



**THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE INSPECTOR GENERAL**

REVIEW OF THE SEEKONK LANDFILL

**Robert A. Cerasoli
Inspector General
December 1998**



The Commonwealth of Massachusetts
Office of the Inspector General

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December 1998

His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chairman of the Senate Ways and Means Committee

The Honorable Chairman of the House Ways and Means Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit Committee

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

I am releasing this report outlining deficiencies in the construction of a composting site at the Town of Seekonk's landfill on Fall River Avenue. This Office was asked by the Town to investigate allegations of illegal waste disposal activities at the Seekonk landfill which has since been closed.

This report documents the events leading up to the discovery of large amounts of construction and demolition waste illegally dumped in wetlands and groundwater at the Town's composting site. This Office's investigation revealed that the former Superintendent of the Seekonk Department of Public Works illegally constructed a composting site in a wetland area near the landfill. As a result of this individual's actions, the Town has had to expend significant sums on unanticipated capping and closure costs. In addition, the Town may be required to undertake groundwater remediation in the future. This Office also found that the investigation conducted by the Massachusetts Department of Environmental Protection was inadequate.

The Seekonk landfill case offers vitally important lessons. about one municipality's failure to provide sufficient control and supervision of the official responsible for operating its landfill and composting operation. By issuing this report, it is my intent to highlight the importance of protecting the Commonwealth's wetlands and exercising proper oversight of municipal landfills.

Sincerely,

Robert A. Cerasoli
Inspector General

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INTRODUCTION

During the early 1990's, the operation of a municipal landfill by the Town of Seekonk was the subject of intense public concern stemming from citizen complaints about possible illegal dumping in one area of the town landfill. In 1996, when the landfill was in the process of being closed, the Town's consultant engineers discovered significant amounts of household waste and construction debris buried in the landfill where dumping was not permitted.

In November 1996, the Office of the Inspector General received a request from the Town of Seekonk's attorney to review the actions taken by Seekonk officials relating to the landfill. The Office reviewed the legal requirements for siting and operating a municipal landfill in Massachusetts. The Office also reviewed documents and information provided by the Town of Seekonk and the Massachusetts Department of Environmental Protection. Finally, the Office interviewed Town officials and employees, the Town's former engineering consultant, DEP officials and citizen complainants. The progress of this Office's review was hampered by the absence of detailed records and documents relating to landfill operations, as well as a six-month delay in obtaining a file from the Office of the Building Inspector.

This Office's review revealed that officials in charge of the landfill paid inadequate attention to requirements and conditions of operation upon which state and local approvals had been granted. This Office also found that state laws enacted to ensure public health and safety and to protect the environment were disregarded by the Superintendent during the construction and operation of a composting site at the landfill.

This Office's review yielded the following findings:

1. The Town of Seekonk constructed a composting site in wetlands.
2. The Composting Registration Form submitted to the Commonwealth by the Town did not accurately report and describe plans and characteristics of the proposed composting site.

3. During construction of the composting site, significant amounts of construction and demolition waste were deposited into wetlands and groundwater.
4. DEP's investigation was inadequate to reveal that construction and demolition waste had been dumped beyond the landfill limit in a wetlands area.

This report documents the events leading up to the discovery of large amounts of construction and demolition waste illegally dumped in wetlands and groundwater at the Town of Seekonk's composting site. The Office compared the legal requirements for operating the landfill, including construction of a composting site, with operations as practiced under the stewardship of the then-Superintendent of the Department of Public Works (DPW). This Office intends this review to assist the Town in determining how further to proceed in its best interest.

BACKGROUND

During the summer of 1976, the Town of Seekonk began taking steps to find alternative space for sanitary landfill operations. The location of the Town's old landfill on Fall River Avenue was approaching maximum capacity. The Town appointed a Landfill Study Committee that began to review several alternative sites. In March 1978, the Committee recommended a parcel of land for landfilling located adjacent to the original landfill on Fall River Avenue. The parcel was owned by L. Romano Realty Co. Inc. Since the 1950's, the land had been used as a gravel removal operation.

In the late 1970's, Massachusetts municipalities were required to obtain state and local approvals prior to siting a landfill. On the state level, the Department of Environmental Quality Engineering¹ (DEQE) was responsible for making an initial determination that a site was suitable for landfilling purposes, but DEQE reserved final approval of a site until local review boards considered and approved plans for landfilling activity on a subject parcel. After the local board of health, the zoning board of appeals, and the conservation commission established conditions for landfilling at a site, DEQE reviewed the adequacy of the plans as well as the conditions imposed by local review boards pursuant to state policy and regulations. Then DEQE would often impose its own conditions on landfilling operations at a proposed site. DEQE's approval would be conditioned on whether its conditions and those imposed by the local review boards were complied with.

Specifically, according to M.G.L. c. 111, §150A, the local board of health was required to designate the location of a landfill by a public process called a "site assignment process." To make the determination, a board would be assisted by reports and studies of the parcel prepared by an engineering consultant and, after a public hearing process, the board would be authorized to assign the site for landfilling purposes.

¹ In July 1989, the Department of Environmental Quality Engineering became the Department of Environmental Protection.

Additionally, local zoning laws often required a special permit to operate a solid waste disposal facility. After considering engineering information and after a public hearing, a zoning board of appeals determined whether to grant a special permit.

Finally, in accordance with the Wetlands Protection Act and, in some municipalities, a local bylaw, if the proposed site for landfilling was located within 100 feet of wetlands, a conservation commission would hold a public hearing to consider the effect of the proposed project on wetlands. Under the provisions of the Wetlands Protection Act, no person was permitted to remove fill, dredge, or alter certain resource areas without first filing a Notice of Intent and obtaining an Order of Conditions from the conservation commission.² DEQE's wetlands protection policy was based on the premise that work undertaken within 100 feet of wetlands has a very high likelihood of adversely affecting those ecologically sensitive areas.

In considering the issue, a conservation commission would use design studies and topographical plans of the parcel prepared by an engineer indicating the location of wetlands in relation to the proposed site for landfilling. A conservation commission would make a final determination after a public hearing. This deliberative process promoted an informed and public decision as to possible impacts of construction work on wetlands. The Order of Conditions would contain stipulations sufficient to preserve and promote certain public interests such as the prevention of pollution and preservation of ecologically important wetlands.

After completing the local approval process, and before commencement of any site preparation, DEQE would finally approve the engineer's report and proposed plans for construction and landfill operation. DEQE's conditions for operating a landfill were imposed at this time.

² Pursuant to rulemaking authority set forth in the Wetlands Protection Act, M.G.L. c.131, §40, DEQE first adopted wetlands regulations in 1974. The regulations were later amended in 1977 and 1978. A comprehensive revision of the regulations was issued in 1983.

The Town of Seekonk followed the process of obtaining the requisite approvals from state and local regulatory authorities for siting the new landfill on Fall River Avenue. The Town's process began on October 14, 1977, when the Town's Board of Selectmen directed the engineering firm of Caputo & Wick to conduct a study of the proposed landfill site. On November 14, 1977, DEQE granted preliminary approval for the Town to proceed with the process of obtaining approvals for that particular site.

Caputo & Wick determined that only 7.5 of the proposed site's approximately 11 acres were appropriate for landfilling purposes. The firm issued a study report and topographical plan dated December 1977 that indicated the location of wetlands within the 11-acre parcel. The plan identified the three-acre wetlands area with an icon and the notation: "to remain natural." [Exhibit A] On February 27, 1978, Caputo & Wick sent a letter describing the parcel to the Landfill Study Committee. The letter stated:

The site (Plat No. 11, Lot No. 51) contains 11.6 acres of land, but due to its irregular shape and peculiar hydraulic characteristics, we feel that only about 7.5 acres may be used for landfill purposes. The remainder of the land would be utilized as buffer zones for the protection of wetlands and adjoining property owners and to maintain a safe distance of 500 feet from a private well located on the Mulhearn property lying south of the site.

The Landfill Study Committee had been considering three parcels for landfilling. In a report issued on March 21, 1978, the Landfill Study Committee stated that Caputo & Wick's detailed study of the Romano site along with DEQE's preliminary approval of the site were the basis for its decision to recommend the Romano site as its first choice as a site for the landfill.

