

DEVENS ENTERPRISE COMMISSION
SERVING AS THE DEVENS BOARD OF HEALTH

In the Matter of:

DEVENS RECYCLING CENTER,
LLC
45 Independence Drive, Devens

Major Modification to Site Assignment
DEP Site Suitability Report #X224311

DECISION

INTRODUCTION

The Devens Enterprise Commission acting as the Board of Health of the Devens Regional Enterprise Zone (the “DEC”) held a public hearing, upon due notice, on the application of Devens Recycling Center, LLC (“Applicant”) for a Major Modification to Site Assignment to change its current transfer operations at 45 Independence Drive, Devens, Massachusetts in the West Rail Industrial Park (the “Site”) from handling exclusively construction and demolition (“C&D”) waste to a combination of C&D and municipal solid waste (“MSW”). (See pp. 13-14 of this Modified Decision for definitions). By a vote taken on April 21, 2009 and after considering the record of the hearing, and subject to the conditions set forth below, the DEC approves the requested Major Modification to Site Assignment, subject to the conditions listed below.

THE PROPOSED MODIFICATION

The Site is currently authorized to handle up to 1,500 tons per day of C&D pursuant to a decision of the DEC on January 31, 2006 approving the original request for Site Assignment. The Applicant has proposed to modify the existing Site Assignment to allow the handling of a combination of C&D and MSW without increasing the maximum authorized capacity of the Site. During the course of the hearing, the Applicant reduced its requested modification from 1,000 tons per day of MSW to 500 tons per day of MSW. The handling of MSW does not require any physical modifications to the existing facility building (the “Building”) other than the placement of concrete barriers on the tipping floor and an impermeable berm along the rail/truck loading area to confine the MSW handling area, in addition to a high-speed roll-up egress door on the northwest side of the building. All operations will continue to take place within the Building. The Facility will continue to operate from 7:00 am to 5:00 pm, Monday through Friday as set forth in Condition 23 of the Decision (Site Assignment). The Facility will continue to be authorized to accept C&D waste for sorting and recycling.

PROCEDURES

On June 2, 2008, the Applicant submitted a Notice of Project Change to the MEPA Office of the Executive Office of Energy and Environmental Affairs (EOEA File No. 9116), which was approved by Certificate of the Secretary of Energy and Environmental Affairs on July 11, 2008. The Applicant submitted its Application for Major Modification of Site Suitability Report and Major Modification of Site Assignment (“Application”) to the Department of Environmental Protection (“DEP”) on October 29, 2008. The DEP issued its Determination of Administrative Completeness on November 24, 2008. The DEP issued its determination of technical completeness and positive site suitability report on February 27, 2009.

The DEC hired attorney John F. Shea as the hearing officer for the hearing, and caused the hearing to be duly posted and published in accordance with 310 CMR 16.20(7). The site assignment hearing commenced on March 25, 2009 and was continued on April 7, 2009. On April 7, 2009, following receipt of testimony, the hearing officer closed the hearing. The DEC heard testimony from the Applicant and its consultants, and from the DEC’s consultants, and from members of the public who requested and were granted status as participants. A list of the documents entered into the record of the proceeding is attached to this Decision.

On April 21, 2009, at a duly posted meeting, the DEC deliberated on the Application and voted to approve the requested Major Modification to Site Assignment.

STANDARD FOR DECISION

As set forth in 310 CMR16.20 (10(k)(2) a board of health shall determine that a site is suitable for assignment for a solid waste facility unless it makes a finding supported by the record of the hearing, that the siting thereof would constitute a danger to the public health, safety or environment, based on the siting criteria set forth and established under 310 CMR 16.40 and 974 CMR 8.03(2).

FINDINGS CONCERNING SITE SUITABILITY CRITERIA

In the following section, the DEC sets forth its findings, based upon the Application and the evidence in the Record of this proceeding, with respect to the compliance of the Site with the specific site suitability criteria for a solid waste handling facility set forth in 310 CMR 16.40(3)(d), the general site suitability criteria set forth in 310 CMR 16.40(4) and the DEC siting criteria set forth at 974 CMR 8.03(2). The DEC’s findings have been reached on the basis of, and are subject to, the conditions listed below.

I. Compliance with Specific Site Suitability Criteria for Solid Waste Handling Facilities (310 CMR 16.40(3)(d))

- A. **No site shall be determined to be suitable or be assigned as a solid waste handling facility where the waste handling area would be within the Zone I of a public water supply.**

The Record contains evidence demonstrating that the Zone I of the closest public water supply well to the Site, Grove Pond Well #1, is approximately 2,300 feet to the east-northeast of the Site, placing it far outside the waste handling area of the proposed facility. *See, e.g.*, Vollmer Report at p. 2 (Exhibit 39); reconfirmed by Stantec Memo at p. 2 (Exhibit 40). Both the Applicant and DEC's consultant agree that the waste handling area would be outside any Zone I of a public water supply. As a result, the DEC finds that the Site complies with this siting criterion.

- B. **No site shall be determined to be suitable or be assigned as a solid waste handling facility where the waste handling area would be within the Interim Wellhead Protection Area (IWPA) or a Zone II of an existing public water supply well within a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR, unless restrictions are imposed to minimize the risk of an adverse impact to the groundwater; and either (a) the proponent can demonstrate to the satisfaction of the Department that the facility cannot reasonably be sited outside the IWPA or Zone II; or (b) there would be a net environmental benefit to the groundwater by siting the facility within the Zone II or the IWPA where the site has been previously used for solid waste management activities.**

The Record contains evidence demonstrating that the Zone II for the Grove Pond Wells is located no less than 390 feet from the entrance to the Site, placing the waste handling area of the Site outside the Zone II for the Grove Pond Wells and any other nearby wells. *See, e.g.*, Vollmer Report at p. 2 (Exhibit 39); confirmed in Stantec Memo (Exhibit 40). Both the Applicant and the DEC's consultant agree that the waste handling area would be outside any Zone II or Interim Wellhead Protection Areas of a public water supply. As a result, the DEC finds that the Site complies with this siting criterion.

