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31 October 2015
File No. 00530-210

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

Attention: Deneen Simpson

Subject: EO562 Input
Beneficial Use Determination (BUD) Permit Process Streamlining

Ladies and Gentlemen:

The letter is written to provide comments to the Beneficial Use Determination (BUD) Permit Process under the MassDEP Regulatory Evaluation for Executive Order 562. The undersigned requests that efforts be made to streamline the regulatory process to allow on-site crushing of coated asphalt, brick and concrete (ABC) materials for on-site reuse as a compacted structural fill material. Based on the undersigned's experience in 2008 for a large Boston project, the current BUD process is considered cumbersome, over-conservative and duplicative of controls provided under the framework of the Massachusetts Contingency Plan 310 CMR 40.0000 (MCP) and, in the opinion of the undersigned, discourages sustainable re-use of crushed ABC materials.

For the subject Boston project, approximately 6-monthes were required to obtain a BUD permit. During the review process, MassDEP Bureau of Waste Prevention (BWP) focused on common historic fill constituents such as Arsenic and PAHs which are routinely considered as "background" under the MCP. The BUD risk assessment methods appear modeled on MCP risk methods, but in some cases are more conservative than the MCP. For example the BUD S2/GW3 criteria for arsenic is 11 mg/kg while the MCP reportable concentration for arsenic is 20 mg/kg. In addition, under 310 CMR 19.060 (16)(d), a separate deed restriction is required which is duplicative of an MCP Activity and Use Limitation (AUL).

The following suggestions are made to streamline the BUD process:

- Develop a sampling and analyses guidance document to provide standard characterization methods and frequencies for ABC materials and coatings, and a basis for "presumptive certainty".
- Utilize MCP risk assessment framework for evaluating suitability of on-site reuse of crushed ABC as a fill material; this considers that the gradation of crushed ABC is similar to a soil material;
- Develop on-line submittal of a BUD application on e-DEP with presumptive approval of the permit, provided requirements for "presumptive certainty" are documented in the application.
- Utilize MCP Activity and Use Limitation (AUL) in lieu of separate BUD deed restriction.

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Thank you for the opportunity to provide comments under Executive Order 562. Please contact the undersigned at 617-886-7454 or esteinberg@haleyaldrich.com if you wish to discuss the above comments and suggestions.

Sincerely yours,
HALEY & ALDRICH, INC.

A handwritten signature in black ink that reads "Elliot I. Steinberg". The signature is written in a cursive style with a large, prominent initial "E".

Elliot I. Steinberg, P.E. , LSP
Brownfields Program Manager | Vice President

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