On May 12, 1978, the Board of Selectmen requested that the Board of Health hold a public hearing relative to assignment of the Romano parcel. On May 31, 1978, pursuant to M.G.L. c. 111, §150A, a public hearing was held and the parcel received designation by the Board of Health for use as a sanitary landfill.

The Board of Selectmen simultaneously sent a memorandum to the Town's Conservation Commission requesting approval to use the parcel for landfilling. Seekonk's local wetlands protection by-law required that a permit be obtained prior to

filling, dredging, building upon, or altering areas within 100 feet of any freshwater wetland, bog or swamp.³ The by-law defined “alter” as follows:

1. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
2. Dumping, discharging or filling with any material which may degrade water quality;
3. Placing of obstructions or objects in water; and
4. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

The Conservation Commission reviewed Caputo & Wick’s December 1977 study plan for the proposed landfill. In a letter to the Town dated May 24, 1978, the Conservation Commission outlined its preliminary determination. The letter stated:

A copy of the “Study Plan, Proposed Landfill Site, Seekonk, Mass.” by Caputo and Wick, dated December, 1977, was marked to show the limit of the project within the lot. If this limit is adhered to, the activity should not adversely affect the wetland. The nearest activity to the swamp will be about 25 feet. The nearest activity to the stream bed will be about 15 feet.

The Conservation Commission, therefore, determines it will not be necessary to file with the Conservation Commission provided:

- (a) The Landfill project is limited as shown on the marked up “Study Plan, Proposed Landfill Seekonk, Mass.” by Caputo and Wick, December 1977.
- (b) Steps are taken during the activity to prevent leaching from the Landfill into the stream.

In the intervening period between May 24, 1978, when the Conservation Commission issued its preliminary determination, and September 5, 1978, when it issued its final Order of Conditions, the Town had received a final design plan from another consultant engineering firm.⁴ The new firm, E. J. Flynn Engineers, Inc. (E. J. Flynn) produced a

³ The Conservation Commission had no regulations interpreting the by-law at this time.

⁴The records contain no evidence that the Town conducted a competitive selection process at this time.

final plan, entitled: "Site Preparation Plan." E. J. Flynn's Site Preparation Plan depicted approximately three-acres as a swamp area, separate from the 7.5-acre parcel proposed to be developed for landfilling. [Exhibit B]

On June 15, 1978, the Town's Zoning Board of Appeals considered a Special Permit to operate a sanitary landfill on the Romano parcel. The meeting record reflected that at a June 5, 1978 public hearing, abutters were concerned with water pollution and paper problems. Therefore, the record stated that several stipulations were attached to the Zoning Board of Appeals' allowance of a Special Permit for the use of the Romano parcel as a sanitary landfill site. One stipulation stated:

That the buffer zone be as submitted to the Zoning Board of Appeals at said hearing.⁵

On July 12, 1978, E.J. Flynn forwarded its final landfill report and Site Preparation Plan to the Board of Selectmen.⁶ The report stated that a buffer zone varying from 25 feet to 50 feet had been maintained along the Martin property and a buffer zone of 60 feet had been maintained along the Mulhearn property. The report further stated that when the landfill reached capacity, the Town anticipated that the final use of the site, when the landfill operation was completed, would be recreational.

Since portions of the landfill would operate within 100 feet of the three-acre wetlands area; under state law, the Conservation Commission would also be required to assess the impact of landfill activity on wetlands and approve the proposal in accordance with the Wetlands Protection Act. On August 14, 1978, pursuant to M.G.L. c. 131, §40, the Town filed a Notice of Intent with the Conservation Commission.⁷

⁵ The record did not identify the engineer's plan used by the Zoning Board of Appeals in its deliberations.

⁶ E. J. Flynn sent the final report and Site Preparation Plan to DEQE on July 20, 1978.

⁷ On August 17, 1978, DEQE issued interim approval of the Town to operate a landfill at the site with conditions including that the Town file with the Conservation Commission if landfilling operations were contemplated within 100 feet of wetlands.

The Town provided E.J. Flynn's report and Site Preparation Plan dated June 28, 1978, to the Conservation Commission together with a completed form constituting a Notice of Intent to construct in the vicinity of wetlands. Shortly thereafter, the Conservation Commission issued the Order of Conditions upon which its approval was based. The letter stated that approval was based on statements the Town had made in its Notice of Intent, and information contained in E. J. Flynn's June 1978 report and Site Preparation Plan. The Conservation Commission's Order of Conditions approved landfilling provided that the Town complied with several conditions, including:

Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including, without limiting the generality of the foregoing, lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes refrigerators, motor vehicles or parts of any of the foregoing; and,

The work shall conform to the following described plans and additional conditions: A. "Sanitary Landfill, Fall River Ave., Seekonk, Mass. by E. J. Flynn Engineers, Inc. Dated June 28, 1978" together with the stipulation that prior to filling operations in Phase I –A, a shallow ditch or swale must be constructed near the toe of the slope between the dumping site and the low area bordering on land belonging to Edna Martin to carry surface water runoff and prevent possible silting of the wetland.

The Wetlands Protection Act, M.G.L. c. 131, §40 required that an Order of Conditions issued by a Conservation Commission be filed at the appropriate Registry of Deeds, thereby noting it in the parcel's chain of title. This Office located the Conservation Commission's 1978 Order of Conditions for the new landfill in Book 1842 at Page 165 at the Bristol County Registry of Deeds. One of the Order's general conditions required the Town, upon completion of the work, to request in writing that a Certificate of Compliance be issued by the Conservation Commission stating that the work has been satisfactorily completed. A Certificate of Compliance filed at the Registry of Deeds would eliminate any effect on title to the land. However, this Office did not find the Certificate of Compliance on file at the Registry of Deeds. The current Chairman of the Conservation Commission reported to this Office that in the past, Seekonk's Conservation Commission has not consistently ensured that applicants comply with this Condition.

On October 19, 1978, DEQE approved E.J. Flynn's final Site Preparation Plan and report, entitled, "Report for the Operation of a Sanitary Landfill In Seekonk, Massachusetts." The Report stated:

The "Romano Site" designated as Lot No. 51 on Assessors Plot No. 11 is located westerly of Fall River Avenue adjacent to the existing landfill. The site contains approximately 11.6 acres of which approximately 7.5 will be used for landfill purposes. The remaining portions of the land will be used as buffer zones from abutting property and to maintain a distance of 500 feet from a private well on the property of Mr. Robert Mulhearn.

The approval was limited by several provisions, including that the landfill accept no more than 40 tons of refuse per day and that the landfill operate in strict accordance with approved plans and regulations. A carbon copy of the letter was forwarded to the Town's Board of Health and Conservation Commission. In addition, DEQE required that the approved copy of the plans and report be kept on site at the landfill at all times.

The landfill began operating in December 1978. Its life expectancy was eight to nine years. According to Regulation 24 of the Town's "Specifications for Sanitary Landfill Operation", the sanitary landfill operator was required to maintain a daily log to record operational information, including the type and quantity of refuse received . . . the portion of the landfill used, and any deviations made from the approved plans and specifications.

In 1984 the Town entered into an agreement with the City of Fall River to utilize the City's incinerator to assist in the disposal of the Town's trash. Seekonk's landfill was open on the second and fourth Saturdays of each month for bulky waste drop-off. The Town's trash hauler provided roll-off containers for collection and ultimate transport of these wastes to off-site locations.

Composting Operation

In 1986, the Board of Selectmen appointed a new DPW Superintendent.⁸ In an interview with this Office, that individual, who served as the Superintendent until 1992,

⁸ The decisions made by this DPW Superintendent are the subject of this report.

stated that upon his appointment, his main priority was to construct a composting pad at the landfill. DEQE had been promoting composting as a way to reduce the volume of the municipal solid waste stream and recycle valuable organic material. A composting operation would separate leaf and yard materials from the general waste stream.