- C. **No site shall be determined to be suitable or be assigned as a solid waste handling facility where the waste handling area would be within the Zone A of a surface drinking water supply.**

The Record contains evidence demonstrating that the closest surface drinking water supply to the Site is Nagog Pond located almost 8 miles to the southeast of the Site.

See, e.g., Stantec Memo at p. 2 (Exhibit 40). Both the Applicant and the DEC's consultant agree that the waste handling area would not be within the Zone A of that drinking water supply. *See* Vollmer Report at p. 2 (Exhibit 39). As a result, the DEC finds that the Site complies with this siting criterion.

- D. No site shall be determined to be suitable or be assigned as a solid waste handling facility where the waste handling area would be within 500 feet upgradient, and where not upgradient, within 250 feet, of an existing or potential private water supply well existing or established as a Potential Private Water Supply at the time of submittal of the application, provided however, the applicant may show a valid option to purchase the restricted area including the well and a guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment.**

The Record contains evidence demonstrating that the solid waste handling area is not located within 500 feet upgradient, or otherwise within 250 feet, of an existing or potential private water supply well existing or established as a Potential Private Water Supply at the time this Modified Decision was written. The closest known private drinking water supply well is at Red Tail Golf Course, located approximately 4,500 feet from the proposed entrance to the Site. *See*, Water Resources Protection District CAD drawing, Vollmer Report, page 2 (Exhibit 39); confirmed in Stantec Memo at p. 2 (Exhibit 40). Both the Applicant and the DEC's consultant have agreed that the waste handling area of the Site is not within 500 feet upgradient or otherwise within 250 feet of that well. *See* Vollmer Report at p. 4 (Exhibit 39). As a result, the DEC finds that the Site complies with this siting criterion.

- E. No site shall be determined to be suitable or be assigned as a solid waste handling facility where the waste handling area of a transfer station that proposes to receive more than 50 tons per day of solid waste is 500 feet from (i) an occupied residential dwelling or (ii) a prison, health care facility, elementary school, middle school or high school, children's preschool, licensed day care center, or senior center or youth center, excluding equipment storage or maintenance structures.**

The Record contains evidence demonstrating that there is no prison, health care facility, licensed day care center, senior center or youth center within one-half mile of the Site. *See, e.g.*, Vollmer Report at pp. 2-3 (Exhibit 39); confirmed in the Stantec Memo (Exhibit 40). The Applicant and the DEC's consultant agree that there are no such facilities within 500 feet of the waste handling area of the Site. The closest school is the Francis W. Parker Charter School located approximately 2,000 feet to the west of the Site. *Id.* The closest residences are located a similar distance to the west. *Id.* The Applicant and the DEC's consultant agreed that the prison-owned maintenance facility at Devens is not operated as a prison. *See* Vollmer Report at p. 3 (Exhibit 39); Stantec Memo at p. 2 (Exhibit 40). As a result, the DEC finds that the Site complies with this siting criterion.

- F. **No site shall be determined to be suitable or be assigned as a solid waste handling facility where the waste handling area would be within the Riverfront Area as defined at 310 CMR 10.00.**

The Record contains evidence demonstrating that the closest Riverfront Area is associated with Willow Branch and is located nearly one-half mile to the west of the Site. Both the Applicant and the DEC's consultant agree that the waste handling area of the Site would not be within a Riverfront Area. Vollmer Report at p. 3 (Exhibit 39); confirmed by Stantec Memo at p. 3 (Exhibit 40). As a result, the DEC finds that the Site complies with this siting criterion.

- G. **No site shall be determined to be suitable or be assigned as a solid waste handling facility where the maximum high groundwater table would be within two feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two-foot separation can be designed to the satisfaction of the Department.**

The Record contains evidence demonstrating that the Applicant performed sub-surface investigations of the Site, including the installation of monitoring wells, and determined that the depth to groundwater was in excess of 25 feet. Both the Applicant and the DEC's consultant agree that the maximum high groundwater table will not be within two feet of the ground surface on the Site. *See* Vollmer Report at p. 3 (Exhibit 39) and confirmed by Stantec Memo at p. 3 (Exhibit 40). Consequently, the DEC finds that the Site complies with this siting criterion.

II. Compliance with General Site Suitability Criteria for Solid Waste Management Facilities (310 CMR 16.40(4))

- A. **Agricultural Lands. No site shall be determined to be suitable or be assigned as a solid waste management facility where:**
1. **the land is classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service; or**
 2. **the land is deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility; and**
 3. **a 100-foot buffer would not be present between the facility and those lands classified at 310 CMR 16.40(4)(a)1. or 2.**

The Record contains evidence demonstrating that the Site is not classified as Prime, Unique, or of Local Importance by the U.S. Department of Agriculture, Natural Resources Conservation Service or deemed Land Actively Devote to Agricultural or Horticultural Uses, and that the closest private agricultural land is located 1.3 miles to the east of the Site, while the closest designated horticultural lands are Holy Hill and

Westward Orchards in Harvard, MA, each approximately 2 miles from the Site. The Site is not within (or within 100 feet of) the designated agricultural lands. Both the Applicant and the DEC's consultant agree that the Site meets this criterion. *See* Vollmer Report at p. 3 (Exhibit 39) and confirmation in Stantec Memo at p. 3 (Exhibit 40). As a result, the DEC finds that the Site complies with this siting criterion.

