



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

Central Regional Office • 8 New Bond Street, Worcester MA 01606 • 508-792-7650

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

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Commissioner

## **BWP SW 36 - MAJOR POST-CLOSURE USE**

Solar Photovoltaic Facility  
Ayer Sanitary Landfill, Groton-Harvard Road  
Ayer, Massachusetts

Permit Issuance Date: April 10, 2018

Name of Permittees: Town of Ayer ("Permittee", "Applicant" or "Town")  
Department of Public Works ("DPW")  
25 Brook Street  
Ayer, MA 01432

Ayer East Solar LLC ("Permittee", "Applicant")  
88 Black Falcon Avenue, Suite 342  
Boston, MA 02210

Name of Facility: Ayer Sanitary Landfill ("Facility" or "Landfill")  
Facility Address: Groton-Harvard Road  
Ayer, Massachusetts 01432

MassDEP Region: Central Regional Office (CERO), Worcester  
Solid Waste Management Program

Permit Number: X277144 (Transmittal Number)

Facility ID: 39049

MassDEP Classification: CLF

## **I. FACILITY DESCRIPTION AND OUTSTANDING APPROVAL STATUS**

### **A. Facility**

1. Landfill Owner: Town of Ayer  
1 Main Street  
Ayer, MA 01432

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

2. Solar Array Operator: Ayer East Solar LLC  
88 Black Falcon Avenue, Suite 342  
Boston, MA 02210
3. Description: The capped Landfill occupies approximately 9 acres within a 12.8 acre parcel of land in Ayer, Massachusetts. The Landfill was capped and closed from 2002 to 2003. MassDEP issued a final closure certification approval for the capped Landfill on September 22, 2006. The Town transfer station is located to the southwest of the capped Landfill.

The proposed post-closure use plan for the Landfill involves construction of a solar photovoltaic power generating facility on the capped and closed Landfill. The proposed solar array project, including solar panels and the rack/rail systems, will encompass approximately 4.9 acres of the 9 acres capped Landfill.

**B. Title of Approvals Affecting Proposed Operation.**

Permit for BWP SW 43, Landfill Closure Completion, Ayer Sanitary Landfill.  
Permit Number: W074734  
Issued by MassDEP-CERO: September 22, 2006

MEPA (Massachusetts Environmental Policy Act)  
EEA No.: 15760

- Environmental Notification Form (ENF)  
Ayer Landfill Solar Project  
Published in MEPA Monitor: September 20, 2017
- ENF Certificate of the Secretary of Energy and Environmental Affairs  
indicating that the project **does not** require the preparation of an  
Environmental Impact report (EIR).  
Published in MEPA Monitor: October 20, 2017

Massachusetts NHSEP (Natural Heritage and Endangered Species Program)

- Correspondence dated June 16, 2017, NHESP File No.: 17-36809, from the Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries & Wildlife (“the Division”) to Emily Mann of Citizens Energy indicating that “Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that the project, as currently proposed, **will not result in a prohibited Take** of state-listed rare species.”

Permit for BWP SW 36, Major Post-Closure Use, Solar Photovoltaic Facility,  
Permit Number: X276221  
Issued by MassDEP-CERO: February 16, 2018

**C. Permit Application Information for BWP SW 36 Post-Closure Use – Major**

1. Applicant Names:

Town of Ayer - DPW	Ayer East Solar LLC
25 Brook Street	88 Black Falcon Avenue, Suite 342
Ayer, MA 01432	Boston, MA 02210

2. Transmittal Number: X277144 (Permit Number)

3. Consulting Registered Professional Engineer:

Kennedy/Jenks Consultants, Inc.  
1 Highwood Drive, Suite 301  
Tewksbury, MA 01876  
Michael Clark, P.E.

4. Title of Plans & Reports Submission:

“BWP SW 36, Major Post-Closure Use Permit Application, Ayer Landfill,  
0 Groton-Harvard Road, Ayer, Massachusetts”  
Transmittal Number: X277144  
Prepared by: Kennedy/Jenks Consultants, Inc. for Ayer East Solar LLC  
Dated: April 5, 2018  
Received by MassDEP-CERO: April 5, 2018

5. Project Description:

The proposed post-closure use request is for the installation and operation of an approximately 0.920 megawatt (DC) (0.750 megawatt (AC)) ground mounted solar photovoltaic (PV) array (“Landfill Array”) on the capped Landfill owned by the Town of Ayer. The solar panels will encompass most of the top of the closed and capped Landfill. The permit application listed in section I.C.4. above (“Application”) states that the Landfill Array will not require any penetration of the final Landfill cover system.