In an interview with this Office, the former Superintendent stated that budgetary constraints dictated that only minimal resources be devoted to building the composting pad. The former Superintendent told this Office that in 1986 he assigned a DPW employee to begin excavation work at the landfill to construct a composting site. This Office learned that excavation and filling was necessary because the area that the Superintendent chose for the composting site was wetlands. The former Superintendent later told the Board of Health that excavation was necessary in order to build a composting pad that could support heavy operating equipment. The former Superintendent told this Office that years of excavating had left a large hole to fill, and that he needed rubble to construct a pad for vehicles to work at the composting site.

The former Superintendent stated that in 1988 he was able to fill the large hole with rubble through a variety of arrangements with local demolition contractors. One contractor was demolishing a Stop & Shop store in East Providence, Rhode Island. According to the former Superintendent, the contractor gave the Town cover material for the landfill in exchange for permission to dump concrete and re-bar from the Stop & Shop store into the composting hole. Similarly, the former Superintendent stated that he arranged another deal in 1988 with a contractor demolishing an East Providence, Rhode Island grammar school. The contractor provided concrete curbing for the compost pad retaining walls in exchange for cover fill for the landfill.

The former Superintendent told this Office about two additional arrangements he made with firms demolishing a local restaurant in Seekonk and the Johnson & Wales University Motel. In these arrangements, the former Superintendent permitted the contractors to dump rubble into the composting site hole without paying a tipping fee.

DEQE's Composting Registration Form

DEQE required that Towns proposing to begin composting operations first register with DEQE. The DPW Superintendent completed DEQE's Composting Registration Form on October 13, 1988. On the Registration Form the Superintendent described the proposed composting site as a 1.53-acre parcel located at the landfill. A hand-drawn topographical plan was submitted with the Registration Form. The topographical plan did not contain a professional engineer's stamp. The plan's grades were not consistent with the prior professional plans done by Caputo & Wick and E. J. Flynn.

In addition, the plan located the composting site within the three-acre wetland area indicated as a natural reserve on Caputo & Wick's study plan. [Exhibit C1, C2 & C3]⁹ On E. J. Flynn's final Site Preparation Plan, the three-acre wetland area was depicted as an undeveloped buffer zone area. Moreover, the Board of Health, Zoning Board of Appeals, Conservation Commission, and DEQE had each based approval for use of the parcel as a landfill on engineering plans that portrayed this three-acre area as an undeveloped wetlands.

DEQE's instructions for completing the Registration Form stated:

No operation will be allowed to commence on a location where refuse has previously been disposed, without the written approval of the Regional Office of DEQE.¹⁰

A question on the Registration Form required the Superintendent to provide information about the compost pad design, including construction materials to be used. The Superintendent responded as follows:

Materials are a fine sand which is indigenous material, covered with 10" – 12" of course gravel containing approximately 12 % finer. Walls of receiving pit to be precast concrete (Jersey Barrier), primarily for ease of relocating pit if expansion of site is warranted. . . .

⁹ Exhibit C1 depicts Caputo & Wick's 1977 Study Plan. Exhibit C2 depicts the hand-drawn plan forwarded to DEP in 1988 by the former DPW Superintendent. Exhibit C3 is an overlay combination of the two above plans.

¹⁰ No record indicating DEQE's approval was provided to this Office.

The signature page of the DEQE's Composting Registration Form contained DEQE's Conditions of Operation. The Form stated:

As a condition of operation the undersigned agrees to operate the above named leaf composting operation in accordance with the Composting Guidelines and the following duties.

A duty listed in the Conditions of Operation stated that the operator would ensure adequate site security to prevent the illegal dumping of solid wastes there. DEP approved the composting application sometime in the spring of 1989, at which time the Town opened the composting facility to the public.

Composting Site Expansion

In 1991, the Town authorized the reutilization of its landfill site for the disposal of all household trash collected by the Town's curbside collection program in order to save on tipping and transportation charges that the Town would otherwise pay to the City of Fall River for trash disposal. Also at this time, the Superintendent supervised a 35-foot by 75-foot expansion of the composting site.

In an interview with this Office, the former Superintendent stated that the effectiveness of the composting program prompted him to expand the site to accommodate greater amounts of composting material. The former Superintendent told this Office that the area had a high water table, making access to it nearly impossible. This characterization was confirmed by a DPW worker employed by the Town, who told this Office that, like the original composting site construction, the area of the composting site expansion was located in the middle of a peat bog. He stated that Town equipment could not perform the tasks necessary for preparing the site for expansion. The former Superintendent told this Office that when he expanded the composting site in 1991, a final deal was made with another local contractor for demolition material consisting of gravel and rubble from the Esquire Motel in exchange for excavation of peat to make room for the expansion.

This Office asked the former Superintendent where records of contractors who dumped debris in the area of the composting site were located. The former Superintendent

stated that all of the paperwork was on file at the DPW office. In an interview with this Office, the present Superintendent stated that he was not able to locate any records.

On December 12, 1991, prior to expansion of the composting site, the Seekonk Building Inspector granted a demolition permit to the owner of the Esquire Motel. The former owner stated to this Office that he and his father had built the 75-room Esquire Motel in the early 1950's. [Exhibit D] The former owner stated that additions to the motel were built in 1956 and 1960. The demolition permit received by the former owner did not reference removal of hazardous materials.

According to the former owner, he hired a local contractor to demolish the motel and haul the debris away in January 1992. The former owner stated that before demolition began, he removed all plumbing pipes, fixtures, fuel tanks, and furniture. He said all that remained of the motel when it was demolished was brick, concrete, plaster, wood, and shingles. The former owner thought his contractor had made a deal with the DPW Superintendent to dump the motel's contents into the Seekonk landfill. He stated that in addition to brick, concrete, wood, and plaster, other materials may have been dumped into the landfill.

Dumping In Wetlands

During the expansion, members of the Town's governing boards began to receive complaints about possible unauthorized dumping in wetlands at the landfill in the area of the composting site. In January, February and March 1992, the Board of Health, Board of Selectmen, and Conservation Commission received complaints alleging that dumping was occurring in wetlands at the composting site of the Seekonk landfill. During this time, the Department of Environmental Protection (DEP) also received a complaint alleging illegal dumping.

A former Board of Selectmen member interviewed by this Office stated that in January 1992, a resident had approached him about unauthorized dumping at the composting site. The former Board member stated that he then went to the landfill and observed

numerous trucks entering the landfill area. He stated that he witnessed wood and other non-rubble material being dumped into the composting area.

Similarly, a former member of the Board of Health told this Office that in January 1992, he received information from a citizen that tractor-trailer trucks were dumping loads of rubble at the landfill on days when the landfill was closed. He was told that water was being pumped from holes at the composting site just prior to rubble being deposited into the holes. The former Board member stated that he inquired and found that the Board of Health had not issued permits or approvals for this type of work. The former member of the Board of Health then complained to the Board of Selectmen about unauthorized dumping at the landfill.

This Office also interviewed a concerned citizen who had complained to DEP in January 1992 about the dumping of hazardous material at the landfill. The citizen reported having witnessed dumping throughout the course of a weekend beginning on a Friday evening in January 1992. The citizen stated that trucks belonging to several contractors were dumping material that included roofing shingles, pipes, ceramic, tiles, wood, metal, wires, bricks, and concrete. The citizen also stated that the debris was not shredded or pulverized in any manner.

A DPW employee working on site at the landfill during the period in question told this Office that a local contractor was dumping large amounts of plastic, plaster, and wood at the site in 1992.¹¹ He stated that when he questioned the acceptability of the contents, the DPW Superintendent ordered him to do his job and dump the fill rather than questioning his orders.

Another DPW employee who occasionally worked on site at the landfill during the period in question, told this Office that over a period of three to four weeks, 30 to 40 truckloads of assorted debris were deposited into the composting pad. He also stated that he

¹¹ The DPW employee working at the landfill stated that his main job responsibility included oversight of the dumping of contractors' rubble into the compost/landfill site, peat excavation, and management of the day to day landfill site operations.

witnessed a low volume of shingles, pipe, and wire being deposited into the hole. He stated that he noticed that water was seeping into the hole as soon as the backhoe excavated peat.