B. **Traffic and Access to the Site.** No site shall be determined to be suitable or be assigned as a solid waste management facility where traffic impacts from the facility operation would constitute a danger to the public health, safety, or the environment taking into consideration the following factors:

1. traffic congestion;
2. pedestrian and vehicular safety;
3. road configurations;
4. alternate routes; and
5. vehicle emissions

The Record contains evidence demonstrating that the Site will not create traffic impacts that will constitute a danger to the public health, safety, or the environment taking into consideration each of the factors listed above. The Applicant has agreed to take certain measures to monitor and control traffic coming to and from the Facility (*See, e.g.,* Single Environmental Impact Report at §§ 5.1, 5.2, and 9.4; Affidavit of Eric B. Eby, P.E. (Exhibit 36)). The Record contains evidence of an analysis of traffic impacts from the proposed project that identifies no significant concerns with traffic congestion, pedestrian or vehicular safety, road configurations, haul routes, and vehicle emissions. *See id.* Both the Applicant and DEC's consultant agree that the Site meets this criterion. *See* Vollmer Report at pp. 3-7 (Exhibit 39) and additional analysis in Stantec Memo at pp. 3-6 (Exhibit 40). As a result, the DEC finds that, with conditions, the Site will comply with this siting criterion.

C. **Wildlife and Wildlife Habitat.** No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would:

1. have an adverse impact on Endangered, Threatened, or Special Concern species listed by the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife in its database;
2. have an adverse impact on an Ecologically Significant Natural Community as documented by the Natural Heritage and Endangered Species Program in its database; or
3. have an adverse impact on the wildlife habitat of any state Wildlife Management Area.

The Record contains evidence demonstrating, through review of the 2003 Natural Heritage Atlas and the Botanical Survey Report and consultations with staff at the Massachusetts Natural Heritage and Endangered Species Program and U.S. Fish and Wildlife Service, that the siting would not have an adverse impact on (i) Endangered, Threatened, or Special Concern species listed by the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife in its database and (ii) an Ecologically Significant Natural Community as documented by the Natural Heritage and Endangered Special Program in its database, or (iii) the wildlife habitat of any state Wildlife Management Area. Both the Applicant and DEC's consultant agree that the Site meets this criterion. *See* Vollmer Report at p. 7 (Exhibit 39); confirmed in Stantec Memo at pp.6-7 (Exhibit 40). As a result, the DEC finds that the Site complies with this siting criterion.

D. **Areas of Critical Environmental Concern. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting:**

1. **would be located within an Area of Critical Environmental Concern (ACEC), as designated by the Secretary of the Executive Office of Environmental Affairs; or**
2. **would fail to protect the outstanding resources of an ACEC as identified in the Secretary's designation if the solid waste management facility is to be located outside, but adjacent to the ACEC.**

The Record contains evidence demonstrating that the nearest ACEC to the Site is the Squannassit ACEC, which is located approximately 1,300 feet to the north and northeast. As a result, the Applicant and the DEC's consultant agree that the Site is not within an ACEC. The Record contains evidence that the only potential adverse impact of the Facility and the Site on the ACEC is associated with stormwater runoff and contamination. These potential impacts should be mitigated in the Storm Water Pollution Prevention Plan and the design and implementation of stormwater best management practices. Both the Applicant and the DEC's consultant agree that the Site is not within an ACEC and will not fail to protect the Squannassit ACEC's outstanding resources. *See* Vollmer Report at p. 8 (Exhibit 39); confirmed in Stantec Memo at p. 7-8 (Exhibit 40). Consequently, the DEC finds that the Site complies with this siting criterion.

E. **Protection of Open Space. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would have an adverse impact on the physical environment of, or on the use and enjoyment of:**

1. **state forests;**

2. **state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution;**
3. **MDC reservations;**
4. **lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs; or**
5. **conservation land owned by private non-profit land conservation organizations and open to the public.**

The Record contains evidence demonstrating that the closest areas to the Site that fall within the categories specified above are Pirone Park (which is located more than one-half mile to the northeast of the Site on the opposite side of Grove Pond), Phelps Park (which is located more than one-half mile to the east of the Site on the southern shore of Grove Pond), and the Nashua River Conservation Land (which is located more than one-half mile to the northwest of the Site). Record evidence also indicates that the Facility and its operations will not have adverse impacts to the environment or enjoyment of these protected areas. *Id.* The Applicant and the DEC's consultant agree that the Site meets this criterion. *See* Vollmer Report at p. 8 (Exhibit 39); confirmed by Stantec Memo at p.8 (Exhibit 40). As a result, the DEC finds that the Site complies with this siting criterion.

- F. **Potential Air Quality Impacts. No site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment, taking into consideration:**
1. **the concentration and dispersion of emissions**
 2. **the number and proximity of sensitive receptors; and**
 3. **the attainment status of the area.**

The Record contains evidence demonstrating that the anticipated emissions from the Site will meet state and federal air quality standards or criteria, taking into account each of the factors listed above. Both the Applicant and the DEC's consultant agree that the anticipated emissions from the Facility will meet applicable standards and will not constitute a danger to public health, safety, or the environment. *See* Vollmer Report at pp. 8-11 (Exhibit 39); confirmed by Stantec Memo at p. 8 (Exhibit 40); and Affidavit of Dammon Frecker (Exhibit #34B p. 3 (Air Quality Study prepared by Tech Environmental). Consequently, the DEC finds that the Site complies with this siting criterion.

G. **Potential for the Creation of Nuisances.** No site shall be determined to be suitable or be assigned as a solid waste management facility where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment taking into consideration the following factors:

1. noise;
2. litter;
3. vermin such as rodents and insects;
4. odors;
5. bird hazards to air traffic; and
6. other nuisance problems.