In the Application, the Applicants propose to construct and maintain the Landfill Array as follows:

- The Landfill Array will consist of approximately 2,708 340-watt (W) PV modules on panels supported by approximately 346 precast concrete ballast foundation blocks, of three different sizes depending upon their location, to be placed on gravel installed above the existing vegetative cover layer/surface of the capped Landfill cover system. Larger ballasts will be used on the northern portion of the Landfill cap to manage higher anticipated loads related to wind exposure. The surface-mounted ballast blocks will not penetrate the Landfill cover system;
- The solar PV module racks will be constructed on level concrete ballasts on portions of the Landfill that have slopes not greater than 20 percent as noted in the proposed layout on the Application drawings. The racks will be placed to avoid interfering with the critical Landfill features including the geomembrane cap. The elevation and grade of the Landfill will not be significantly altered during the project;
- The modules will be interconnected with aboveground electrical wiring in cable trays which will not impact the Landfill cap;
- Cable and transmission lines from the solar panels will be mounted on the mounting systems above grade which will not adversely impact the Landfill cover system;
- One 750-kilowatt (kW) central inverter and transformer will be installed on an approximately 19-feet by 30-feet concrete equipment pad foundation including the following:
  - The electrical conduit will be installed above the Landfill's soil cap. The conduit(s) traveling to and from the equipment pads will be routed above grade, secured to and supported by concrete blocks per applicable code;
  - Grounding will meet applicable NEC, International Electrical Engineering Congress (IEEC), and local code requirements. The proposed grounding rods will be installed horizontally in the vegetative layers of the Landfill cap using a Ground Enhancement Material (GEM) to promote the conductivity. The grounding rod construction will not penetrate the Landfill's geomembrane cap or have a detrimental impact on the Landfill's cover system;

- Electrical utilities from the transformer and switch pad to the utility riser poles will be installed in the above grade conduit on the concrete blocks which will not penetrate the Landfill cap;
- The proposed riser and meter utility poles will be located outside the perimeter of the capped Landfill;
- Site security will include a 6-foot tall chain-link fence surrounding the Landfill Array facility to restrict access to the Site from Groton-Harvard Road and the abutting properties. The fence will be installed using a ballasted system to avoid penetrating or disturbing the Landfill cover system; and
- A temporary gravel access road is proposed to be constructed within the Landfill area, as depicted on the Application plans, to facilitate the project construction.

This post-closure use permit authorizes the installation and maintenance of the proposed Landfill Array on the capped Landfill and appurtenances thereto subject to the conditions of this permit. It does not apply to the solid waste transfer station that is operated by the Town adjacent to the Landfill.

**The BWP SW 36 Ayer Sanitary Landfill Solar Photovoltaic Facility Post Closure Use Permit X276221 issued on February 16, 2018 is being reissued to clarify that Specific Permit Condition IV. W. Decommissioning Financial Assurance Mechanism (“DFAM”) is not required for the project with the Town as a co-applicant, and therefore the DFAM condition has been removed from the Permit.**

## **II. POST-CLOSURE USE – MAJOR, APPLICATION REVIEW AND APPROVAL**

The post-closure use application complies with the application requirements set forth at 310 CMR 19.030: Application for a Solid Waste Management Facility Permit and 310 CMR 19.033: Permit Procedure for an Application for a Permit Modification or Other Approval, and was reviewed in accordance with 310 CMR 19.038: Review Criteria for a New or Expanded Facility Permit or Permit Modification, 310 CMR 19.143: Post-closure Use of Landfills, and MassDEP’s Landfill Technical Guidance Manual (May 1997). Based on the information presented in the plans, reports and correspondence referenced in Section I.C.4. above, MassDEP approves the Applicant’s request for a post-closure use permit at the Facility.

This document is a Permit, issued pursuant to M.G.L. c. 111, Section 150A, and 310 CMR 19.000 et seq., the “Solid Waste Management Facility Regulations”, and it is subject to the conditions set forth below.

