



*The Commonwealth of Massachusetts*  
*Executive Office of Energy and Environmental Affairs*  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Charles D. Baker  
GOVERNOR

Karyn E. Polito  
LIEUTENANT GOVERNOR

Matthew A. Beaton  
SECRETARY

Tel: (617) 626-1000  
Fax: (617) 626-1081  
<http://www.mass.gov/eea>

October 6, 2017

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
NOTICE OF PROJECT CHANGE

PROJECT NAME : Daley Development  
PROJECT MUNICIPALITY : Lee  
PROJECT WATERSHED : Housatonic  
EEA NUMBER : 14764  
PROJECT PROPONENT : Bad Boys Realty Trust, Inc. (formerly Robert Daley)  
DATE NOTICED IN MONITOR : August 23, 2017

Pursuant to the Massachusetts Environmental Policy Act (MEPA; M.G. L. c. 30, ss. 61-62I) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) and hereby determine that the project **requires** a Mandatory Environmental Impact Report (EIR). The Proponent should submit a Draft EIR (DEIR) in accordance with the Scope below. Comments from State Agencies and other stakeholders identify additional information required to identify potential impacts and to determine the project's consistency with regulatory criteria. Comments from the Berkshire Regional Planning Commission (BRPC) identify concerns regarding nuisance and public health impacts associated with receiving and handling Municipal Solid Waste (MSW) and Construction & Demolition (C&D) debris. I note that the Massachusetts Department of Environmental Protection's (MassDEP) Site Assignment Regulations for Solid Waste Facilities (310 CMR 16.00) and Solid Waste Regulations (310 CMR 19.00) require that facilities be designed and constructed to prevent pollution of land, air and water, and to prevent the creation of nuisance conditions. The Scope for the DEIR requires that the Proponent provide additional information that addresses the applicable Site Assignment and Solid Waste regulatory approval criteria to support MassDEP review and permitting.

### Project Change Description

The original project consisted of the phased construction of a 35,100-square foot (sf) light-industrial development comprised of four buildings. The NPC identifies changes to the building program and land use. Specifically, the NPC proposes the construction of a two-story 20,000-sf structure to house a solid waste processing and transfer station (the "facility"). The Proponent will install equipment in the structure to separate and process up to 249 combined tons per day (tpd) of MSW and C&D waste. The facility will be co-located adjacent to an existing structure that accepts 50 tpd of source-separated recyclable materials and Asphalt, Brick, and Concrete (ABC) waste.

As described in the NPC, the ground-floor of the facility will include a tipping floor and a hopper which will feed a mixed-waste conveyer belt on the second floor of the facility. The mixed-waste conveyor belt will run through a gallery where recyclable material will be manually separated from the mixed-waste stream and temporarily stored on-site then transported to various markets on an as-needed basis. The NPC indicates that C&D materials will be received and processed in the facility. An area at the rear of the facility will be reserved for future installation of a shredder/bailer. Recyclable clean wood and metal and ABC materials will be separated from the C&D waste stream. The sorted ABC materials will be transferred to the adjacent RCC facility and other recyclable materials and residuals will be temporarily stored on-site and transported off-site for disposal or to various markets.

### Original Project and Procedural History

A Certificate on the Environmental Notification Form (ENF) was issued on September 16, 2011 and indicated that the project did not require the submission of an EIR. As described in the ENF, the project included the phased construction of a light-industrial development comprised of four structures within a 4.98-acre portion of the site. Phase I include construction of two light industrial buildings (5,400 sf and 10,800 sf), 45 parking spaces, site grading, landscaping, underground utilities, stormwater management infrastructure, and an access drive. Phase II included construction of two additional light industrial buildings (8,100 sf and 10,800 sf) and 38 parking spaces. The ENF indicated that the Proponent intended to relocate their existing trucking business to the site. The impact calculations provided in the ENF assumed Phase I would be used as an industrial park with an automotive care facility and Phase II would be developed as a business park use.

The NPC indicates that only one structure (10,800-sf) identified in Phase I has been constructed to-date. As described in the NPC, the project site contains a Recycling, Composting, and Conversion (RCC) facility and a trucking yard and staging area for a solid waste hauler. A RCC facility was not identified in the ENF as a proposed use nor was the need for a RCC Permit from MassDEP identified. The NPC indicates that the existing RCC facility and proposed 20,000 sf solid waste processing and transfer station facility represents full buildout of the site; the other structures and uses identified in the ENF are no longer proposed.