The Record contains evidence demonstrating that neither the establishment nor operation of the Facility will result in nuisance conditions that would constitute a danger to the public health, safety, or the environment taking into the factors detailed above. More specifically:

1. **Noise:** The DEC's consultant stated that so long as Doors 1 and 2 of the Facility mask noise emanating from machinery inside the Facility, the Facility will not cause a nuisance that would constitute a danger to the public health, safety, or the environment with respect to noise. See, e.g., Affidavit of Douglas Sheadel (Exhibit #43).
2. **Litter:** The Applicant has committed to controlling litter by ensuring all trucks are covered until just before they enter the Facility, all waste handling to be conducted within the Building, daily litter patrol of Facility grounds and MSW to be unloaded sufficiently far from the Facility doors to ensure materials unloaded shall not leave the Building. See e.g., Affidavit of John Manning (Exhibit #35)
3. **Vermin:** The Applicant has agreed to increase the level of pest control for the Facility. See e.g., Stantec Memo (Exhibit #40, page 10)
4. **Odors:** The Applicant has committed to controlling odor by expanding the existing water misting system, installing a high speed door on the west side of the building and manual shut-down of the Facility upon occurrence of a malodorous event. See e.g., Affidavit of Michael T. Lannon and Odor Modeling Report by Tech Environmental, Inc. dated March 9, 2009 (Exhibit #37 and 37B)

5. **Bird hazards to air traffic:** The Applicant has committed to conducting all waste handling within the Building. See e.g., Affidavit of John Manning (Exhibit #35)
6. **Other nuisance problems:** Consideration of airborne pests. See e.g., Stantec Memo (Exhibit #40, p. 16) and Affidavit from Dammon Frecker (Exhibit#34)

Both the Applicant and the DEC's consultant have determined that with respect to these factors the Facility will not result in nuisance conditions that constitute a danger to the public health, safety, or environment. See Stantec Memo at pp.8-16 (Exhibit 40). As a result, the DEC finds that, with conditions, the Site complies with this siting criterion.

- H. **Size of Facility. No site shall be determined to be suitable or be assigned as a solid waste management facility if the size of the proposed site is insufficient to properly operate and maintain the proposed facility. The minimum distance between the waste handling area or deposition area and the property boundary shall be 100 feet, provided that a shorter distance may be suitable for that portion of the waste handling or deposition area which borders a separate solid waste management facility.**

The Record contains evidence demonstrating that the size of the Site is sufficient to properly operate and maintain the Facility and that the minimum distance between the waste handling area and the property boundary is at least 100 feet. Both the Applicant and the DEC's consultant agree that the required 100-foot distance will be maintained. See Vollmer Report at p. 14 Exhibit 39), confirmed in Stantec Memo (Exhibit 40). The Record demonstrates that the existing 90,000-square-foot Facility is located on a Site of approximately 11 acres. The Applicant and the DEC's consultant have agreed that the size of the Site is sufficient to properly operate and maintain the Facility. As a result, the DEC finds that the Site complies with this siting criterion.

- I. **Areas Previously Used for Solid Waste Disposal. Where an area adjacent to the site of a proposed facility has been previously used for solid waste disposal the following factors shall be considered by the Department in determining whether a site is suitable and by the board of health in determining whether to assign a site:**
1. **the nature and extent to which the prior solid waste activities on the adjacent site currently adversely impact or threaten to adversely impact the proposed site;**
 2. **the nature and extent to which the proposed site may impact the site previously used for solid waste disposal; and**
 3. **the nature and extent to which the combined impacts of the proposed site and the previously used adjacent site adversely**

**impact on the public health, safety and the environment;
taking into consideration:**

- a. whether the proposed site is an expansion of or constitutes beneficial integration of the solid waste activities with the adjacent site;**
- b. whether the proposed facility is related to the closure and/or remedial activities at the adjacent site; and**
- c. the extent to which the design and operation of the proposed facility will mitigate existing or potential impacts from the adjacent site.**

The Record contains evidence demonstrating that the Shepley's Hill Landfill located adjacent to the Site will not adversely affect the Site, the Facility will not adversely affect the landfill, and the combined impacts of the Facility and Shepley's Landfill will not adversely impact public health, safety, and the environment. Record evidence demonstrates that the Site is bordered on the north by the now-closed and capped Shepley's Hill Landfill, groundwater from the landfill flows away from the Site toward the north, any Site runoff will be contained and channeled in the stormwater detention basin and conveyance system, which has been designed not to impact the groundwater flow of the area, and the construction and operation of the facility will not impact Shepley's Hill Landfill in any way. Record evidence also demonstrates that the Site is also sufficiently distant from the landfill to not impede any landfill remediation activities, including improvements to the landfill cap. Both the Applicant and the DEC's consultant agree that Shepley's Landfill will not adversely impact the Site, the Site will not adversely impact Shepley's Landfill, and the combined impacts of the proposed facility and Shepley's Landfill will not adversely impact public health, safety, and the environment. *See* Vollmer Report at pp. 14-15 (Exhibit 39); confirmed in Stantec Memo at pp. 16-17 (Exhibit 40). As a result, the DEC finds that the Site complies with this siting criterion.

- J. Existing Facilities. In evaluating proposed sites for new solid waste management facilities the Department and the board of health shall give preferential consideration to sites located in municipalities in which no existing landfill or solid waste combustion facilities are located. This preference shall be applied only to new facilities which will not be for the exclusive use of the municipality in which the site is located. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community with an existing disposal facility:**
 - 1. the extent to which the municipality's or region's solid waste needs will be met by the proposed facility; and**
 - 2. the extent to which the proposed facility incorporates recycling, composting or waste diversion activities.**

The Record contains evidence that there are no currently operating landfills or waste incinerators in the communities surrounding the proposed project. In addition, the Record demonstrates that there are no construction and demolition material recycling facilities within any of the communities around Devens. Both the Applicant and the DEC's consultant agree that the Site meets the requirements of this criterion. *See* Vollmer Report at p. 15 (Exhibit 39) and confirmed in Stantec Memo at p. 17 (Exhibit 40). As a result, the DEC finds that the Site meets this siting criterion in that the DEC has given preferential consideration to the siting of this Facility.