### III. GENERAL PERMIT CONDITIONS

- A. **Compliance with Plans** - The Permittees shall conduct operations in accordance with approved plans, reports, and other submissions described in Section I.C.4. above, except as may be modified by the conditions set forth in Section IV. No material changes in the design or activities described in the approved documents shall be performed without prior written Department approval.
- B. **Compliance with Other Laws and Regulations** - The construction, operation, maintenance, closure and post-closure use of this Facility shall be performed in compliance with other applicable local, state and federal laws, regulations, and bylaws.
- C. **Standard Conditions** - The Permittees shall maintain the Facility in accordance with the conditions set forth at 310 CMR 19.007-19.011 and 19.043(5).
- D. **Joint Liability** - This Permit is issued subject to the conditions of joint liability of the Facility owner and operator in accordance with 310 CMR 19.043(3).
- E. **Right of Access** - MassDEP and its agents and employees shall have the right to enter upon the Facility site at all reasonable times and without notice, to inspect the Facility and any equipment, structure or land located thereon, take samples, recover materials or discharges, have access to and copy records, to perform tests and to otherwise monitor compliance with this approval, or any and all permits relative to the operation of the Facility, and all environmental laws and regulations. This right of entry and inspection shall be in addition to MassDEP’s access authorities and rights under applicable federal and state laws and regulations, as well as any permits or other agreements between one or both Permittees and MassDEP.
- F. **Transfer** - No transfer of this permit shall be permitted except in accordance with the requirements of 310 CMR 19.044.
- G. **Permit Modification** - The Department reserves the right to rescind, suspend or modify this Permit by the imposition of additional conditions based upon a determination of actual or the threat of adverse impacts from the construction, operation, maintenance, closure or post-closure use of the Facility.
- H. **Other MassDEP Permits or Approvals** - In the event this Permit conflicts with

all or parts of prior plan approvals or permits issued pursuant to Chapter 111, Section 150A, the terms and conditions of this Permit shall supersede the conflicting provisions of the prior permits and/or approvals. This Permit does not convey property rights of any sort or any exclusive privilege.

- I. Notice of Landfill Operation** – Within 60 days of the date of issuance of this approval, the Town shall provide MassDEP with written proof that it has recorded in the Middlesex South Registry of Deeds a Notice of Landfill Operation for the Facility, in compliance with 310 CMR 19.141.

#### **IV. SPECIFIC PERMIT CONDITIONS**

- A. Criteria for Post-Closure Use** - This approval for post-closure use of the Ayer Landfill shall be accomplished such that the Permittees ensure that no activity associated with the Facility, or with the Landfill Array and appurtenances thereto as described in the Application, shall in any way alter the integrity of the Landfill cover system or any of the Facility environmental monitoring systems.
- B. Other Post-Closure Use** - The Permittees shall not use the Landfill for any post-closure activity other than that approved by this permit without submittal and Department approval of a Post-Closure Use Permit Application in accordance with 310 CMR 19.143: Post-closure Use of Landfills.
- C. Inspection and Repair of Settlement Areas** - Prior to constructing the Landfill Array, the Permittees shall survey any suspect settlement areas on the Landfill to determine the lowest spot. The Permittees shall then survey the surrounding area to find the “relief point” defined as the lowest surrounding area where ponded water would flow out. The elevation difference is defined as the “pond value”. For purposes of this permit, minor settlement shall be defined as a pond value of less than 12 inches. Prior to constructing the Landfill Array, the Permittees shall correct any area that has undergone minor settlement by the placement of additional vegetative support soil to promote runoff and shall reseed the area. The Permittees shall survey any area repaired and mark the location on a plan with the pond value. Any future settlement shall be recorded cumulatively.

Any minor settlement repair may be done as routine maintenance, provided that the Permittees report the settlement to MassDEP and state their intent to perform repairs, and provides MassDEP with final survey (as-built) results and a summary write-up.

If/when the total settlement reaches greater than 12 inches in an area of the Landfill, the area will be considered to have suffered major settlement and the Permittees must undertake appropriate repairs to eliminate ponding. Major

settlement is defined as a pond value of greater than 12 inches. When this occurs, the Permittees must repair the final cover system subject to MassDEP approval to prevent surface water ponding. The Permittees must submit to MassDEP any proposal to remedy a major settlement repair within a Corrective Action Design (BWP SW 25) permit application since disruption of the final Landfill cover system will take place and repair details must be submitted to and approved by MassDEP.

The Permittees shall provide for continued monitoring for potential differential settlement due to the Landfill Array during operations along with established provisions for addressing and adjusting for such settlement within the Landfill cover system and/or the Landfill Array system.

