



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

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### PROVISIONAL DECISION ISSUED FOR COMMENT – 02/14/2019

*See page 4 for information on deadline and how to submit comments*

Robert Delhome  
Lynn HarborPark, LLC  
500 Harrison Avenue, Suite 4R  
Boston, MA 02118

RE: LYNN—Solid Waste Management  
Lynn Landfill  
Off Riley Way  
FMF Number: 39445

BWP SW45/Any Facility-Presumptive Approval  
Application Number: 18-SW45-000024-APP  
Authorization Number: TBD

**Conceptual Project Approval  
PROVISIONAL DECISION**

Dear Mr. Delhome:

The Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Air and Waste, Solid Waste Management Section (MassDEP) has reviewed your application, category BWP SW45 *Any Facility - Presumptive Approval*, Application Number: 18-SW45-000024-APP (the Application) for MassDEP approval of a conceptual closure plan for the Lynn Landfill located off Riley Way in Lynn, Massachusetts (the Landfill). Langdon Environmental LLC of Southborough, Massachusetts (Langdon) prepared and submitted the Application to MassDEP on behalf of Lynn HarborPark, LLC (Lynn HarborPark). MassDEP received the Application on December 23, 2018. Supplemental Information to support the Application was submitted on February 8, 2019.

### DISCUSSION

The Application states, in part, that Lynn HarborPark is obtaining access to the properties shown in the permit application to perform certain activities at the Lynn Landfill site, including the receipt and placement of grading and shaping materials and construction of a final landfill cover system (cap) at the site in accordance with the Solid Waste Management Regulations, 310 CMR 19.000, where the Landfill's existing cap has either failed or is non-existent.

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

TTY# MassRelay Service 1-800-439-2370

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

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An Environmental Notification Form (ENF) for the proposed project was submitted in accordance with the Massachusetts Environmental Policy Act (MEPA) Regulations (301 CMR 11.00) for review by the Secretary of Energy and Environmental Affairs. On October 26, 2018, the Secretary issued a certificate that determined that no further MEPA review was required.

The proposed project includes activities on four parcels of historically filled lands in the area of Riley Way Extension along Lynn Harbor. The existing capped Landfill parcel is currently owned by South Harbor Realty Trust, LLC (the Trust) and three adjacent properties are owned by Mass Electric. The Mass Electric parcels are currently being managed under the Massachusetts Contingency Plan (MCP) (RTN 03-01308 and RTN 03-32427). As proposed, the total project site is approximately 22 acres. The Trust site is approximately 14 acres in size and was capped in the early 1990's.

The Supplemental Information submitted on February 8, 2019 provides a summary of the current ownership status of the parcels that make up the project site. The February 8, 2019 submittal also includes documentation of the agreements that Lynn HarborPark has obtained from the Trust and Mass Electric for the project.

In the early 1990s, landfill waste was relocated from the adjacent Lynn Water Pollution Control facility to the Trust parcel and a final cap as required by the MassDEP Solid Waste Regulations (310 CMR 19.000) was constructed. The cap, as designed, was to consist of a flexible membrane liner (FML) covered by a 6-inch thick sand drainage layer and a 6-inch thick soil organic vegetated layer. Since that time, the final cover has eroded due to lack of post-closure monitoring and maintenance of the Landfill, and the Trust has failed to repair the landfill cap and perform post-closure care and maintenance of the Landfill.

Current conditions of the landfill cap, as described in the ENF, include: sloughing and erosion of the sand drainage layer and organic vegetated layer soils on the side slopes, exposure and tearing of the FML capping layer, woody growth on most slopes and portions of the plateau, broken passive landfill gas vents, illegal dumping, and standing water in low-lying ponded areas on top of the cap.