- K. **Consideration of Other Sources of Contamination or Pollution.** The determination of whether a site is suitable and should be assigned as a solid waste management facility shall consider whether the projected impacts of the proposed facility pose a threat to public health, safety or the environment, taking into consideration the impacts of existing sources of pollution or contamination as defined by the Department, and whether the proposed facility will mitigate or reduce those sources of pollution or contamination.

The Record contains evidence that the projected impacts from the proposed use of the Facility will not pose a threat to public health, safety, or the environment, taking into consideration the impacts of existing sources of pollution or contamination. The Record demonstrates that the closed Shepley's Hill Landfill will not adversely impact the Site and that the Site and its operations will not adversely impact Shepley's Hill Landfill. Both the Applicant and the DEC's consultant agree that impacts from the Facility will not pose a threat to public health, safety, or the environment, taking into consideration the impacts of existing sources of pollution or contamination. *See* Vollmer Report at pp. 15-17 (Exhibit 39) and Stantec Memo at pp. 17-18 (Exhibit 40). As a result, the DEC finds that the projected impacts of the Facility do not pose a threat to public health, safety, or the environment taking into consideration the impacts of existing sources of pollution or contamination and that the Site meets this siting criterion.

- L. **Regional Participation.** The Department and the board of health shall give preferential consideration to sites located in municipalities not already participating in a regional disposal facility. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community participating in a regional disposal facility:
1. the extent to which the proposed facility meets the municipality's and the region's solid waste management needs; and
 2. the extent to which the proposed facility incorporates recycling, composting, or waste diversion activities.

The Record contains evidence that the proposed project is necessary for the management of the Devens area's future construction and demolition recycling needs as well as the broader needs of the community as regulations regarding waste separation and recycling are implemented. Record evidence demonstrates that the community does not

participate in a regional disposal facility. Both the Applicant and the DEC's consultant agree that the Site meets the requirements of this criterion. *See* Vollmer Report at p. 17 (Exhibit 39); confirmed by Stantec Memo at p. 18 (Exhibit 40). As a result, DEC finds that the Site meets this siting criterion and must be granted preferential consideration for site assignment.

III. Compliance with DEC Siting Criteria [974 CMR 8.03(2)]¹

- A. **If the DEC finds that topography, vegetation, or other natural features, or existing structures do not produce sufficiently protective conditions, including visual screening and/or necessary environmental mitigation, the DEC may require separation (from the solid waste facility to sensitive receptors) or other dimensional requirements that are more stringent than those set forth in 310 CMR 16.00.**

The Record contains evidence that the topographical, vegetative, and other natural features as well as the existing structures provide sufficiently protective conditions, including visual screening; with respect to sensitive receptors. *See* Vollmer Report at p. 18 (Exhibit 39) and confirmed by Stantec Memo at pp. 19-20 (Exhibit 40). As a result, the DEC finds that the Site meets this siting criterion so long as the Facility is operated and maintained as set forth in the Conditions below and the commitments made by the Applicant during the course of the public hearing..

Minimum separation or other dimensional requirements shall be measured from the closest edge of a waste deposition area, in the case of a landfill, to the closest point of the sensitive receptor. In the case of a processing or combustion facility, the measurement shall be from the closest edge of the principal structure to the closest point of the sensitive receptor.

The Record contains evidence that the Facility meets this criterion using the measurement methodology required by 310 CMR 16.40. Both the Applicant and DEC's consultant agree that the Site meets this criterion. *See* Vollmer Report at p. 18 (Exhibit 39) and confirmed by Stantec memo pp19-20 (Exhibit 40). As a result, the DEC finds that the Site meets this siting criterion.

¹ The Applicant filed an objection to the applicability of the DEC Site Suitability Criteria to this proceeding. The Hearing Officer issued an Advisory Ruling stating that the DEC may apply its Site Suitability Criteria to this Major Modification to Site Assignment. (Exhibit 46).

CONDITIONS

As used in this Major Modification to Site Assignment, the words below are defined as follows:

“Applicant” means Devens Recycling LLC, its successors and assigns. Applicant also includes a designee, so that a condition that requires that the Applicant perform, means that the Applicant, while retaining responsibility for that performance, may cause someone else to perform it.

“C&D” means Construction and Demolition waste as defined in 310 CMR 16.02 (waste building materials and rubble resulting from the construction, remodeling, repair or demolition of buildings, pavements, roads or other structures. Construction and demolition waste includes but is not limited to, concrete, bricks, lumber, masonry, road paving materials, rebar and plaster.)

“DEC” means the Devens Enterprise Commission, and its successors.

“Decision” means the Site Assignment Decision in the matter of W.K. Macnamara Corporation, Lot 9A, and Independence Drive dated January 31, 2006 .

“Facility” means the Devens Recycling Center, including the site, the buildings and all other improvements.

“Modified Decision” means this Major Modification to Site Assignment dated April 21, 2009.

“MSW” means useless, unwanted or discarded solid, liquid or contained gaseous material resulting from industrial, commercial, municipal or household activities that is abandoned by being disposed or incinerated or is stored, treated or transferred pending such disposal, incineration or other treatment, but does not include:

- (a) hazardous wastes as defined and regulated pursuant to 310 CMR 30.000;
- (b) sludge or septage which is land applied in compliance with 310 CMR 32.00;
- (c) wastewater treatment facility residuals and sludge ash from either publicly or privately owned wastewater treatment facilities that treat only sewage, which is treated and/or disposed at a site regulated pursuant to M.G.L. c. 83, §§ 6 & 7 and/or M.G.L. c. 21, §§ 26 through 53 and the regulations promulgated thereunder, unless the waste-water treatment residuals and/or sludge ash are co-disposed with solid waste;
- (d) septage and sewage as defined and regulated pursuant to 314 CMR 5.00, as may be amended, and regulated pursuant to either M.G.L. c. 21, §§ 26 through 53 or 310 CMR 15.00, as may be amended, provided that 310 CMR 16.00 does apply to solid waste management facilities which co-dispose septage and sewage with solid waste;