- D. Additional Inspections and Monitoring** - During the first year of operation of the Landfill Array, the Permittees shall perform inspections of the Landfill and the Landfill cover system beneath the solar array on a monthly basis and also following major storm events. After the first year of the Landfill Array's operation, these additional inspections may be incorporated into the existing Landfill inspection and monitoring program subject to MassDEP written approval. In accordance with 310 CMR 19.018 and 310 CMR 19.142(6), the additional inspections shall be performed by a Third-Party Inspector who is registered with the Department. The Permittees shall ensure that the inspection reports are submitted to James McQuade, Section Chief, MassDEP-CERO at [james.mcquade@state.ma.us](mailto:james.mcquade@state.ma.us) within thirty (30) days of the inspection.
- E. Vehicles Operating on the Landfill Final Cover System** - Vehicles operating on the Landfill final cover system shall only operate on the Landfill access road, except for low ground pressure construction equipment in accordance with the conditions of this permit. Low ground pressure construction equipment operating off of the access road shall limit turning on the vegetative support layer as much as possible. If MassDEP determines that the use of excavation equipment is creating the potential for damage to the Landfill's cover system, the usage of such equipment shall immediately cease upon notification by MassDEP. All operators of the vehicles entering the final cover system area shall be clearly instructed by the on-site engineer regarding the requirements of this permit prior to arrival, to avoid damage to the Landfill final cover system components. A list of low ground pressure equipment used and the pressure rating of each vehicle shall be included in the certification report required by Specific Permit Condition IV.K.
- F. Permanent and Temporary Roads and Low Ground Pressure Equipment** - The Permittees shall ensure that low ground pressure equipment shall not access the Landfill final cover system from permanent and temporary roads where the transition will result in excessive pressure and wear on the Landfill vegetative

surface. The on-site engineer may construct ramps as necessary to accommodate the low ground pressure equipment.

- G. Integrity of the Final Cap and Cover System** - The Permittees shall limit all disturbances of the Landfill to the proposed solar array installations on top of the capped Landfill that are described in the Application or as otherwise provided herein. No significant excavations or other penetrations into the final Landfill cover system for any other purpose shall be performed during construction or during operation and maintenance of the Landfill Array without prior MassDEP written approval. The Permittees shall ensure that there are no significant penetrations of any kind of the Landfill final cover system by taking, at a minimum, the following measures:

The Permittees shall place the precast concrete ballast foundation blocks on the finished surface of the Landfill above the existing surface of the capped Landfill cover system and shall ensure that the blocks do not penetrate the Landfill cover system;

The Permittees shall place the concrete pad(s) for the inverter, transformer and associated equipment on the Landfill ground surface. If excavation on the Landfill for the concrete pad(s) or similar structures is necessary, the Permittees shall ensure that the excavation does not exceed six (6) inches below grade;

The Permittees shall construct a 6 foot tall chain-link perimeter security fence surrounding the Landfill Array on a ballasted post system and shall not allow the fence to penetrate the Landfill cap and cover system; and

The Permittees shall ensure that vehicles operating on the Landfill do not damage or compromise the integrity of the Landfill final cover and capping system.

**H. Construction Precautions**

1. The Permittees shall take all necessary precautions to ensure that the proposed construction and maintenance work associated with the Landfill Array does not damage the environmental monitoring network at the Landfill. At a minimum, prior to the commencement of construction activities, the Permittees shall ensure that environmental monitoring locations are flagged for visibility and protective barriers are placed around such structures, as needed, to prevent damage by vehicles accessing the area. If any damage occurs to the environmental monitoring network components, the Permittees or their contractor(s) shall notify James McQuade, Solid Waste Section Chief, MassDEP-CERO at 508-767-2759 within 24 hours of the occurrence of damage and provide a written plan for repairs, including a schedule, at [james.mcquade@state.ma.us](mailto:james.mcquade@state.ma.us).

