of the arguments under the Cease and Desist are also readily apparent if taken to their logical conclusion. Under the theory of the Cease and Desist, the BOH must now require any landowner who brings soil onto its property that somehow measures out to the equivalent of 50 gallons or more

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of liquid containment to apply for a permit under Chapter 61. This would include any type of development activity where soil is brought on site. Surely, the BOH and the Town of Westford did not intend Chapter 61 to require the permitting of such activities. Moreover, the Cease and Desist can be read to include a Chapter 61 permit requirement at any site where there is an activity and use limitation ("AUL") under M.G.L. Ch. 21E because of soils containing solid waste, hazardous wastes or hazardous materials remaining on site. This would be an absurd result to require Chapter 61 permits for sites with AULs.

- Finally, the BOH's vote to proceed with the Cease and Desist apparently in executive session may be a violation of the Open Meetings Act M.G.L. c. 30A, §§ 18-25. On February 13, 2017, the BOH discussed matters related to this matter -- specifically the response to Hinckley Allen's letter concerning the Board's jurisdiction -- which discussion ultimately resulted in the Cease and Desist. As the Cease and Desist, prior to its issuance, was never discussed or voted upon in open session, the BOH's approval of the Cease and Desist most likely occurred in executive session. There are ten (10) enumerated purposes for which a public body is permitted to meet in executive session, M.G.L. c. 30A, §§ 21. None of them applies here.

In sum, the Cease and Desist is based on fundamental misunderstandings of applicable law and regulations. As such, we demand that the BOH immediately rescind in writing the Cease and Desist. Should the BOH decline to do so, my client will pursue litigation and will seek damages for loss of business and any other losses it may suffer as a result of the Cease and Desist, including the costs of removing soil from the Site.

Very truly yours,



Robin L. Main

RLM/lsg

Enclosure

cc: Rhiannon A. Campbell, Esq.
Richard A. DeFelice
Jodi Ross, Town Manager
Andrea Peraner-Sweet, Board of Selectmen
Scott Hazelton, Board of Selectmen
Mark D. Kost, Board of Selectmen
Don Siriani, Board of Selectmen
Kelly J. Ross, Board of Selectmen
Douglas C. Deschenes, Esq.

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March 16, 2017
Page 6

Melissa Robbins, Esq.
Christopher J. Cunio, Esq.
Thomas F. Reilly, Esq.

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HINCKLEY, ALLEN & SNYDER LLP, ATTORNEYS AT LAW
56695888 v1

March 7, 2017

VIA CERTIFIED MAIL-RRR/FIRST CLASS MAIL
No. 7010 3090 0000 4740 2119

Robin L. Main, Esq.
Hinckley Allen & Snyder LLP
28 State Street
Boston, MA 02109

Re: CEASE AND DESIST

Dear Ms. Main:

This letter serves as a response to your January 5, 2017, letter in which you, as counsel for Newport Materials, LLC ("Newport"), question the Board of Health's ("BOH") ability to require that Newport and 540 Groton Road, LLC ("540 Groton") comply with local laws and permitting requirements regarding the storage of imported fill (the "Imported Fill") recently brought to Newport's facility located at 540 Groton Road, Westford, MA (the "Westford Property"). This letter also serves as notice to your clients that the Imported Fill currently being imported to and stored at the Westford Property is a Special Waste as defined under the Chapter 61 of Town of Westford General Bylaw ("the General Bylaw") and that Newport and 540 Groton must cease and desist storage of such Special Waste until such time that Newport and/or 540 Groton obtain a Hazardous Waste Storage Permit pursuant to the General By-Law.

As you have accurately pointed out, the Massachusetts Department of Environmental Protection's ("MADEP") Reclamation Soil Policy (the "Policy"), created a mechanism through which Newport was able to gain approval for the storage of Imported Fill at the Westford Property via the Administrative Consent Order ("ACO").

However, the Policy explicitly states:

Nothing in this Interim Policy eliminates, supersedes or otherwise modifies any local, state or federal requirements that apply to the management of soil, including any local, state or federal permits or approvals necessary before placing the soil at the receiving location, including, but not limited to, those related to placement of fill, noise, traffic, dust control, stormwater management, wetlands, groundwater or drinking water source protection.