Throughout 1992, the Board of Selectmen and the Board of Health grappled with how best to confirm the allegations of improper materials buried at the landfill. In response to the allegations of unauthorized dumping, the DPW Superintendent met with the Board of Health in March 1992 to discuss the use of this area. He stated:

When the Board of Health sited that landfill in 1979, that area was listed as a three acre reserve. It was a very difficult portion to develop because of the topography and the high water table. My predecessor never occupied that site. Then when the Town decided to start a composting operation I looked towards that area. There were some restrictions there. The purpose of the concrete was to replace the peat that I excavated out so we could build a solid pad. Our expectations are to someday erect a building where the composting is going on. The peat was replaced with concrete, rocks and rubble.

Due to a 1976 Home Rule Charter, operation of Seekonk's sanitary landfills did not fall within the jurisdiction of the Board of Health; rather, it remained within the jurisdiction of the Board of Selectmen. Although it had played a significant role in siting the Town's landfills, the Board of Health was apparently unsure of its authority to investigate the allegations, and therefore referred the matter to the Board of Selectmen for appropriate action. According to meeting minutes dated March 4, 1992, the Board of Selectmen decided, based on the rumors that significant materials had been dumped at the landfill site, that it would be in the Town's best interests to have the matter investigated by the Seekonk Police Department.

In the meantime, according to minutes of the Seekonk Conservation Commission dated March 9, 1992, the Chairman of the Conservation Commission was contacted by an individual concerned about contents of the landfill. The minutes stated that the Chairman met with the DPW Superintendent on the site and was assured by him that wetlands were not involved. In a memorandum to the Superintendent dated March 11, 1992, the Chairman of Seekonk's Conservation Commission stated that he had been contacted by an individual concerned that the Superintendent's "work in front of the

recycling bins could affect wetlands.”¹² The memorandum indicated the Chairman had been told in a discussion with the Superintendent and the Building Inspector that only bricks and concrete from the Esquire Motel, not hazardous material, had been deposited into the landfill.

The memorandum further stated that because the Chairman wanted to be certain that wetlands would not be adversely affected, he had visited the landfill with a well-known wetlands expert. The Chairman stated that he had been told by the expert that “there should be no effect on wetlands from your recycling operation.”¹³

On March 13, 1992, the Seekonk Police Department issued a report on its investigation to determine whether demolition material had been dumped at the Seekonk Landfill. The report stated that concrete and brick products from the Esquire Motel had been dumped at the landfill. It stated that the Superintendent acknowledged that from January 15, 1992 to February 12, 1992, concrete, brick, sand, and gravel materials from the Esquire Motel in Seekonk had been dumped at the landfill. The report stated that the materials were used to construct the base of the composting site and the Superintendent had no idea of how many loads were dumped at the landfill. The report did not address whether the area where the dumping had occurred was a wetlands area.

DEP had also received a complaint about illegal dumping at the landfill composting site in February 1992. According to notes provided to this Office by DEP, the complainant told DEP that an article in the *Pawtucket Evening Times* reported that construction debris, oil tanks and asbestos had been dumped at the composting site.

DEP's Investigation

In response to the complaint, DEP sent an investigator to the landfill. In an interview with this Office, DEP officials stated that DEP contracted with an “outside investigator”

¹² The recycling area was in a separate location from the composting site.

¹³ The individual who was Chairman at that time is now deceased.

to check into allegations of illegal dumping at the Seekonk landfill because DEP was experiencing budget constraints and a tremendous shortage of staff.¹⁴

According to the DEP investigator's notes, the DEP investigator had a telephone conversation with the DPW Superintendent on March 2, 1992. In that telephone conversation, the DPW Superintendent told the DEP investigator that the complaints were politically motivated. The notes stated that the DPW Superintendent told the DEP investigator that the composting operation was taking place in a three-acre reserve area of the landfill, in an area composed of dry peat.

According to the DEP investigator's notes, he spoke with DEP's Compost Projects Coordinator on March 3, 1992 and requested that DEP provide him with Seekonk's Composting Registration Form, maps and any other information pertinent to the site. (The DEP Compost Projects Coordinator was on record as having inspected the Town's composting site on behalf of DEP during the late 1980's and early 1990's.) The notes stated that the DEP investigator asked the DEP Compost Projects Coordinator if the composting operation was located in a wetland. The DEP Compost Projects Coordinator stated that he did not think that it was a wetland, and that he had not seen any dumping of construction and demolition debris in that area.

Subsequently, on March 17, 1992, the DEP investigator sent a letter to the DPW Superintendent. According to the letter, the Superintendent had accompanied the investigator on a tour of the composting area, and the DEP investigator had seen concrete slabs containing a galvanized wire mesh irregularly placed on the surface of an area measuring 150 square feet. The investigator's letter stated that the Superintendent had provided him with the following information:

In an area measuring approximately 75 feet by 36 feet, concrete and brick had been placed in a . . . level fashion, and covered with soil to create a firm surface for the machinery such as front-end loaders to operate upon as they manage the composting windows. This material has been placed such that the fill depth ranged from one foot to fourteen feet. The exposed material represented the residue for the most recent load of such debris

¹⁴ The investigator worked at DEP for one year and has since moved out of state.

(i.e. from the demolition of the former Esquire Motel). . . . It was reported that anything salvageable had been removed from the building prior to its demolition, all biodegradable materials had been taken by an out-of-state recycling operation, and the Building Inspector would confirm the singular nature of the buried material.¹⁵

The DEP investigator's letter indicated that no other types of materials were visible. However, the investigator's notes from the site tour state that he saw a pipe protruding from the ground. The notes stated that he pulled the pipe out of the ground and that he saw burlap and decomposed wood.

The letter also stated that the investigator had telephoned the Chairman of the Conservation Commission and was told that the area had not been declared a wetland. According to the DEP investigator's notes, he was told by the Chairman of the Conservation Commission that the Building Inspector told the Chairman that only brick and concrete from the Esquire Motel had been deposited in the composting area. The investigator quoted the Chairman as saying that he "could see no serious threat of environmental degradation constituted by this material." The notes from the investigator's site tour state that the Chairman of the Conservation Commission told DEP's investigator that even if a wetland area did exist there, nothing had been done that would negatively impact a wetland area.

Finally, the DEP investigator's letter advised the Town that it had not adhered to DEP's policy on the use of concrete as a substitute for other material. It stated:

The Division of Solid Waste's policy on the use of concrete as a substitute for other material is that if it is not crushed to pieces less than six inches in diameter, a "case by case" decision is made through the process of reviewing an application for the "Determination of Beneficial Use." You are advised that any future use of concrete, other construction debris or any material that can be classified as a solid waste according to the Department's Regulations, will require the filing of this application with the

¹⁵ The Building Inspector told this Office that as far as he knew, all of the debris from the Esquire Motel was deposited in another landfill in Johnston, Rhode Island. The Building Inspector stated to this Office that the Town's composting site was never mentioned as a destination for the Esquire Motel debris.

Department. No additional materials should be accepted without complying with the above outlined process.”

In closing, the letter stated:

As a separate matter, you should be aware that the Department promulgated revised Solid Waste Facility Regulations, 310 CMR 19.00, on October 12, 1990. These regulations require existing facilities to file either an existing facility permit application or a closure plan application by July 1, 1992. . . .

Selectmen Vote to Close Landfill

According to minutes of a Board of Selectmen’s meeting dated July 1, 1992, the Board decided to close the landfill in September 1993. Prior to permanently closing a landfill area, DEP’s regulations mandated a series of preparatory steps, including environmental testing at the landfill site.¹⁶ Specifically, a community desiring to close its landfill was (and is) required to undertake a Landfill Assessment that can entail up to three phases.¹⁷ The Final Closure/Post Closure Plan was required to incorporate the findings of the Landfill Assessment and any proposed remedial actions resulting from the findings of the Assessment. The Closure/Post Closure Plan was also required to include a schedule of post-closure monitoring and maintenance to assure protection of the public health, safety and the environment.