2. The Permittees shall take all necessary precautions to protect the Landfill storm water control system, including but not limited to maintaining and regularly cleaning out swales, structures, and any and all storm water conveyance systems. If any damage occurs to the storm water control system, the Permittees or their contractor(s) shall notify James McQuade, Solid Waste Section Chief, MassDEP-CERO at 508-767-2759 within 24 hours of the occurrence of damage and provide a written plan for repairs, including a schedule, at [james.mcquade@state.ma.us](mailto:james.mcquade@state.ma.us).
  3. The Permittees shall ensure that any inverter/ transformer pad or appurtenances are designed so as not to create a potential safety hazard. Potential design features may include but are not limited to the installation of fully sealed conduits, explosion proof connections, and fittings.
  4. The Permittees shall ensure that all excavations and construction work related to the Landfill Array project are completed under the supervision of a Massachusetts Registered Professional Engineer who shall have sufficient staff on-site to provide quality assurance/quality control (QA/QC) oversight for all construction work associated with the project. The Permittees shall report any erosion problems, settlement problems, security or other issues observed at the Landfill to James McQuade, Solid Waste Section Chief, MassDEP-CERO at 508-767-2759 within 24 hours and repair them immediately.
- I. Array Setbacks** - The Permittees shall maintain a minimum ten (10) foot radius buffer between the closest edge of the Landfill Array and all landfill gas vents and stormwater drains.
- J. Notification of Construction** - The Permittees shall notify James McQuade, Section Chief, MassDEP-CERO via email at [james.mcquade@state.ma.us](mailto:james.mcquade@state.ma.us) when the post-closure use construction authorized by this permit commences and when it is completed.
- K. Certification Report** - Within ninety (90) days of completing the installation of the Landfill Array, the Permittees shall provide James McQuade, Solid Waste Section Chief, MassDEP-CERO with a certification report. All construction work shall be completed under the supervision of a Massachusetts Registered Professional Engineer who shall have sufficient staff on-site to provide quality assurance/quality control (QA/QC) oversight for all construction work associated with the project. The certification report shall be signed and stamped by a Massachusetts Registered Professional Engineer and include, at a minimum, written certification from the supervising engineer that the project was performed in accordance with MassDEP regulations, applicable requirements and this Permit. The certification report shall include as-built drawings depicting all pertinent site features and the extent of the Facility, Landfill Array and appurtenances thereto.

- L. Personnel Training** - The Permittees and their contractor(s) shall instruct all Landfill Array construction and maintenance personnel regarding the potential hazards associated with the construction of the Landfill Array and shall instruct or give on-the-job training to all personnel involved in any activity authorized by this Permit. Such instruction or on-the-job training shall teach personnel how to comply with the conditions of this Permit to carry out the authorized activity in a manner that is not hazardous to public health, safety, welfare or the environment and that complies with all applicable bylaws, regulations, and laws. The Permittees and their contractor(s) shall provide training to workers conducting monitoring and maintenance activities for the Landfill regarding potential hazards associated with the Landfill Array, including but not limited to electrical hazards.
- M. Health and Safety** - The Permittees and their contractor(s) are responsible for ensuring that all necessary precautions are taken to protect the health and safety of workers and the general public during construction, operation, and maintenance of the Landfill Array.
- N. Construction Plans** - The Permittees shall ensure that Final Construction Plans stamped by a Massachusetts Registered Professional Engineer, including a copy of the final design for the transformer pads and any other electrical and protective switchgear (interconnection equipment) for the Landfill Array project are submitted to James McQuade, Solid Waste Section Chief, MassDEP-CERO within 15 days of the completion of construction. The Permittees and their contractor(s) are responsible to ensure that utilities/structures will not accumulate landfill gas during construction and operation of the Landfill Array.
- O. Electrical Design Plans** - The Permittees shall submit electrical design plans stamped by a Massachusetts Registered Electrical Engineer to James McQuade, Solid Waste Section Chief, MassDEP-CERO within 15 days of completion of construction. The electrical design, including the grounding design, shall meet applicable National Electrical Code (NEC) and local electrical code requirements including but not limited to Article 690 – “Solar Photovoltaic (PV) Systems” of the NEC (2011 Edition). Any grounding rods installed as part of the grounding system shall not be driven through the Landfill geomembrane cap or have a detrimental impact on the Landfill final cover system.
- P. Landfill Inspection** - Pursuant to 310 CMR 19.142(6), Inspection Requirements, and in accordance with 310 CMR 19.018, Third Party Inspections, the Town shall have the Landfill inspected by a registered third-party inspector. Copies of the inspection reports shall be submitted to MassDEP-CERO and the Ayer Board of Health within thirty (30) days of the date of completion of the inspection. The MassDEP inspection reports may be submitted electronically to [james.mcquade@state.ma.us](mailto:james.mcquade@state.ma.us).

**Q. Landfill Gas Notification Requirements -**

1. As specified in solid waste management regulations at 310 CMR 19.132(5)(g): Gas Monitoring,

When, at any time, the concentration of explosive gases exceeds 10% of the lower explosive limit (LEL) in any building, structure, or underground utility conduit at the Facility, excluding gas control, gas recovery and leachate collection system components, the Permittees shall:

- a) take immediate action to protect human health and safety;
- b) notify the Department's Solid Waste Section Chief, James McQuade at 508-767-2759 within two hours of the finding; and
- c) undertake the actions specified under 310 CMR 19.150: Landfill Assessment Requirements and 310 CMR 19.151: Corrective Action Requirements as required by the Department.

