

March 15, 2011

Governor Lincoln D. Chafee
Office of the Governor
222 State House
Providence, RI
02903-1196

Dear Governor Chafee,

We respectfully request a meeting with you and your staff to discuss a matter of great concern to the residents of Portsmouth. We represent a number of Portsmouth citizens concerned and opposed to the deposit of arsenic contaminated soils in our Town. That decision was made March 11 by Mr. Leo Hellested, Chief, Office of Waste Management of the Department of Environmental Management.

The RI Department of Environmental Management (DEM) has decided that arsenic contaminated material can be deposited in the former town dump in the Island Park area of Portsmouth. That site is in the process of remediation by its current owner, AP Enterprises. A representative of DEM stated to Portsmouth residents, at a hearing on January 18, that the addition of arsenic contaminated soil up to the level of 20 – 40 ppm will be beneficial to the completion of the project. Project completion will be aided by funds paid to AP Enterprises for accepting these contaminated soils, which will assist in keeping the project financially solvent and will therefore help complete the capping of the former landfill.

We believe that this decision is deeply flawed for a number of reasons:

1. Other than a cost reduction inducement to complete the project, the deposit of 20-40 ppm arsenic contaminated soils provides no advantage to the cleanup of the former dumpsite, yet significantly increases the amount of hazardous material at that site. This decision essentially means that the people of the Island Park community must assume a health risk to ensure the financial stability of this project. That calculation does violence to the basic mission of DEM.
2. DEM has made its decision in opposition to the Town Council's recommendations and the wishes of the community. At a March 7 meeting, the Portsmouth Council unanimously voted to oppose deposits in excess of 7 ppm at the former dumpsite and has requested DEM halt the project until health and procedural questions can be answered. The Council resolutions are include as enclosure one.
3. The DEM hearing process did not provide the Town government or its citizens an effective opportunity to assess the arsenic proposal. The true intent of the hearing on January 18 was not evident until hours before the hearing took place. In fact, the original hearing was scheduled to take place in the DEM offices in Providence and it was only

through the intervention of two Council members that the meeting was moved to Portsmouth. Even so, most abutters were not notified either of the meeting or its nature.

4. We believe that DEM derived its assessment of the acceptable levels of arsenic from average background levels on Aquidneck Island and not on the direct health risk to the residents of Island Park. DEM and Health Department representatives objected to raising those limits above 7 ppm as late as June 2007. Their objections are contained in the testimony before the House Commission on Special Legislative Commission to Study Naturally Occurring Arsenic in the Soil, published in May 2008. They advised against increasing the limit above 7 ppm. A copy of that Providence Journal story is attached as enclosure two.
5. The requirements for the property owner to deposit funds to ensure the completion of the project are woefully insufficient to ensure completion in the event of financial failure of this project. The requirement for the landowner to deposit a \$2 per ton financial assurance on contaminated soil against completion of the project, contained in Mr. Hellested's letter of March 11, is insufficient to ensure completion of the project and avoid a condition in which that soil is left uncovered.
6. We believe that the primary inducement for DEM approval is a plan, developed by the department, to use the State's former municipal dump sites as repositories for contaminated soil and that that decision by DEM was one more appropriately made by the Assembly and Governor. We believe that the approach by DEM in Portsmouth is the first of a new policy by the Department to deposit contaminated soils in former municipal dumps as they are remediated. Representatives of DEM have made the case that the Johnston landfill is full and a new depository for contaminated soil is required. We understand that there are approximately 100 such landfill/town dumpsites in Rhode Island. We also note the recent announcement that the Johnston landfill has acquired additional land and will be expanded, rendering the justification of the deposit of contaminated soil moot.

We look forward to meeting with you and your staff. Our point of contact is Siobhan McDonnell at 401 662-9770, 96 Norseman Dr., Portsmouth, RI 02871.

The individuals who will attend are: Siobhan McDonnell, Daryll Issa, Tom Casselman and Larry Fitzmorris

Respectfully,

Daryll Issa
Island Park Landfill Committee

Larry Fitzmorris
President,
Portsmouth Concerned Citizens

Enclosure 1: Town of Portsmouth Resolution # 2011-03-07

Enclosure 2

Panel keeps arsenic limits

01:00 AM EDT on Friday, June 15, 2007

By Gina Macris

Journal Staff Writer

PROVIDENCE — A legislative commission has reached consensus that it would be unwise to raise the current allowable limits of arsenic in the soil, according to its chairman, state Rep. Russell Jackson, D-Newport.

Instead, the commission, citing health risks, has called on the state Departments of Health and Environmental Management, as well as Rhode Island Housing, to work over the summer to develop cheaper methods of remediating arsenic, Jackson said.

The formal name of the panel is the Special Legislative Commission to Study Requirements for the Remediation of Naturally Occurring Arsenic in Soil.

It was created last year to respond to concerns of Middletown officials that the high cost of remediation made some much-needed projects unaffordable.