Board of Health Votes To Excavate Material

In June 1993, the Town hired the engineering firm of Weston & Sampson Engineers, Inc. (Weston & Sampson) to begin preparations to close the landfill. On June 23, 1993, the Board of Health sent a memorandum to the Board of Selectmen ordering the Board of Selectmen to excavate and expose the area of the landfill where the materials from the Esquire Motel had been buried. The letter stated that the Board of Health was

¹⁶ 310 CMR 19.150

¹⁷ The first phase is an Initial Site Assessment, followed by a Comprehensive Site Assessment and, if necessary, a corrective Action Alternatives Analysis. The latter must recommend remedial action in any situation that poses a threat to the public health, safety and the environment.

requiring that the excavation be done in the presence of an official from the Solid Waste Division of DEP and the Health Agent. For reasons stated below the excavation did not occur.

DEP Issues Notice of Noncompliance

In the meantime, on July 12, 1993, DEP issued the Town a Notice of Noncompliance for the landfill. The issues of leachate breakouts, soil staining, inadequate cover, erosion swales, improper grading and improper signage were noted as regulatory violations. Specifically, one of the violations stated:

It was observed that large chunks of asphalt, approximately one (1) foot in length, were a component of the cover material on the northern side slope. Be advised that the use of asphalt, brick, concrete (ABC) rubble may be used as a component in cover material provided that the rubble is processed to a maximum length less than six inches, such that the resulting mixture can be easily graded, and in general conforms to the requirements contained at 310 CMR 19.130(15).

The Town submitted a response to DEP on July 21, 1993 addressing each violation. Regarding the use of ABC rubble, the response stated:

Large chunks of asphalt, brick and concrete (ABC) rubble greater than six (6) inches shall no longer be mixed with conventional cover materials unless it conforms to the requirement of 310 CMR 19.130(15). The material was obtained from an in-town construction site and is no longer available for use.

DEP Advised Town Not to Excavate

On August 5, 1993, DEP responded to the Board of Health. DEP advised the Town not to excavate in the area of the composting site. The letter stated that the area proposed to be excavated was the alleged burial site of asbestos and other assorted construction debris. DEP's letter stated:

As allowed by 310 CMR 19.000, the "Solid Waste Management Facility Regulations" (the "Regulations"), the disposal of construction and demolition debris is allowed at state permitted landfills. In addition, disposal of asbestos is allowed at state permitted landfills, provided that a separate permit is secured prior to its disposal, according to 310 CMR

19.061. Therefore, with the exception of the possible failure of the Town to first notify the Department of the disposal of the alleged asbestos containing material, please be aware that this alleged action does not concern the Department. Furthermore, if the allegations of past asbestos burial are true, the material is presently completely covered; thus, it is in a non-friable, contained state and is not an environmental hazard.

DEP's letter further stated:

Should the Town choose to excavate, the town must comply with the following state regulations prior to commencement of work:

- 1) 310 CMR 19.130(32), Disruption of Landfilled Areas.
- 2) 310 CMR 19.0007(15), U Asbestos.

In addition, the Town must contact the Department of Labor and Industries ("DLI") and comply with the regulations, 453 CMR 6.000, so as to protect the workers which would be involved in the excavation effort.

Should the Town choose not to excavate, the Department suggests that future site plans of the landfill outline this area as a possible asbestos disposal area.

Landfill Site Assessment

Shortly thereafter, the Town began preparations to close the landfill. Pursuant to DEP's regulations, Weston & Sampson submitted an Initial Site Assessment of the landfill to the Town on October 27, 1993. The Site Assessment included findings and observations regarding the review of the landfill's history; review of state and local agency files; review of previous studies, and a site reconnaissance. It stated that in preparing the report, Weston & Sampson had utilized all known existing reports previously prepared for the site. However, this Office noted that Caputo & Wick's 1977 study plan was not among the reports Weston & Sampson listed as having been consulted.

Approximately a year and a half later, in March 1995, Weston & Sampson submitted its "Draft Report on Comprehensive Site Assessment Seekonk Sanitary Landfill." Weston & Sampson's cover letter accompanying the report stated that as a result of test sampling at the landfill, the types and concentrations of contaminants identified did not

warrant groundwater remediation. It further stated that the information they had reviewed indicated there was no qualitative risk to human health or the environment stemming from the contaminants identified. Weston & Sampson told the Town that no quantitative risk assessment at the landfill was necessary.

The data appended to Weston & Sampson's 1995 draft report included a summary of the results of the firm's field investigation. The report's description of the site geology included "wetlands/swamp deposits consisting of peat, organic silt and clayey silt." The report also included several figures depicting aspects of the site. Figure #7 was a color depiction of General Geologic Cross Sections. [Exhibit E] This figure (Section A-A) represented that in the area of the composting site, fill was deposited over wetlands. However, the report did not identify the materials constituting the fill nor did it further mention the issue of wetlands.

DEP Memorandum Notes Possible Water Contamination

Possible pollution from the Seekonk landfill was cited in an internal DEP memorandum dated August 28, 1995. The memorandum discussed a leachate breakout at a nearby pond, and elevated metals levels in area groundwater. Specifically, the memorandum stated:

The Seekonk landfill is located upgradient of Burr's Pond. Apparently, Burrs' Pond has had some "red gell-like" material appearing at the bank. I haven't seen it, but last year I looked at a sample and saw that there was a lot of filamentous bacteria in it, probably *Sphaerotilus*. RI also contacted me – they had some metals data from groundwater in the area and a few were elevated.

For the closing of the Seekonk landfill were there any test wells that were put in or data collected off site to examine if there are contaminant plumes leaving the site? Did closure end up with capping? Is there a report that may describe what was done there?

DEP records provided to this Office did not contain answers to the questions posed by the August 1995 memorandum. However, DEP states in its response (attached) to a draft copy of this report that groundwater monitoring has not revealed a need for groundwater remediation at this point in time.

Town Requests Additional Testing

In 1996, at the request of the Board of Selectmen, Weston & Sampson performed additional testing in the area of the composting site. According to a draft letter dated July 15, 1996 from Weston & Sampson to the Town, Weston & Sampson had dug 39 test pits using an excavator to verify the limit of refuse and the amount of area needing to be capped. According to the letter, the firm's excavation work revealed that the limit of refuse had extended into the composting area and into a portion of the recycling area.

Engineers Discover a Three-Acre Area Where Debris is Buried in Wetlands

The final letter sent by Weston & Sampson to the Town on July 23, 1996 stated that the purpose of the additional testing was to quantify the amount of refuse disposed in the compost area at the landfill. [Exhibit F] The letter stated:

The test pits indicate that the waste in this area is construction and demolition debris (i.e. woodwaste, asphalt pavement, reinforced concrete, metal). The depths of waste range from 2.5 to 17 feet thick, with greater amounts disposed in the northern most corner of the compost area. . .

In addition to the materials noted above, Weston & Sampson's Landfill Test Pit Summary Table 1 and 3, dated July 18, 1996, revealed that test pit numbers 1A, 2B, 3C, and 4C contained wire, plastic bags, woodchips, brick, springs, and pipes. The quantity of the waste disposed in the compost area was approximately 9000 cubic yards and the depths of the waste ranged from 2.5 to 17 feet thick. The survey indicated that groundwater was found starting at two feet in some locations.

Based on this finding, Weston & Sampson advised the Town that it would cost less to cap this portion of the composting pad rather than excavate and move the waste into the landfill. Despite the discovery of debris buried outside of the project limit in wetlands and groundwater at the composting site, there is no evidence that Weston & Sampson reconsidered the necessity of a remediation program to identify any qualitative risk to human health or the environment.

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FINDINGS

Finding 1.

The Town of Seekonk constructed a composting site in wetlands.

Massachusetts law prohibited landfilling activities unless the landfill site had been approved by a board of health after a public hearing and, subsequently, by DEQE. Compliance was the responsibility of officials in charge at a landfill. To ensure compliance, DEQE required that the plans and all site approval documents be maintained on site at a landfill for easy access by officials in charge.

In Seekonk, both Caputo & Wick's landfill study plan and E. J. Flynn's final landfill Site Preparation Plan restricted the landfill development to 7.5 acres of the approximately 11-acre site and prohibited development of the remaining acreage.

Seekonk's Zoning Board of Appeals issued a special permit to operate a landfill based on maintaining the buffer zones in accordance with the final design plan. The Town's Conservation Commission and DEQE each approved landfilling at the site provided that operations there were conducted in strict accordance with approved plans and regulations.