As proposed in the Application, the project includes the receipt and placement of up to 540,000 cubic yards of MassDEP-approved Grading and Shaping Materials (Materials<sup>1</sup>) to grade the site and generate revenue prior to constructing a new final landfill cover system that will meet the applicable solid waste regulations and policy. An application, category BWP SW25 *Corrective Action Design* (CAD) will be submitted for the proposed project to provide additional, required details including the design of the new landfill cap, the volume and details on the acceptance and placement of grading and shaping materials, and plans for the post-closure monitoring and maintenance of the Landfill as required by the Solid Waste Regulations. Lynn HarborPark has submitted an Interim Stockpile Plan for MassDEP review and approval.<sup>2</sup> During meetings with MassDEP regarding the conceptual project, Lynn HarborPark has discussed its preliminary cost and revenue summary for the project. Lynn HarborPark shall submit a written cost and revenue summary to MassDEP within 30 days of the effective date of this decision.

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<sup>1</sup> For this Project, Grading and Shaping Materials (Materials) refer to historic fill soils that comply with MassDEP's COMM-97-001 Policy for acceptance at unlined landfills, clean soils, dredge sediments, street sweepings and catch basin cleanings. Other Beneficial Use Determination (BUD) materials may be accepted subject to approval from MassDEP. The Project does not propose to accept construction and demolition (C&D) waste fines or recycling process residual.

<sup>2</sup> On January 19, 2019, MassDEP received Lynn HarborPark's application, category BWP SW11 *Landfills-Major Modification*, Application Number: 19-SW11AC-000002. The interim stockpiling of grading and shaping material at the site is the subject of a separate review and decision regarding the Interim Stockpile Plan Application.

Following completion of landfill capping, Lynn HarborPark shall submit to MassDEP, for review and approval, an application, category BWP SW43 *Landfill Closure Completion*, to certify closure activities.

Following completion of the project, the capped landfill is anticipated to be incorporated as open space to support the revitalization of the Lynn Harbor Waterfront. Any proposed post-closure use(s) of the Landfill not reviewed and permitted as part of the closure design would require submittal of an application to MassDEP, category BWP SW36 *Post-Closure Use-Major* or BWP SW37 *Post-Closure Use-Minor*, as appropriate, in accordance with the Solid Waste Regulations. As proposed in the ENF and the Application, the project design does not include any post-closure use(s) of the site.

In summary, as described in the Application, Lynn HarborPark proposes<sup>3</sup> to:

1. Accept the following grading and shaping materials as part of this project: clean soils; soils meeting MassDEP's policy "Reuse and Disposal of Contaminated Soils at Massachusetts Landfills (Policy COMM-97-001)" for unlined landfills; street sweepings; catch basin cleanings from storm water systems that are separated from sewers; and dewatered dredge materials for unlined landfills per MassDEP Policy 94-007. Lynn HarborPark may consider additional materials to be used as grading and shaping materials as part of this project. If Lynn HarborPark elects to incorporate materials other than those outlined above, the other materials will be presented for approval in future permit application(s) to MassDEP.
2. Access the site from the Lynnway (Route 1A) to the intersection with Marine Boulevard to Riley Way to the Landfill. The same route will be used to enter and exit the Landfill.
3. Place grading and shaping materials generally above the existing 40-foot contour up to an approximately 80-foot contour at a maximum slope of 3H: 1V. Storm water drainage swales would be graded in at approximate 30-foot vertical intervals to direct storm water flow to a new stormwater basin to be constructed in the northeastern corner of the site. The stormwater basin design will be reviewed and validated as part of the Corrective Action Design permit application. While the final grading plan will need to be refined, a preliminary plan submitted as part of the application shows approximately 540,000 cubic yards (cy) of grading and shaping materials being placed at the Site to meet the final subgrades prior to placement of the new landfill cap.
4. Temporarily stockpile approximately 75,000 cy of grading and shaping materials at the western end of the project site prior to receiving final MassDEP approval for the Corrective Action Design permit application submittal. Lynn HarborPark is requesting approval to commence the temporary stockpiling while other approvals such as the Corrective Action Design (CAD) permit application and the Chapter 91 License under the Waterways Regulations (310 CMR 9.00) are finalized.
5. Enter into an Administrative Consent Order (ACO) with MassDEP for performing the proposed activities including, but not limited to, the temporary stockpile and submittal and implementation of the CAD. The ACO will also include requirements for placing a conservation restriction on the project site to ensure future uses of the site will be consistent with the ongoing master planning efforts for revitalization of the Lynn Harbor Waterfront.
6. Prior to the initiation of stockpiling, submit for review and approval by MassDEP a plan for the temporary stockpiling of approximately 75,000 cy of grading and shaping materials at the site. The plan will include a Materials Management Plan and Storm Water Pollution Prevention Plan