- (e) ash produced from the combustion of coal when reused as prescribed pursuant to M.G.L. c. 111, § 150A;
 - (f) solid or dissolved materials in irrigation return flows;
 - (g) source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended;
 - (h) those materials and by-products generated from and reused within an original manufacturing process;
 - (i) compostable or recyclable materials when composted or recycled in an operation not required to be assigned pursuant to 310 CMR 16.05(2) through (6); and
 - (j) waste from restaurants and grocery stores and wastes containing large concentrations of food waste from other businesses.
1. All conditions in the Decision shall apply unless otherwise modified herein. In the event of any conflict between the conditions of this Modified Decision and the conditions of the Decision, the conditions of this Modified Decision shall prevail.
 2. The Facility may receive MSW subject to the conditions in this Modified Decision. All MSW operations, handling and storage shall be conducted within the building of the Facility (the building). No burning or processing of MSW is permitted.
 3. The Applicant shall notify the DEC as soon as practicable, but in no event more than the end of the next business day, after receipt of any correspondence from a federal or state agency, alleging that the Facility is not in compliance with applicable law or regulations.
 4. The Applicant shall train all employees on the safe operation of all equipment within the Facility and maintain records of such training.
 5. Condition #8 of the Decision is modified to allow the Facility to receive a maximum of 500 tons of MSW per day of the 1500 tons per day total allowed.
 6. The Applicant shall separate the MSW and C&D tipping, handling and storage areas with an 8' high concrete block wall that runs the entire length of the MSW handling area. The Applicant shall place and maintain sorbent media (e.g., filter sock) along the base of the wall to prevent liquids from migrating into the C&D tipping, handling and storage area. The Applicant shall also install an impermeable curb or berm along the entire length of the rail/truck loading area to prevent liquids and material from escaping into the truck/rail loading area. MSW shall be unloaded and loaded in areas that are sufficiently deep in the building to reduce to the extent feasible the likelihood that windblown material will leave the building. Any liquids observed shall be contained by the use of sorbent media (i.e. Speedi-Dry) or by directing the liquids into the Facility's trench drain by manual methods (brooms, squeegees) or using the Facility's front end loader equipped with a rubber blade on the bucket. The Applicant shall maintain the truck/rail loading area free and clear of debris and liquids at all times. The Operation and Maintenance Plan for the Facility shall be updated to address these requirements. A copy shall be provided to the DEC prior to receipt by the Facility of MSW.

7. Condition #12 of the Decision is deleted and replaced with the following: The Facility shall maintain truck loading Doors 1, 6 and a third door closed at all times except when necessary for loading, unloading or maintenance activities. The Applicant shall make all reasonable efforts to include Door 2 as the third door referenced above, consistent with its operational needs. Other doors shall be closed to the maximum extent possible given that the normal operations of the Facility require consistent entrance, unloading and exiting of trucks.
8. Prior to the Facility receiving MSW the Applicant shall install a high speed roll-up door on the northwest truck egress doorway of the rail/truck loading area for purposes of loading C&D and MSW. This door shall remain closed at all times except when vehicles are leaving the building.
9. The Applicant shall continue to operate security video cameras at the Facility and preserve their images for a minimum of one week and shall allow the DEC to view these images at the Facility upon request.
10. The Applicant shall take all measures necessary to control odor from Facility operations to ensure compliance with 974 CMR 4.02, including, but not limited to augmenting the existing misting system to include odor control solutions, manual shutdown of the Facility doors and ventilation system in the event of an odorous incoming load, and maintaining a supply of odor control liquids and crystals on-site at all times for manual application. Prior to receipt by the Facility of MSW, the Applicant shall submit for review and comment by the DEC, an updated Operations and Maintenance Plan that specifically addresses these and any other additional odor control mechanisms and procedures.
11. Condition #14 of the Decision is modified to also require the Applicant to provide the DEC, prior to the Facility receiving MSW, written confirmation that the air handling and ventilation system within the Facility is properly functioning as per manufacturer's specifications. Such confirmation shall be in the form of a copy of the most recent service record and completion of any required maintenance. The Applicant shall maintain ongoing service records for the air handling and ventilation system.
12. Condition #17 of the Decision is modified to also require the Applicant to modify its current professional pest control contract to address the addition of MSW to its operations and to provide a copy of the contract to the DEC prior to receipt by the Facility of MSW. The contract shall require trained personnel who hold Pesticide Certifications/Licenses to inspect the site for vermin, including but not limited to birds, rodents, and insects at least once per week for the first three months of receipt by the Facility of MSW, and then will establish a frequency of inspection necessary to adequately control pests and take appropriate actions to eliminate the vermin immediately, to the maximum extent practicable. After the first three months, the Applicant shall submit to the DEC for its review and comment, a long-term pest control plan for MSW and C&D operations, prepared by a professional pest control

firm licensed by the Commonwealth of Massachusetts. The Applicant shall closely monitor the effectiveness of the plan and shall periodically adjust its inspection schedule and pest control activities to respond to changing MSW throughput levels and to ensure adequate pest control.