Moreover, the Town's wetlands protection bylaw and the Commonwealth's Wetlands Protection Act required a permit from the Conservation Commission prior to filling, dredging, constructing upon, or altering areas within 100 feet of any freshwater wetland, bog or swamp.

Despite these explicit plans and legal restrictions, testing performed in 1996 by the Town of Seekonk's engineers confirmed that the composting site was constructed in a wetlands area. According to the 1978 site assignment documents use of this three-acre wetlands area was prohibited.

Finding 2.

Seekonk submitted a Composting Registration Form to the Commonwealth that did not accurately report and describe plans and characteristics of the proposed site for composting.

The instructions on DEQE's Composting Registration Form stated that DEQE's written approval was required prior to commencing a composting program at a location where refuse had previously been disposed. The Form, which was completed by the DPW Superintendent, did not reference the fact that the Town's composting site was a wetland and therefore had to be filled before it could be used. During that process, contrary to the DPW Superintendent's repeated statements, debris other than concrete and bricks were used to fill in wetlands and stabilize the land area for use as a composting site.

DEQE's Composting Registration Form also instructed applicants to describe the proposed site in accordance with 11 requirements. One such requirement was to attach a copy of a topographic map clearly delineating the site. In response to this requirement, the Superintendent provided a copy of a hand-drawn topographic map that lacked the seal of a professional engineer.

The fact that the hand-drawn map was not professionally drawn is significant. A professional engineer would have been remiss not to have reviewed the original site assignment plans prior to completing a topographic map delineating the proposed site for composting. A review of the site assignment plans, (which included the Site Preparation Plan) required by DEQE to be on file at the landfill, would have indicated to the engineer that the proposed location of the composting site was in a wetlands area.

Moreover, if DEP had compared the hand-drawn topographic map presented in 1988 with the E.J. Flynn's 1978 Site Preparation Plan upon which DEQE's original approval for landfilling had been based, the wetlands area would also have been evident to DEP.

In effect, constructing a composting site in an area outside the project limit as depicted in the 1978 Site Preparation Plan, was tantamount to expanding the landfill. The area

would have required a permit from DEP prior to commencement of work at the composting site. Additionally, work at the site required the filing of a Notice of Intent with the Conservation Commission for a determination about locating a composting site in this area. If the Town had consulted with a professional engineer to submit the Composting Registration Form to DEP, the debacle of filling in wetlands with unauthorized debris may not have occurred.

The Composting Registration Form's second requirement instructed applicants to describe the compost pad design, including materials to be used in construction. In response, the DPW Superintendent stated on the Form: "Walls of the receiving pit to be precast concrete (Jersey Barrier), primarily for ease of relocating pit if expansion of site is warranted." However, upon his appointment in 1986, the DPW Superintendent stated that he immediately assigned a DPW employee to excavate at this location in anticipation of building a composting site. It does not appear that the DPW Superintendent ever intended to construct the receiving pit at the composting site from precast concrete (Jersey Barrier).

Finally, the Composting Registration Form required that applicants provide a soil description and/or a copy of Soil Conservation Service (SCS) map with the compost pad location indicated. The application indicated that an SCS map was attached to the Form; however, the SCS map was not attached to the Form provided to this Office. The SCS map would have indicated the location of wetlands in relationship to the proposed composting site.

The signature page of the Composting Registration Form, signed by the DPW Superintendent and dated October 13, 1988, contained DEQE's Conditions of Operation. The Form stated:

As a condition of operation the undersigned agrees to operate the above named leaf composting operation in accordance with the Composting Guidelines and the following duties. . . . e. Duty to Provide Site Security – The operator shall ensure that adequate site security exists to prevent the illegal dumping of solid wastes at the site.

It is clear that during the construction and expansion of the composting site, this condition was not followed.

Finding 3.

During construction of the composting site, significant amounts of construction and demolition waste were deposited into wetlands and groundwater.

In 1978, the Conservation Commission had imposed an order prohibiting use of any fill at the landfill that contained trash, refuse, rubbish or debris, including lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, or tires. However, the DPW Superintendent's actions violated this order.

At a February 1992 meeting with the Board of Health, the DPW Superintendent confirmed that he had authorized dumping in that area. At the Board of Health meeting, the DPW Superintendent stated that between 50 and 60 truckloads of material had been deposited into the composting site. He stated that he monitored the loads during the work day and that the loads contained bricks, plaster, mortar, pieces of wood, dirt, and gravel, particularly from the Esquire Motel.

In 1992, DEP sent an investigator to follow-up on allegations of illegal dumping in wetlands. During the investigator's site inspection, the Superintendent confirmed that he had authorized dumping in that area. According to DEP's letter reporting on its findings, DEP stated that the Superintendent acknowledged having authorized the dumping of concrete and brick from the Esquire Motel into the composting area, and stated that he had no idea how many truckloads of material had been dumped there. The letter stated that the investigator actually saw concrete slabs containing a galvanized wire mesh on the surface of an area that measured approximately 150 feet. The letter stated that the exposed material represented the residue of the most recent load of demolition debris from the Esquire Motel.

In 1996, the Town's consultant engineers, Weston & Sampson, estimated that 9000 cubic yards of construction and demolition debris was disposed of in the area of the

composting site.¹⁸ Weston & Sampson's letter to the Town, dated July 23, 1996, reported finding woodwaste, asphalt pavement, reinforced concrete, and metal buried at depths ranging from 2.5 to 17 feet. Groundwater was located in some test pits at a depth of two feet. The results of the test pit survey confirm that construction and demolition debris was buried in wetlands and groundwater.

Finding 4.

DEP's investigation was inadequate to reveal that construction and demolition waste had been dumped beyond the landfill limit in wetlands.

Although the investigator assigned by DEP to investigate alleged dumping at the landfill requested all relevant information pertinent to the site from the DEP Compost Projects Coordinator, it appears that the DEP investigator never received E.J. Flynn's 1978 Site Preparation Plan. The Site Preparation Plan was clearly relevant to the allegation of illegal dumping in a wetlands area. An adequate DEP investigation would have referenced the 1978 Site Preparation Plan upon which DEP approval was based.

According to the DEP investigator's notes, the DEP investigator visited the landfill on March 4, 1992. In the area of the composting site, the DEP investigator encountered 150 feet of surface area where concrete "slabs" containing galvanized wire mesh had been placed. DEP's subsequent letter to the DPW Superintendent, dated March 17, 1992, written in response to the complaint, indicated that the DPW Superintendent told the DEP investigator that only concrete and brick had been buried underground at that site. DEP's letter made no reference to concrete slabs containing galvanized wire mesh buried at the site. However, the DEP investigator's notes of the site visit contained his drawing of the composting site where he was told the concrete was buried. The DEP investigator's notes depicted a 36-foot by 75-foot area as "underlain by concrete slabs."

¹⁸ Weston & Sampson's letter to the Town of Seekonk dated July 23, 1996 as illustrated at Table 3.

The investigator wrote on the drawing: “depth of concrete fill grades from one foot to seventeen feet.”

Under the provisions of 310 CMR 19.060 certain types of prohibited solid waste could be put to a “beneficial use” when approved by DEP. However, it does not appear to this Office that DEP approved the deposit of rubble containing slabs of concrete, rebar, metal pipe, woodwaste, wire, and asphalt in Seekonk’s landfill.

Despite the DEP investigator’s discovery of concrete slabs, wire mesh, and pipe on the surface at the landfill, DEP did not conduct further site investigations. In an interview with this Office, the Chief of DEP’s Solid Waste Division stated that since the complainant would not sign an affidavit about the illegal dumping of asbestos, DEP did not to excavate in the course of its investigation.

Moreover, when the DEP investigator visited the composting site in March 1992, the wetlands had been filled in. A site visit to this area was clearly insufficient to verify whether wetlands had been affected without the original Site Preparation Plan indicating the location of wetlands near the landfill. A reference to that document would also have revealed that debris had been dumped outside the landfill project limit.

Furthermore, had DEP dug test pits in 1992, the unauthorized burial of debris that Weston & Sampson discovered in 1996 would have been discovered four years earlier. Digging test pits would have revealed that debris other than concrete and brick had been buried in wetlands and groundwater. From a liability and remediation perspective, early discovery of the unauthorized material would have been in the public’s best interest.