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<sup>3</sup> Additional details on the proposed project can found in the Application.

for the temporary stockpiling of this material. The submittal will include, in part, appropriate erosion control barriers, construction of a new stormwater control basin and swales, preparation of the subgrade area, installation of the truck weighing scale, and controls to minimize off-site tracking of materials and generation of dust at the site.

7. Establish an appropriate Financial Assurance Mechanism (FAM) in a form approved by MassDEP in an amount necessary to complete the closure of the site. Establish an appropriate Financial Assurance Mechanism (FAM) in a form approved by MassDEP in an amount necessary for the post-closure maintenance and monitoring of the site.

### **PROVISIONAL DECISION**

MassDEP has determined that the Application, as conditioned by this Provisional Decision and permit, complies with the requirements of 310 CMR 19.000. Therefore, in accordance with M.G.L. Chapter 111, § 150A and 310 CMR 19.000 MassDEP approves the conceptual closure plan for the Lynn Landfill subject to compliance with the conditions contained in this decision.

MassDEP is issuing this decision pursuant to 310 CMR 19.033(4)(a) as a Provisional Decision for the purpose of obtaining comment from the Applicant, the City of Lynn, other interested parties, and the public on the proposed decision. The Application and MassDEP's Provisional Decision are available on the EEA ePLACE Public Access Portal at <https://eeaonline.eea.state.ma.us/EEA/PublicApp/>. The Application, MassDEP's Provisional Decision and related documents are also available for inspection at MassDEP's Regional Office at the above letterhead address.

**Comments on the Provisional Decision must be in writing, and must be received by MassDEP at the address below on or before 5 PM on Friday, March 8, 2019.** Please include the Application Number: 18-SW45-000024-APP and FMF Number: 39445 with your comments. Such comments may be submitted to:

[mark.fairbrother@mass.gov](mailto:mark.fairbrother@mass.gov)

or

Massachusetts Department of Environmental Protection  
Northeast Regional Office -- Solid Waste Management Section  
205B Lowell Street  
Wilmington, Massachusetts 01887

This decision is issued pursuant to 310 CMR 19.033 and is an approval of the conceptual closure plan for the Lynn Landfill issued pursuant to M.G.L. Chapter 111, § 150A and 310 CMR 19.000, subject to the conditions set forth below. In the event this approval conflicts with all or parts of other prior plans or approvals issued pursuant to Chapter 111, § 150A, the terms and conditions of this approval shall supersede the conflicting provisions of the prior approvals. This approval does not convey property rights of any sort or any exclusive privilege. This decision does not relieve the Permittee, or any other person, of the responsibility to comply with all other applicable federal, state and local statutes, regulations and requirements.