2. Pursuant to 310 CMR 40.0321(1)(a), if at any time, monitoring detects the presence of any combustible gases at or in excess of 10% of the LEL at any location within a building or within any utility conduits at the Facility, the owner/operator shall notify the local fire department and MassDEP's Bureau of Waste Site Cleanup-Emergency Response Section at 888-304-1133 within two (2) hours of the exceedance.

**R. Stormwater Management and Wetlands Protection -** The Permittees shall implement and maintain Best Management Practices (BMPs) for erosion and sedimentation control to adequately handle stormwater runoff and protect surface water adjacent to the Facility, including but not limited to complying with the MassDEP Storm Water Management Policy, the NPDES Storm Water Pollution Prevention Plan (SPPP) developed for the site, and any conditions or requirements issued by the Ayer Conservation Commission.

**S. Post-Closure Environmental Monitoring –** The Town shall implement and maintain the existing Facility environmental monitoring plan of groundwater, surface water and landfill gas. Copies of the environmental monitoring results shall be submitted to James McQuade, Solid Waste Section Chief, MassDEP-CERO and the Ayer Board of Health within sixty (60) days of the date of completion of the monitoring event.

**T. Site Security -** The Permittees are required to provide sufficient fences or other barriers to prevent unauthorized access to the Landfill. The Permittees must continually monitor and evaluate the potential for unauthorized access to the Landfill

and institute all appropriate measures to prevent unauthorized access during the post-closure period.

- U. **Financial Assurance Mechanism** - The Town shall maintain adequate post-closure financial assurance for the Landfill utilizing an established Financial Assurance Mechanism (FAM) in accordance with the requirements set forth at 310 CMR 19.051.
- V. **Decommissioning Plan** – If the proposed Landfill Array is abandoned, during or after completion of construction, the Permittees shall submit to MassDEP for review and prior approval a detailed decommissioning and site restoration plan, which includes, at a minimum: dismantling and removal of all panels and supporting equipment, transformers, overhead cables, foundations and buildings; and restoration of the roads to restore the Landfill to substantially the same physical condition that existed prior to post-closure use construction of the Landfill Array.
- W. **Other Requirements** - The Permittees and their contractor(s) are responsible to ensure that the proposed work complies with all applicable local, state and federal codes, requirements, regulations and permits.

## V. RIGHT OF APPEAL

- A. **Request for Provisional Decision** - An applicant aggrieved by the Department's permit decision, within twenty-one (21) days of the issuance of the Department's permit decision to the applicant, may file a written request, with the appropriate regional office of the Department, that the permit decision be deemed a provisional decision, and a written statement of the basis on which the applicant believes it is aggrieved, together with any supporting materials. Upon timely filing of such a request, the permit decision shall be deemed a provisional decision. Such a request shall reopen the administrative record, and the Department shall issue a final permit decision after the end of the comment period. **Failure by an applicant to exercise the right provided in 310 CMR 19.033(4)(b) shall constitute a waiver of the applicant's right to appeal.**
- B. **Right to Appeal** - Any person aggrieved by the final permit decision, except as provided for under 310 CMR 19.033(4)(b), may file an appeal for judicial review of said permit decision in accordance with the provisions of M.G.L. c. 111, § 150A and M.G.L. c. 30A no later than thirty (30) days following the date of issuance of the final permit decision to the applicant. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the final permit decision by a court of competent jurisdiction, the final permit decision shall be effective in accordance with 310 CMR 19.033(3).

- C. Notice of Appeal** - Any aggrieved person intending to appeal a final permit decision to the Superior Court shall first provide notice of intention to commence such action. Said notices of intention shall include the Department file number (Transmittal No. X277144) and shall identify with particularity the issues and reason why it is believed the final permit decision was not proper. Such notice shall be provided to the Office of General Counsel of MassDEP and the Regional Director for the regional office which processed the permit application at least five (5) days prior to the filing of an appeal:

Office of General Counsel  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

and

Mary Jude Pigsley, Regional Director  
Department of Environmental Protection  
8 New Bond Street  
Worcester, MA 01606

No allegation shall be made in any judicial appeal of a final permit decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in 310 CMR 19.000, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

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James A. McQuade  
Section Chief  
Solid Waste Management Program