Subsequently, in July 1993, the Board of Health voted to order the Board of Selectmen to excavate and expose the area of the landfill where the Esquire Motel was buried. The Board of Health sent a letter to DEP’s Solid Waste Division requesting advice on the excavation. It is clear from DEP’s response to the Board of Health that DEP’s Solid Waste Division did not review the original site assignment report or design plan before

opining that excavation to determine if hazardous material was buried at the composting site should not be conducted.

DEP noted in its letter to the Board of Health that the Town should have obtained a permit from DEP before burying asbestos, but DEP did not express concern over the possibility that asbestos might have been buried at the landfill. DEP's letter stated:

With the exception of the possible failure of the Town to first notify the Department of the disposal of the alleged asbestos containing material, please be aware that this alleged action does not concern the Department. Furthermore, if the allegations of past asbestos burial are true, the material is presently completely covered; thus it is in a non-friable, contained state and is not an environmental hazard.

DEP's written determination that any buried asbestos did not constitute an environmental hazard did not mention, and apparently did not consider, the possibility that asbestos or asbestos-containing material may have been buried in wetlands and groundwater at the site.

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CONCLUSION

In 1996, the Seekonk Board of Selectmen voted to cap the area constituting the composting pad. This unplanned project required the Town of Seekonk to expend an additional \$59,410 to cap the 12,300 square-foot portion of the composting pad, which is now part of the Fall River landfill. Moreover, although DEP has concluded that groundwater remediation at the landfill is unnecessary at this point, remediation may be required in the future, depending upon future test results. The higher-than-anticipated landfill closure costs and continued uncertainty about health and safety issues there are the consequences of the former DPW Superintendent's failure to operate the landfill and construct the composting site in accordance with the rules established by the Town of Seekonk and approved by DEP. This Office has forwarded a copy of this report to the Massachusetts Office of the Attorney General with the recommendation that the Attorney General take appropriate action with respect to potential criminal and civil violations of state law based upon activities detailed in this report.

LIST OF EXHIBITS

For electronic publishing purposes, the exhibits have been omitted from this version of the report. The exhibits are available as a separate electronic document at <http://www.state.ma.us/ig/publ/seekexh.pdf>. [1755 KB]

- Exhibit A:** Caputo & Wick 1977 topographic study plan
- Exhibit B:** E.J. Flynn Engineers, Inc. 1978 "Site Preparation Plan"
- Exhibit C1:** Caputo & Wick 1977 study plan
- Exhibit C2:** 1988 hand-drawn plan of the site
- Exhibit C3:** Overlay combination of the 1977 study plan and the hand-drawn plan
- Exhibit D:** Photograph of the Esquire Motel
- Exhibit E:** Weston & Sampson Engineers, Inc. 1995 field investigation summary
- Exhibit F:** Weston & Sampson Engineers, Inc. 1996 letter to the Town of Seekonk

APPENDIX A: RESPONSES TO DRAFT REPORT

A confidential draft of this report was provided to the Town of Seekonk's Town Administrator and the Board of Selectmen and to the Commissioner at the Department of Environmental Protection (DEP.) The Office received written responses from both the Town and DEP. Based on the responses,¹ the draft report was amended as discussed below. The final report also incorporates several technical corrections.

The draft report stated that the original plan for the landfill parcel after closure was for recreational use, but that the landfill parcel was not currently being considered for recreational use because of health and safety concerns related to illegal dumping in the three-acre reserve area. Based on the Town's response to the draft report, these statements were omitted from the final report.

In its response to the draft report, the Town criticizes the draft report for its failure to determine whether individuals now or formerly employed by the Town engaged in any improper or illegal activities in the operation of the landfill. The basis for this objection is unclear. The draft report (and final report) clearly identifies the Town's former DPW Superintendent as the individual responsible for carrying out the activities documented in Findings 1, 2 and 3. By his own admission, the former Superintendent violated these restrictions by overseeing landfilling and composting in this wetlands area.

The Town also maintains that the Town bears no responsibility for any wetlands violations caused by the former DPW Superintendent. This Office disagrees. As the report makes clear, there is no evidence that the Board of Selectmen or other Town Officials were aware of the former DPW Superintendent's actions documented in Findings 1, 2 and 3 of this report. Nevertheless, the position description for Seekonk's Superintendent of Public Works dated April 23, 1986, clearly stated that the Superintendent would be supervised by the Board of Selectmen. The position

¹ The original response letters have been scanned and reformatted for electronic publishing. However, the text of the letters has not been changed.

description was written as follows: “Under the direction of the Board of Selectmen [the Superintendent] supervises all facets of the Public Works Department.”

It is unfortunate that the former DPW Superintendent’s actions have exposed the Town of Seekonk and its citizens to unexpected costs and liability risks. This case illustrates the importance of ensuring that public officials responsible for landfill operations are qualified, receive appropriate training and are supervised effectively.

In its response to the draft report, DEP takes issue with the report’s finding that DEP’s investigation was inadequate to reveal that landfilling and composting had occurred in a three-acre wetland area where landfilling was prohibited. This Office stands by its finding. The 1978 site assignment documents, which include the approved limits within which the landfill was permitted to operate, constitute the rules of operation for the Seekonk landfill. Although DEP approved the site assignment documents in 1978, DEP did not consult these documents when it received the Town’s composting application and when it subsequently investigated the allegation of illegal dumping. Had DEP done so, DEP would have discovered the former DPW Superintendent’s landfilling and composting activities in the three-acre wetlands area.

Moreover, in investigating the allegation, DEP did not dig test pits to determine whether the contents of materials dumped and buried violated DEP regulations and threatened groundwater. Rather, DEP relied on statements of the former DPW Superintendent and the former Chairman of the Conservation Commission, (who himself had relied on the former DPW Superintendent’s statements) in concluding that wetlands were unaffected by the dumping.

As stated in the final report, this Office has forwarded a copy of this report to the Massachusetts Office of the Attorney General with the recommendation that the Attorney General take appropriate action with respect to potential criminal and civil violations of state law based upon activities detailed in this report.

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November 9, 1998

BY HAND

CONFIDENTIAL - NOT A PUBLIC DOCUMENT

Robert A. Cerasoli, Inspector General
John W. McCormack State Office Bldg.
One Ashburton Place, Room 1311
Boston, MA 02108-1518

Re: Draft Investigation Report Relative to Seekonk Landfill

Dear Mr. Cerasoli:

In my capacity as Town Counsel for the Town of Seekonk, I submit this letter, together with the enclosed written comments of each of the members of the Board of Selectmen, in response to the confidential draft Report (the Report) forwarded to the Town by your office on or about October 27, 1998. This letter, together with the enclosed memoranda, shall constitute the Town's written response to the Report.

As previously discussed with representatives of your office, I attended a meeting in executive session with the full Board of Selectmen on Friday evening, October 30, 1998, to review and discuss the proposed Report resulting from your investigation into allegations of misconduct or improprieties with respect to the operation of the Seekonk Landfill. This investigation was undertaken in response to the Town's request of November 1, 1996. Upon careful consideration of the Report, a lengthy discussion ensued at which time numerous issues and comments were offered with respect to the Report. Given the varied and, in some instances, conflicting viewpoints of the Selectmen with respect to the contents of the Report, I submit with my general comments herein, the entire text of the written comments provided by the individual Board members.

As a whole, the Board of Selectmen was somewhat disappointed with the Report due to the lack of specific reference to any additional evidence or information discovered by your office and by the fact that your Conclusion and Recommendation merely proposes "that the Town of Seekonk and DEP take the necessary steps to determine adequate remediation measures" and that

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INSPECTOR GENERAL

KOPELMAN AND PAIGE, P.C.