13. The Applicant shall provide to the DEC a copy of each semi-annual Facility solid waste inspection report that is completed by a registered professional engineer and submitted to the DEP as required by the Facility's DEP solid waste permit at the same time it submits such report to DEP. If the DEC hires a licensed Sanitarian to inspect the Facility to ensure compliance with the requirements of this Modified Decision, the Applicant shall reimburse the DEC for such expense up to a maximum amount of ten thousand dollars.
14. A. The Applicant shall use a first in/first out system of inventory control for MSW to ensure that each delivery of MSW is moved through the Facility as quickly as possible.
B. To the maximum extent feasible and necessary to control odors and vermin, MSW that remains in the Facility overnight shall be stored within a covered, leak and vector-proof truck or container.
C. The Applicant shall sweep and clean the portions of the tipping floor used for MSW management on at least a weekly basis, and more frequently if necessary for odor or vector control.
15. Condition #19 of the Decision shall be modified to require the Applicant to notify haulers of the preferred truck route by providing them with maps and periodically corresponding with them. For those instances when truck trips originate in the surrounding communities and utilize Verbeck Gate, the preferred route shall be Sherman Avenue to Antietam Street to Jackson Road to Barnum Road to Saratoga Boulevard to Independence Drive. An alternative route from the Ayer Traffic Circle is Barnum Road to Saratoga to Independence. The Applicant shall notify its haulers that they are to stay out of the residential areas of Devens unless making pickups on those residential streets.
16. The Applicant shall periodically (at least on a semi-annual basis) contact the State Police (for Devens) and the police departments in the three Devens communities to discuss Facility traffic patterns and any traffic concerns, and agrees to participate in any meetings that the police departments may recommend to discuss any Facility traffic concerns with residents.
17. Condition #22 of the Decision is replaced with the following: the Applicant shall enforce compliance with the Massachusetts Anti-Idling Law. The Anti-Idling Law provides that subject to certain exceptions, no vehicle may idle for more than 5 minutes.
18. All MSW handling areas in the building shall drain to the existing industrial wastewater holding tank and shall be operated in accordance with the applicable portions of 314 CMR 18.00. Under no circumstances shall interior drainage be permitted to flow outside the building. The Applicant shall ensure the industrial

wastewater holding tank vent(s) are properly equipped with all necessary odor control.

19. If the Applicant identifies haulers entering the Facility with high organic load contents of 25% or more, such loads shall be either refused or, in the case of a hauler who is already in the tipping process, the Applicant shall notify the hauler that such loads will not be accepted in the future. Applicant shall maintain records of all such actions.
20. Every calendar quarter for the first two years after accepting MSW at the Facility, the Applicant shall have an odor engineer conduct a site visit to the Facility to observe MSW operations and make written recommendations to the Applicant as to any improvements that are advisable to prevent nuisance odor conditions at the Facility. Every calendar quarter for the first two years of the Facility receiving MSW, the Applicant shall provide the DEC with a copy of such written recommendations, and shall implement those recommendations that are reasonable and feasible.
21. The Applicant shall continue to provide a designated phone line (888-399-1322) on a 24-hour basis, seven days a week, for any concerns of either customers and/or Devens residents and take immediate corrective action to address any concerns within one business day. All calls and resolutionary actions shall be recorded in a phone log, maintained by the Applicant. Such phone log shall be made available for inspection by the DEC.
22. The Applicant shall participate in any meetings with residents concerning the Facility that are held by the Devens Committee and other duly constituted Devens resident organizations and to which the Applicant is invited for purposes of ensuring there is a clear line of communication between Devens residents and the Facility.
23. Condition #16 of the Decision is modified to require the Applicant to inspect waste storage compartment(s) of all vehicles carrying MSW, to ensure all trucks entering and exiting the Facility have fully contained, leak-proof, covered storage compartments.
24. The Applicant shall conduct daily litter patrol for the Facility grounds. The Applicant is also responsible for clean-up of any off-site waste, generated from the Facility or haulers accessing the Facility.
25. The Applicant shall periodically monitor access routes that are not acceptable as per Condition #15 of this Modified Decision, to ensure that trucks accessing the Facility stay out of residential areas in Devens. A summary report shall be submitted to the DEC after the first year of MSW operations, including monitoring dates, results, list of infractions and any action(s) taken. The frequency of ongoing monitoring will be determined by the DEC based on the Applicant's initial monitoring and the complaints (if any) about the Facility operations.

26. This Modified Decision shall take effect when executed by all signatories and recorded in the Middlesex County Registry of Deeds and after a certified copy of the same from the Registry of Deeds is provided to the DEC, with all recording fees and charges paid by the Applicant. This Modified Decision may only be transferred if advance (at least thirty days) written notice is first provided to the DEC.
27. The DEC may modify, suspend or terminate this Modified Decision in accordance with the provisions of M.G.L. c. 111, Section 150 A, and 310 CMR 16.22 and further, in its discretion, may take any other enforcement or remedial action available in law or equity.
28. Prior to receipt of MSW by the Facility and throughout the operation of the Facility, the Applicant shall provide the DEC with a redacted copy of a sample pricing agreement which includes language (a) advising the haulers of the preferred Devens designated truck route (Jackson Gate from Route Two to Patton Road to Saratoga Boulevard, to Independence Drive) and (b) assures adequate availability of trucks to remove MSW from the Facility and minimizes the duration of stockpiling in accordance with this Modified Decision.

RIGHT OF APPEAL

Any person aggrieved by this decision may, within thirty (30) days of publication of the Notice of Decision, appeal under the provisions of G.L. c. 30A, § 14.

The following commissioners of the DEVENS ENTERPRISE COMMISSION, voted to APPROVE the Major Modification to Site Assignment:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The following commissioners of the DEVENS ENTERPRISE COMMISSION, voted to DENY the Major Modification to Site Assignment:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Dated this __ day of April, 2009