### Project Site

The 15.43-acre project site is located at 1185 Pleasant Street (Route 102) in Lee. The site is generally bounded by Route 102 to the north, a paper manufacturing plant to the east, the Housatonic River to the south, and a residential parcel to the west. The entire site is located in Priority and/or

Estimated Habitat as mapped by the Division of Fisheries and Wildlife's (DFW) Natural Heritage and Endangered Species Program (NHESP). The site is not located within an Area of Critical Environmental Concern (ACEC) and it does not contain any structures listed in the State Register of Historic Places or the Massachusetts Historical Commission's (MHC) Inventory of Historic and Archaeological Assets of the Commonwealth.

### Environmental Impacts and Mitigation

The project change will increase impervious area by 11,325 sf (from 2.35 acres to 2.61 acres). It will not increase land alteration compared to the project as previously reviewed. It will reduce water demand by approximately 1,740 gallons per day (gpd) (200 total gpd proposed) reduce wastewater generation by 1,130 gpd (190 total gpd proposed), and will eliminate 38 parking spaces (45 total spaces proposed) compared to the project as previously reviewed. Total site build-out will be reduced from 35,100 sf to 30,800 sf. The NPC indicates that it will decrease traffic generation compared to the project as last reviewed. The project site is located within mapped rare-species habitat area. The project will accept and process up to 249 tpd of combined MSW and C&D. Greenhouse gas (GHG) emissions are associated with the project's energy use (heating, cooling, processing equipment, etc.) and transportation.

Phase 1 required the permanent protection of 10.45 acres of rare species habitat area and installation of exclusion fencing around the perimeter of the 4.98-acre developable area. Other measures to avoid, minimize, and mitigate project impacts include the use of erosion and sedimentation controls, siting the project on a previously altered site, and performing all processing activities within the metal building.

### Jurisdiction and Permitting

The project originally underwent MEPA review pursuant to Section 11.03(2)(b)(2) of the MEPA regulations because it required State Agency Actions and would result in greater than 2 acres of disturbance of designated Priority habitat that results in a "take" of a state-listed species of Special Concern. The project required a Vehicular Access Permit from the Massachusetts Department of Transportation (MassDOT) as the site abuts and will be accessed from Route 102, a state-controlled roadway. According to the NPC, the Vehicular Access Permit was issued by MassDOT on February 3, 2012. It also required a Conservation and Management Permit (CMP) from NHESP which was issued on March 22, 2012.<sup>1</sup> The ENF did not identify a MassDEP RCC Permit and the Proponent did not consult with the MEPA Office regarding whether a NPC should be filed for the proposed RCC facility and associated Permit. MassDEP issued a RCC Permit on May 8, 2014 authorizing the acceptance of 50 tpd of source-separated recyclable materials and ABC waste.

The project required an Order of Conditions from the Lee Conservation Commission and a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (EPA).

---

<sup>1</sup> The ENF Certificate erroneously indicated that the Project required a 401 Water Quality Certification (WQC) from the Massachusetts Department of Environmental Protection (MassDEP).

The project, as currently proposed and described in the NPC, is subject to a mandatory EIR as a stand-alone project pursuant to Section 11.03(9)(a) because it requires a new State Agency Action that will create New Capacity for the processing of 150 or more tpd of solid waste.<sup>2</sup> The NPC indicates the facility will accept and process a combined tonnage of 249 tpd of MSW and C&D waste. The project changes require a Determination of Site Suitability (BWP SW 01), a Solid Waste Handling Facility Permit including an Authorization to Construct (ATC) (BWP SW 05) and an Authorization to Operate (ATO) (BWP SW 06) a Large Handling Facility, from MassDEP. The project change will also require a Site Assignment from the Lee Board of Health. Because it requires an EIR, the project is subject to review in accordance with the MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol. The NPC indicates the project may require an Access Permit from MassDOT and a new CMP from NHESP. The NPC indicates that the Proponent anticipates issuance of a Negative Determination of Applicability from the Lee Conservation Commission.

Because the project is not seeking Financial Assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required, or potentially required, State Agency Actions and that may cause Damage to the Environment as defined in the MEPA regulations. The subject matter of the Site Assignment regulations is sufficiently broad to confer the equivalent of broad scope jurisdiction over the potential environmental impacts of the project. Therefore, MEPA jurisdiction is broad in scope and extends to all aspects of a project that are likely, directly or indirectly, to cause Damage to the Environment, as defined in the MEPA regulations.

## SCOPE

### General

The DEIR should follow Section 11.07 of the MEPA regulations for outline and content, as modified by this Scope.

### Project Description and Permitting

The DEIR should include a detailed project description including construction components such as site preparation and staging. It should describe any changes to the project since the filing of the NPC and provide revised plans which clearly identify conditions of the site prior to construction of the RCC facility, conditions of the site now and proposed conditions. The plans should identify existing and proposed stormwater infrastructure, on-site traffic flow/truck circulation routes, areas with a conservation restriction, and wetland resource areas. The DEIR should clarify whether MSW is currently permitted and/or stored at the site.