BY HAND

Robert A. Cerasoli, Inspector General

November 9, 1998

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the Town's legal counsel "determine what parties are liable for the costs of and necessary remediation for damages resulting from contamination". As you know, the November 1, 1996 request for investigative action by your office with respect to the operation of the Seekonk Landfill was accompanied by a comprehensive compilation of all documents, plans, etc. in the possession of the Town with respect to this matter. Several Selectmen felt that your report was nothing more than a digested version of these documents, which were already available to the Town. Due to the general nature by which sources of information are identified in the Report, the Selectmen believe that the Report provides no basis for the Town to proceed any further than it could have prior to this matter being brought to your attention. Given the two year period during which investigatory action was undertaken and the numerous witnesses presumably interviewed by your office, we, quite frankly, expected a more detailed and informative recitation of the results of your investigation. In many respects, the Selectmen feel that we are no closer to resolution of the myriad factual and legal issues raised in our November 1, 1996 request than we were prior to the submission of that request two years ago.

The draft Report also concludes that "the Town of Seekonk" constructed a composting site in wetlands and that "the Town" did not accurately report and describe the characteristics of and plans for the proposed composing site in its correspondence with then DEQE. The principal purpose for which the investigation request was submitted to your office was to determine whether individuals, now or formerly employed by the Town of Seekonk, engaged in any improper or illegal activities in the operation of the Landfill. The conclusions set forth in the Report broadly assert that it is the Town, rather than any individual, which is responsible for these wetlands violations. As a formal statement of legal position, this assertion is expressly denied by the Town.

As your investigators well know, various Town officials made repeated attempts in the early 1990's to contact appropriate state agencies with purview over environmental matters, specifically the Department of Environmental Protection and the Attorney General's office, to try to shed light on many of the issues raised in your Report. There is, however, no mention whatsoever of the apparent disregard and lack of follow through on this matter by the office of the Attorney General. Furthermore, the Report places the Town of Seekonk in a most disadvantageous position with respect to proposed future remediation efforts in conjunction with the Department of Environmental Protection. As is well documented in the Report, the Town repeatedly attempted to engage DEP in this matter in 1991 and 1992 only to be rebuffed by that agency. There was never any mention by DEP at that time of potential wetlands violations at the Landfill site.

Although the Report states that it is your office's intent to assist the Town in determining how to further proceed in its best interest, your recommendations that we work with DEP to attempt to remediate environmental concerns and that Town officials confer with counsel to

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determine appropriate civil action provides little, if any, substantive assistance with the issues raised in our written request for intervention by your office.

Several Selectmen also noted that the Report contains what appear to be inconsistent or uncorroborated conclusions. For example, in the Conclusion and Recommendation section, you state that "[A]s a result of the illegal dumping at the landfill site, an area once slated for the public's recreational use after closure is no longer available for this purpose because of the health, safety and environmental risks". First of all, the area in which the illegal dumping allegedly took place, i.e., wetlands, was never designated as an area for potential public recreational use. Typically, wetlands are not suitable for such use and, furthermore, the portions of the former Landfill site so designated in design plans prepared by the Town's consultants are not even adjacent to the composting area where the alleged filling took place. Also, your reference to "health, safety and environmental risks" is not substantiated by any empirical data or evidence. As you know, within the past two years the Landfill has been capped in accordance with applicable DEP regulations. Among the requirements imposed by such regulations is the construction of groundwater observation wells around the perimeter of the Landfill site and in areas immediately adjacent to the Landfill. Said groundwater test wells are required to be periodically inspected for a period of thirty years after closure. To date, the Town's environmental consultants have uncovered no evidence of any health, safety or environmental risk as a result of the wetlands filling activities cited in the Report. Thus, to the extent that your office has concluded that such risks do, in fact, exist, we request a detailed explanation of the basis for this conclusion. We, furthermore, request clarification of the evidence relied upon for your conclusion that an area once slated for recreational use is no longer available for such use.

Perhaps the Department of Environmental Protection has information in its files on the subject Landfill which may have influenced your conclusions in this regard. To the extent that such information has not heretofore been made available for inspection by the Board of Selectmen, we hereby formally request that any such files be identified and forthwith made available to the Board of Selectmen for its review.

One Selectman has also disputed several factual conclusions which, in his view conflict with testimony elicited under oath during the course of your investigation. Specifically, he challenges the veracity of your conclusion that 9,000 cubic yards of debris was deposited in the composting area at the Landfill. He furthermore questions whether some of the test pits relied upon the Town's Consulting Engineer, Weston & Sampson, were located in the Landfill proper or in the adjacent area where the composting facility was built. These are significant factual issues with respect to which the Town does possess some plans and data (as compiled by Weston & Sampson), however, we are unable to determine whether there is any additional corroborating evidence or information with respect to these matters, due to the general nature of your Report.

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The Selectmen feel strongly that the only way they will be able to proceed with the further action you recommend is upon amendment of the Report, by incorporation therein of corroborating factual evidence and a list of witnesses interviewed by your office. We, accordingly, request that such evidence and a list of witnesses be made available to the Board. In addition, we hereby request an opportunity to meet with you or your representatives, in executive session, to discuss the future role of the office of the Inspector General in this matter and the process by which further action, including a potential criminal investigation, could be commenced. I believe that such a meeting would be most constructive in our attempt to resolve the myriad issues which have been raised by the draft Report.

In light of the conclusions and recommendations set forth in the Report, the Board of Selectmen has agreed that two of its current members, who were actively involved with the operation of the Landfill and efforts to investigate alleged improprieties with respect thereto in the late 1980's and early 1990's, will recuse themselves from further deliberations relative to this matter. Accordingly, the three remaining members of the Board of Selectmen hereby request an opportunity to meet with you or your representatives as soon as possible to address the issues raised in this letter and in the attached comments submitted by members of the Board of Selectmen. As stated in my November 1, 1996 letter to your office, it remains the goal of the Selectmen to protect the public interest and to assure that public officials and employees of the Town of Seekonk conduct their business in a professional and appropriate manner. Although we have perhaps advanced this goal somewhat, the Board of Selectmen believes that further investigation and/or involvement by your office is imperative to bring this matter to final resolution.

We await your reply. Do not hesitate to contact me, members of the Board of Selectmen or the Town Administrator if you have any questions or comments relative to this matter.

Very truly yours,

Patrick J. Costello

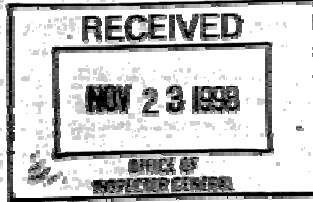
PJC/megs

Enc.

cc: Board of Selectmen (w/o enc.)
Town Administrator



**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500



TRUDY COSE
Secretary
DAVID B. STRUBIS
Commissioner

November 12, 1998

Robert A. Cerasoli, Inspector General
Office of the Inspector General
State House
P.O. Box 270
Boston, MA 02133

Dear Inspector General Cerasoli:

Thank you for the opportunity to comment on the confidential draft report resulting from your Office's investigation into the construction and operation of compost activities at the Seekonk Massachusetts landfill on the Fall River Road in Seekonk. Before going into a summary of our comments, I would like to emphasize that DEP strongly encouraged town officials to request your review as a result of concerns over possible inappropriate and possibly illegal actions by some Town officials and/or private citizens. Our comments will focus only on DEP's role with activities at this landfill as we are not in a position to accurately comment on municipal decisions and internal actions related to this landfill and composting activities.

We disagree with summary statements in the report that suggest DEP did not take appropriate actions or did not go far enough regarding our regulatory activities. My review of DEP's actions and investigation, and the description of the same in the Report's Background section lead me to conclude that DEP acted appropriately and made informed remedial decisions responding to the complaint that construction and demolition material was placed under Seekonk's landfill compost area. The results of my examination into this matter (which are supported by many sections of your draft report) show DEP's investigation, determinations and remedial recommendations consisted of the following:

- In early 1992, after receiving a complaint alleging the compost area was constructed on construction and demolition debris, DEP sent an investigator to the site to conduct an inspection;
- The investigator interviewed Seekonk's DPW Superintendent, DEP Compost Project's Coordinator, and Seekonk's Chairman of the Conservation Commission;

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DEP on the World Wide Web: <http://www.magnet.state.ma.us/dep>

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Please do not hesitate to contact me, or to have someone from your investigation unit contact David Johnston, a senior manager in DEP's Southeast Regional Office if you wish to discuss this matter or the draft report in more detail.

Sincerely,

Edward P. Kunce
Deputy Commissioner