RECORD OF EXHIBITS

Exh #	Document	Date
1.	Decision of Devens Enterprise Commission on Site Assignment Application of W.K. Macnamara Corporation	January 31, 2006
2.	Notice of Decision for Solid Waste Facility Site Assignment by Devens Enterprise Commission	February 1, 2006
3.	Memorandum from Peter Lowitt, Devens Enterprise Commission, to W.K. Macnamara memorializing DEC's approval of name change for Site Assignment Decision and Unified Permit Record of Decision	May 31, 2006
4.	Assignment of Permits	June 9, 2006
5.	Notice of Project Change for Devens Recycling Center by ESS Group, Inc.	June 2, 2008
6.	Certificate of the Secretary of Energy and Environmental Affairs on the Notice of Project Change	July 11, 2008
7.	Letter from John Regan, Department of Environmental Protection, to W. Kurt Macnamara	October 28, 2008
8.	Application for Major Modification of Site Suitability Report and Major Modification of Site Assignment by ESS Group Inc.	October 29, 2008
9.	Letter from John Regan, Department of Environmental Protection, to W. Kurt Macnamara	August 8, 2008
10.	Determination of Administrative Completeness/Application for Site Suitability Report for a Major Modification of an Existing Site Assignment -- Devens Recycling Center	November 24, 2008
11.	Letter from Devens Enterprise Commission to John Regan, Department of Environmental Protection	December 5, 2008
12.	"Back at Junk Value, Recyclables Are Piling Up," New York Times, p. A1	December 8, 2008
13.	"Lack of green for recycling spurs some drastic steps," Boston Globe, p. 1	December 14, 2008
14.	"Recycling Firms Deal with Price Collapse," Metrowest Daily News	December 28, 2008
15.	Memorandum from Stantec Consulting Services, Inc. to Peter Lowitt, Devens Enterprise Commission	December 15, 2008
16.	Letter from ESS Group, Inc. Regarding Proof of Public Notifications	December 24, 2008

17.	Abutter letter of support from Kenco Logistic Services	January 13, 2009
18.	Letter from People of Ayer Concerned About the Environment to John Regan, Department of Environmental Protection	January 20, 2009
19.	Customer letter of support from Mitrano Removal Service LLC	January 26, 2009
20.	Abutter letter of support from Integra Companies	January 30, 2009
21.	Letter from ESS Group, Inc. to John Regan, Department of Environmental Protection	February 3, 2009
22.	Letter from Tech Environmental, Inc. to Kurt Macnamara	February 12, 2009
23.	Abutter letter of support from NFI	February 16, 2009
24.	Abutter letter of support from Equity Industrial Partners Corp. to Peter Lowitt, Devens Enterprise Commission	February 18, 2009
25.	Abutter letter of support from RockTenn	date unknown
26.	Customer letter of support from All State Waste, Inc.	date unknown
27.	Prehearing Order	February 20, 2009
28.	Memorandum from ESS Group, Inc. to Ronald Headrick, Stantec Consulting Services	February 24, 2009
29.	Devens Recycling Center, LLC's Objection To Use Of DEC Site Assignment Rules	February 24, 2009
30.	Customer letter of support from G.W. Shaw & Son, Inc.	February 24, 2009
31.	Report on Suitability – Devens Recycling Center, Transmittal No. X224311, BWP SW 38, Application for Site Suitability Report for a Major Modification of an Existing Site Assignment	February 27, 2009
32.	Devens Enterprise Commission Response to Devens Recycling Center, LLC's Objection to Application of 974 CMR 8.03	March 6, 2009
33.	Proof of Public Notice of Site Assignment Hearing Under 310 CMR 16.20(7)(b)	Various
34.	Affidavit of Dammon M. Frecker Exh. A: Resume Exh. B: Air Quality Study for W.K. Macnamara C&D Material Recycling Facility, Devens, Massachusetts, by Tech Environmental, Inc. (December, 2005) Exh. C: Noise Data	March 17, 2009

35.	Affidavit of John J. Manning Exh. A: Resume	March 17, 2009
36.	Affidavit of Eric B. Eby, P.E. Exh. A: Resume Exh. B: Sections 3.2.2, 3.2.2.1, and 3.2.2.2 of Site Suitability Report Application dated July 18, 2005 Exh. C: Sections 5.1, 5.2, and 9.4 of Single Environmental Impact Report for Construction & Demolition Material Recycling Facility dated September 29, 2005	March 17, 2009
37.	Affidavit of Michael T. Lannan, P.E. Exh. A: Resume Exh. B: Odor Modeling Report by Tech Environmental, Inc. dated March 9, 2009	March 17, 2009
38.	Notice of Appearance of Beveridge & Diamond, P.C. on behalf of Devens Recycling Center, LLC	March 18, 2009
39.	Memorandum from Vollmer Associates LLP to Peter Lowitt, Devens Enterprise Commission	January 3, 2006
40.	Memorandum to Peter Lowitt, Director-Devens Enterprise Commission, from Ronald Headrick, Stantec, Joseph Uglevich, Stantec, and Douglas Sheadel, CCM, Modeling Specialties	March 20, 2009
41.	Affidavit of Ronald Headrick Exh. A: Resume	March 20, 2009
42.	Affidavit of Joseph Uglevich Exh. A: Resume	March 20, 2009
43.	Affidavit of Douglas L. Sheadel Exh. A: Resume Enclosed: Memo re: Noise Analysis Support in the Matter of Devens Recycling Center, LLC dated March 20, 2009; Noise Data DVD/Noise Data CD March 20, 2009	March 20, 2009
44.	Letter from Judy Cohen to Peter Lowitt, Devens Enterprise Commission	December 30, 2008
45.	Stipulation Concerning Expert Qualifications	March 24, 2009
46.	Advisory Ruling	March 25, 2009
47.	Letter from Devens Recycling Center, LLC to John F. Shea, Hearing Officer	March 31, 2009

48.	Memorandum and Order	March 31, 2009
49.	Letter from Peter Lowitt, Devens Enterprise Commission, to Kurt Macnamara	April 3, 2009
50.	Applicant's Proposed Conditions for Site Assignment Modification	April 6, 2009
51.	Order on Status of Participants	April 7, 2009
52.	Letter from Christopher and Rachele Brown <i>[Accepted into the record but not as evidence by order of the Hearing Officer]</i>	April 7, 2009
53.	Materials submitted by Denise Saroff during public participation comments	Submitted April 7, 2009