Specifically, the Middletown Town Council favored raising the acceptable level of arsenic in the soil from 7 parts per million to 15 parts per million in light of environmental issues that have delayed development of a public park on the 45-acre Kempenaar Valley property off Valley Road.

Town Administrator Gerald Kempen said the town has received estimates ranging from \$1 million to \$5 million to remediate the property.

The town also wants to build a new police station in the same area and has had to have the soil on the site tested in accordance with orders from DEM. The results of that testing are not yet available, according to a spokesman for police Chief Anthony M. Pesare.

Kempen said there is a 50-50 chance that soil remediation may hold up the groundbreaking for the new police station until next year.

IN TESTIMONY during the spring, officials of the Department of Environmental Management and the Department of Health strongly advised Jackson's commission against raising the limit, a move they said would increase the risk of cancer.

The federal Environmental Protection Agency has set the "safe" level of arsenic in the soil at .4 parts per million, with the risk of cancer at 1 in a million people.

DEM allows a ceiling of 7 parts per million based on the naturally occurring level in Rhode Island soil. At that concentration, the cancer risk is 1 in 50,000.

“Any time you have a carcinogen, you set the level as low as you can,” Dr. Robert Vanderslice, of the Department of Health, said in a recent interview.

Vanderslice explained that the DEM standard is based on the fact that children will be exposed to soil 350 days out of the year.

While many would say that there are many days during the year when children do not go outside, every time they come indoors they track in soil, he said.

“The truth is that most of the stuff in the vacuum cleaner” contains particles of soil from the outdoors, Vanderslice said.

“Children playing indoors are exposed to plenty of soil,” he said. “A toddler crawling on the floor ingests soil from outside.”

Jackson, meanwhile, said after taking considerable testimony, the commission members reached a “consensus” that “maybe the solution is to come up with more workable, cost-effective remediation which satisfied DEM and the Department of Health.”

He said the commission has asked DEM, the Department of Health, and Rhode Island Housing to work together on that goal, “and we’ll see where we are in September.”

“Hopefully, in early ’08 we will make formal recommendations,” he said.

Vanderslice said, “I am much more comfortable with this approach.”

Developing lower-cost methods for safe remediation of arsenic is a reasonable goal, he said.

“That’s exactly what happened with high levels of lead in the soil,” he said. The problem became so widespread that the typical solution — replacing contaminated soil with two feet of clean fill — became cost prohibitive.

Drawing from the remediation history for lead, however, Vanderslice warned that less costly methods tend to require more maintenance.

A good grass cover is acceptable, Vanderslice said, but not in high traffic areas.

Mulching deeply — to a depth of six inches — is also an acceptable remediation method for lead, he said, “but you can’t put down mulch and not check on it.”

Vanderslice said the challenge for arsenic is the same as it was for lead, that is, “how to make a residential setting safe for kids but still practical enough that you can afford to build a house there.”

Kempen, the Middletown town administrator, said the town would be exempt from remediation requirements if it could prove that the arsenic in the soil was naturally occurring.

But he said it is virtually impossible to show that the land has been unaffected by human activity.

EARLIER THIS YEAR, the Middletown Town Council solicited support from other communities for raising the allowable limit of arsenic. Most cities and towns did not respond, Kempen said.

But the town councils in two neighboring communities, Portsmouth and Tiverton, took stands opposing any increase in the limit because of the health risks.

Residents of North Tiverton are embroiled in a controversy over soil contamination of about 100 acres, including arsenic, lead, cyanide and other toxins which DEM has traced to the dumping of wastes from the former Fall River Gas Co., when it burned coal to generate gas in the early 1900s.

Southern Union, the successor to Fall River Gas, has denied responsibility for the contamination, both in proceedings before DEM and in a federal lawsuit brought by affected residents.

GAIL CORVELLO, president of a residents' group known as ENACT, Environmental Neighborhood Awareness Committee of Tiverton, said that testing in her Bay Street neighborhood has turned up 258 cases in which arsenic exceeds 7 parts per million in the soil.

Increasing the allowable limit to 15 parts per million, as the Middletown Town Council wanted, would legalize 240 of those soil samples, she said.

Corvello said that considering lower-cost methods of remediation is "a good way" of looking at the issue. "But they need to be very careful," she said, adding that ENACT representatives have attended every commission meeting so far and will continue to monitor its deliberations.

In considering alternative methods of remediation, "you have to bear in mind what is accessible on a residential property," she said. "You have to be able to dig down and put a footing."

There is now a town-imposed ban on any digging in the Bay Street neighborhood. Residents cannot plant shrubs, flowers, or vegetable gardens.

Corvello said she understands that much of the concern over remediation costs is driven by developers of affordable housing, including the Newport Housing Authority, which is developing the mixed-income Newport Heights project in the north end of town.

Affordable housing is "extremely necessary," Corvello said, "but we need to make sure that affordable housing is safe housing, especially for families with children."

East Bay

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