



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

September 22, 2016

Mr. William Keegan, Jr.  
Foxborough Town Manager  
40 South Street  
Foxborough, MA 02035

and

Mr. Rafael Dobrynski  
SunE MA DG1, LLC  
100 California Street, Suite 400  
San Francisco, CA 94111

RE: Approval with Conditions  
Application for: BWP SW 49 Certification for Transfer of a Permit  
Transmittal No: X272084

OF: Solar PV Generating Facility on a Closed, Capped Landfill  
BWP SW 36 Post-Closure Use - Major  
Transmittal No: X264970  
Issued June 2, 2015

AT: Foxborough Landfill  
East Belcher Road  
Foxborough, Massachusetts  
Facility ID: 39279 Regulated Object#: 172523

Dear Mr. Keegan and Mr. Dobrynski:

The Massachusetts Department of Environmental Protection, Solid Waste Management Section (the "MassDEP"), has completed its Technical review of the above referenced Certification for Transfer of a Permit application (the "Application") regarding ownership of the Solar PV Generating Facility at the Foxborough Landfill. The Application was prepared and submitted on behalf of the Town of Foxborough ("Town") and SunE MA DG1, LLC by SunEdison, 44 Montgomery Street, Suite 2200, San Francisco, CA, and received by MassDEP on September 15, 2015.

## **I. PROJECT BACKGROUND**

On June 2, 2015, MassDEP issued to the Town and Sun Edison Origination1, LLC an Approval with Conditions for a BWP SW 36 Post-Closure Use – Major permit application ( Transmittal No: X264970), regarding a 1.556 megawatt ("MW") DC solar photovoltaic ("PV") array to be constructed at the Town of Foxborough landfill ("Landfill").

## **II. PROPOSED PERMIT TRANSFER**

Within the BWP SW 49 Certification for Transfer of a Permit Application, SunE MA DG1, LLC and the Town propose to transfer partial ownership of the BWP SW 36 Post-Closure Use – Major permit. As presented in the Application, the Town will remain co-owner of the permit and co-ownership of the permit will be transferred from Sun Edison Origination1, LLC (the Transferor") to SunE MA DG1, LLC (the "Transferee").

## **III. APPLICATION REVIEW AND DECISION PROCESS:**

The Application was submitted and reviewed pursuant to the provisions of 310 CMR 19.029(3): Applicable Permit Procedures and 310 CMR 19.034: Presumptive Approval Procedure.

## **IV. PERMIT DECISION:**

MassDEP, having determined the information in the Application is satisfactory and in accordance with its authority granted pursuant to M.G.L. c.111, s. 150A, and 310 CMR 19.000, hereby **APPROVES** the proposed transfer of the BWP SW 36 Post-Closure Use – Major permit, Transmittal No: X264970, issued June 2, 2015, from Sun Edison Origination1, LLC (the Transferor") to SunE MA DG1, LLC, subject to conditions as specified herein.

## **V. PERMIT CONDITIONS:**

1. Responsibilities: SunE MA DG1, LLC and the Town shall be responsible to operate and maintain the Foxborough Landfill solar generation facility in accordance with all applicable laws and regulations, and in accordance with the conditions of the site assignment, the post closure use permit (BWP SW 36 Post-Closure Use – Major permit ( Transmittal No: X264970), and any modifications thereto, and to correct any and all conditions at the site of the post-closure use permit activity, which result in a threat to public health, safety, and the environment or constitute violations of laws, regulations, or conditions of any permit, approval, or authorization , and are caused by or related to the activity authorized by the post-closure use permit being transferred.
2. Entries and Inspections: In accordance with *310 CMR 19.043: Standard Conditions*, MassDEP and its agents and employees shall have the right to inspect the Landfill and any equipment, structure or land located thereon, take samples, recover materials or discharges, have access to and photocopy records, to perform tests and to otherwise monitor compliance with this permit and all environmental laws and regulations.
3. Transfer – No transfer of this permit shall be permitted except in accordance with the requirements of 310 CMR 19.044. The form established by MassDEP for permit transfers is the BWP SW 49 application form. If at any time, the Applicant for this project does not

include a municipal entity, the Applicant shall (or *MassDEP will require the Applicant to*) provide to MassDEP a financial assurance mechanism, in accordance with 310 CMR 19.051, for the costs of decommissioning and site restoration activities.

4. Decommissioning Plan – If the proposed Landfill Solar Photovoltaic Array project is abandoned, during or after completion of construction, the Applicant 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.
5. Reservation of Rights: MassDEP reserves the right to require additional assessment or action, as deemed necessary to protect and maintain an environment free from objectionable nuisance conditions, dangers or threats to public health, safety and the environment. MassDEP reserves all rights to suspend, modify or rescind this permit if it determines the solar array compromises the integrity of the final cover system and/or results in a threat to public health, safety or the environment.

This approval pertains only to the Solid Waste Management aspects of the proposal does not negate the responsibility of the owners or operators to comply with any other local, state or federal laws, statutes and regulations or enforcement actions, including orders issued by another agency now or in the future. Nor does this approval limit the liability of the owners or otherwise legally responsible parties from any other applicable laws, statutes or regulations now or in the future.

## **VI. REVIEW OF DECISION**

Pursuant to 310 CMR 19.033(4)(b), if the Applicants are aggrieved by MassDEP's decision to issue this decision, it may within twenty-one days of the date of issuance file a written request that the decision be deemed provisional, and a written statement of the basis on which the Applicants believe they are aggrieved, together with any supporting materials. Upon timely filing of such a request, the decision shall be deemed a provisional decision with an effective date twenty-one days after MassDEP's receipt of the request. Such a request shall reopen the administrative record, and MassDEP may rescind, supplement, modify, or reaffirm its decision. If MassDEP reaffirms its decision, the decision shall become final decision on the effective date. Failure by the Applicants to exercise the right provided in 310 CMR 19.033(4)(b) shall constitute waiver of the Applicants' right to appeal.

## **VII. RIGHT TO APPEAL**

Right to Appeal: This approval has been issued pursuant to M.G.L. Chapter 111, Section 150A, and 310 CMR 19.033: Permit Procedure for an Application for a Permit Modification or Other Approval, of the "Solid Waste Management Regulations". Pursuant to 310 CMR 19.033(5), 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 decision in accordance with the

provisions of M.G.L. Chapter 111, Section 150A and M.G.L. Chapter 30A no later than thirty days of issuance of the final permit decision to the Applicants. The standing of a person to file an appeal and the procedures for filing such an appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the permit by a court of competent jurisdiction, the permit decision shall be effective in accordance with the terms of 310 CMR 19.033(3).

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 MassDEP Transmittal No. X272084 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, if applicable at least five days prior to filing of an appeal. The appropriate addresses to send such notices are:

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

Regional Director  
Department of Environmental Protection  
20 Riverside Drive  
Lakeville, MA 02347

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 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.

Please direct any questions regarding this matter to me at (508) 946-2847 or Dan Connick (508) 946-2884 or write to the letterhead address.

Very truly yours,

This final document copy is being provided to you electronically by the  
Department of Environmental Protection. A signed copy of this document  
is on file at the DEP office listed on the letterhead.

Mark Dakers, Chief  
Solid Waste Management Section  
Bureau of Air and Waste

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