1. **Grading and Shaping Material:** The proposed project includes the conceptual placement of approximately 540,000 cubic yards (cy) of additional grading and shaping materials to complete the final closure of the landfill in accordance with the Solid Waste Regulations (310 CMR 19.000). Approved grading and shaping materials include: clean soils; soils meeting MassDEP's policy "Reuse and Disposal of Contaminated Soils at Massachusetts Landfills (Policy #COMM-97-001)" for unlined landfills; street sweepings; catch basin cleanings from storm water systems that are separated from sewers; and dewatered dredge materials for unlined landfills per MassDEP Policy #94-007.
2. **Interim Stockpile Plan:** Prior to being approved to stockpile approximately 75,000 cy of grading and shaping material at the site, Lynn HarborPark shall submit to MassDEP for review and approval an application, category BWP SW11 *Landfills-Major Modification*.<sup>4</sup> The application shall include the plan for the temporary stockpiling of up to 75,000 cy of grading and shaping material as discussed in the Conceptual Closure Plan and this decision (the Interim Stockpile Plan). The submittal shall include, but not be limited to, a Materials Management Plan and Storm Water Pollution Prevention Plan for the temporary stockpiling of this material and shall, in part, include appropriate erosion control barriers, construction and/or repair of storm water control basin and swales, preparation of the subgrade area, installation of the truck weighing scale, and controls to minimize off-site tracking of materials and generation of dust at the site. Within thirty (30) days of the effective date of this decision, Lynn HarborPark shall submit to MassDEP a written cost and revenue summary for the project.
3. **ACO:** Prior to the initiation of stockpiling of grading and shaping material, Lynn HarborPark shall execute an ACO with the MassDEP for completing the proposed closure activities at the Site. Without limitation, the ACO shall include requirements for submittal of an application, category BWP SW25 *Corrective Action Design (CAD)* to MassDEP for the design of the closure project. In the CAD application, Lynn HarborPark shall provide additional details about the proposed project, including the design of the new landfill cap, the volume and details on the acceptance and placement of grading and shaping materials, and plans for the post-closure monitoring and maintenance of the Landfill as required by the regulations. The ACO shall also include requirements for placing a conservation restriction on the project site to ensure future uses of the site will be consistent with the ongoing master planning efforts for revitalization of the Lynn Harbor Waterfront.
4. **Financial Assurance Mechanism:** Prior to the initiation of stockpiling of grading and shaping material at the site, Lynn HarborPark shall establish a Financial Assurance Mechanism for completion of the closure pursuant to 310 CMR 19.051. The Post-Closure Maintenance and Monitoring FAM shall be funded in accordance with a schedule to be incorporated in the ACO.

This decision is issued by MassDEP in accordance with M.G.L. Chapter 111, § 150A and 310 CMR 19.000.

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<sup>4</sup> As stated above, Lynn HarborPark submitted an application, category BWP SW11 *Landfills-Major Modification*, Application Number: 19-SW11AC-000002 on January 19, 2019 for the interim stockpiling of grading and shaping material. The interim stockpile plan is the subject of a separate MassDEP review and decision.

**NOTICE OF RIGHT TO APPEAL**

*[as it would appear in any decision following the provisional comment period]*

**Appeal.** Any person aggrieved by the issuance of this decision, except as provided for under 310 CMR 19.033(4)(b), may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, s. 150A, and M.G.L. c. 30A, not later than thirty (30) days following the receipt of the final decision. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the decision by a court of competent jurisdiction, the decision shall remain effective.

**Notice of Action.** Any aggrieved person intending to appeal this decision to the Superior Court shall first provide notice to the Department of their intention to commence such action. Said notice of intention shall include the Department file number and shall identify with particularity the issues and reasons why it is believed the decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Regional Director for the regional office which processed the application. The appropriate addresses to which to send such notices are:

General Counsel  
Department of Environmental Protection  
One Winter Street - 3rd Floor  
Boston, MA 02108

and

Eric Worrall  
Regional Director  
Department of Environmental Protection  
205B Lowell Street  
Wilmington, MA 01887

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

If you have any questions in regards to this matter please contact Richard Spieler at 978-694-3317.

Sincerely,

**PROVISIONAL DECISION ISSUED FOR COMMENT – 02/14/2019**

Mark G. Fairbrother  
Section Chief  
Solid Waste Management Section

Richard J. Spieler  
Environmental Engineer  
Solid Waste Management Section

Enclosure: Communication for Non-English Speaking Parties

cc: Eric Worrall, Regional Director, MassDEP-NERO  
Email: [eric.worrall@mass.gov](mailto:eric.worrall@mass.gov)

Susan Ruch, Deputy Regional Director, MassDEP-NERO/BAW  
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