Policy, at p. 3 (emphasis added).

Metaxas Brown Pidgeon LLP

Robin L. Main, Esq.
March 7, 2017
Page 2

In addition to the Policy's mandate that Newport and 540 Groton must still comply with local laws and permitting requirements, the ACO requires that Newport and 540 Groton comply with local laws and regulations. Section III ¶ 11(A) of the ACO explicitly states:

11. Respondents shall perform the following actions:

A. Upon the effective date of this Consent order, **Respondents shall perform any and all activities related to the Project in compliance with M.G. L. c.21E, the MCP the Similar Soils Policy, the Reclamation Soil Policy, and all other applicable local, state and federal laws and regulations.**

ACO at p. 6 (emphasis added). Section III ¶ 11(O) of the ACO goes on to state:

O. **Respondents shall obtain all applicable local, state and federal permits or approvals that may be required by the Project.**

ACO at p. 8 (emphasis added).

Clearly, the ACO's approval of storage of the Imported Fill at the Westford Property is conditioned on Newport and 540 Groton's compliance with the General Bylaw and permitting requirements. In addition the General Bylaws regarding the storage of Special Waste that are more stringent than those memorialized by the Policy and the ACO, are not preempted by State Regulation. See *Hobbs Brook Farm Prop. Co. L.P. v. Conservation Comm'n of Lincoln*, 65 Mass. App. Ct. 142, 149 (2005).¹

Chapter 61 of the General Bylaw entitled "Hazardous Materials Storage" governs the handling and storage of certain materials. Section 61.4 provides in pertinent part:

Permits – non-residential.

A. **All industrial, commercial, retail, institutional, and municipal establishments that maintain tanks, containers, or storage facilities with an individual capacity to hold more than 50 gallons liquid volume used for storage, use, processing or generation of hazardous materials, hazardous wastes or special wastes shall apply for a permit from the Health Department and the Fire Department, if applicable.**

...

¹ Indeed, the Policy itself makes clear that it does not supersede any local requirements, including permitting, for the storage of soil. See Policy, at p. 3.

Metaxas Brown Pidgeon LLP

Robin L. Main, Esq.
March 7, 2017
Page 3

Bylaws, § 61.4 (emphasis added). The "Definitions" section of Chapter 61 of The General Bylaw defines "Special Waste" as:

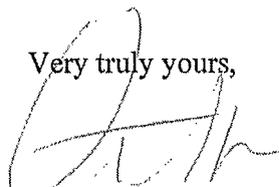
[A]ny solid waste that is determined not to be a hazardous waste pursuant to 310 CMR 30.000 and that exists in such quantity or in such chemical or physical state, or any combination thereof, so that particular management controls are required to prevent an adverse impact from the collection, transport, transfer, storage, processing, treatment or disposal of the solid waste. Without limitation, special waste includes waste that will require special management to ensure protection of public health, safety, or the environment based upon the physical, biological, or chemical properties of the waste. Special wastes include but are not limited to: asbestos waste, infectious wastes, except as specified in 310 CMR 19.061(2), sludges including wastewater treatment sludges, and industrial process wastewater treatment sludges. For the purposes of this bylaw, special wastes do not include drinking water treatment sludges. (Ref: 310 CMR 19.006 and 19.061(2) and (3).)

Bylaws, § 61.3.

The quantity and composition of the Imported Fill which Newport and 540 Groton are storing on the Westford Property require special management pursuant to both MADEP regulations and the General Bylaw. Consequently, the Imported Soil being stored by Newport is "Special Waste" as defined by the General Bylaw. As Newport and 540 Groton are currently storing "Special Waste" in an area with an "individual capacity to hold more than 50 gallons liquid volume," i.e. the Westford Property, they are required to comply with the permitting requirements set out in section 61.4 of the General Bylaw.

You are hereby notified that your clients must cease and desist the storage of Imported Fill at the Westford Property until such time as they comply with chapter 61 of the General Bylaw. Your clients' failure to comply with the General Bylaw may subject them to fines and/or court action for enforcement.

Very truly yours,



Orestes G. Brown

OGB:st

cc: Town of Westford Board of Health