The DEIR should provide a brief description and analysis of applicable statutory and regulatory standards and requirements, and describe how the project will meet those standards. The DEIR should include a list of required permits and approvals and provide an update on the status of each permit and/or approval.

---

<sup>2</sup> The NPC indicated that the project change meets/exceeds the Solid Waste ENF threshold at 301 CMR 11.03(9)(b)(1) but it did not indicate that the project meets/exceeds an EIR threshold.

### Alternatives Analysis

The NPC indicates that co-locating the proposed facility with the existing RCC facility will allow the processed C&D material to be sent from the proposed facility directly to the adjacent RCC facility for recycling. The NPC indicates that this eliminates the need to transport processed material off-site for further recycling which reduces fuel consumption and vehicle travel time. The NPC did not identify any additional locations that were considered for development. The NPC indicates that the proposed location and orientation of the facility on the project site were determined based on on-site traffic flow, operational and space requirements of the RCC facility, aesthetics, and site grades. The NPC specifically identified site topography as a significant constraint which dictated the location of the facility within the site. The NPC indicates that the building location was selected as it reduces the amount of cut and fill required to construct the 13-ft “drop wall” between the tipping floor and transfer trailer loading bay. The NPC did not provide a comparison of environmental impacts or project plans to support selection of the Preferred Alternative.

The DEIR should provide an expanded alternative analysis to support identification of the Preferred Alternative. As discussed below, comments from MassDEP indicate that the project may require a Waiver from Site Suitability criteria. The DEIR should provide an expanded alternative analysis to support the Waiver request that evaluates the following: 1) an on-site alternative which complies with all Site Suitability criteria; 2) an on-site alternative that reduces impacts to agricultural soils and increases the property line setback; and 3) a Preferred Alternative. The DEIR should identify impacts of each alternative on creation of impervious area, wetland resource areas, parking, the amount of cut/fill, and distance to sensitive receptors. The DEIR should provide a comparison of project impacts in a tabular format with supporting narrative and conceptual site plans.

### Solid Waste

Because project development is in the conceptual stage, the Proponent should meet with MassDEP to discuss the project’s permitting requirements and applicable regulatory standards prior to preparing and filing the DEIR. The facility will accept a combined tonnage of 249 tpd. The DEIR should clarify whether the balance of the 249 tpd will be fluid or whether a tonnage limit will be determined for each waste stream. If fluid, the DEIR should identify factors that will influence the waste stream. The DEIR should include site plans and conceptual floor plans that identify the proposed process line and equipment. It should include a supporting narrative that describes the proposed operations and how the combined MSW and C&D will be received, processed, stored, and transported off-site in a manner that prevents potential nuisance conditions, including noise, dust, and odors. This narrative should also address how the project will comply with the waste ban provisions of the Solid Waste Regulations. The DEIR should clarify whether organics (food waste) will be sorted from the waste stream, and if so, it should describe how this will occur and identify mitigation measures to address potential impacts. The NPC indicated that an area at the rear of the facility will be reserved for future installation of a shredder/bailer. This area should be depicted on project plans. The DEIR should explain how this equipment would be incorporated into the process line and should clarify the determining factors and timeline for making this decision.



The NPC included a narrative that briefly addressed the Site Assignment and Solid Waste regulatory approval criteria. The suitability criteria established in the Site Assignment Regulations are intended to protect public health, safety, and the environment by requiring that minimum distances be maintained from drinking water supplies, residences, hospitals, schools, and other sensitive receptors. Suitability criteria are also intended to address concerns over traffic, air quality, and potential nuisances.

The NPC indicates that the project does not require any Waivers from the Site Suitability criteria. I refer the Proponent to comments from MassDEP which indicate that the project appears to require waivers from the agricultural land (310 CMR 16.40(4)(a)(1)) and property line setback (310 CMR 16.40(4)(h) criteria. The DEIR should expand on the information provided with the NPC and should identify and describe the project's consistency with each of the applicable Site Assignment and Solid Waste regulatory approval criteria. If applicable, it should identify whether the Proponent intends to request a waiver of any Site Suitability Criteria identified at 310 CMR 16.40. The expanded narrative should include supporting plans and figures that depict the proposed facility and identify the required setback distances to property lines, conservation land, sensitive receptors, and other resource areas identified in the Site Suitability Criteria. The alternatives analysis provided in the DEIR should be used to support any waiver requests. I refer the Proponent to MassDEP's comment letter for additional guidance on this issue.

The DEIR should also identify mitigation measures and Best Management Practices (BMPs) that have been incorporated into the project design to minimize potential impacts to the site and surrounding environment, including but not limited to potential impacts associated with noise, litter, and odors. The DEIR should clarify whether an odor control system will be installed in the structure and should identify any air quality permits that may be required.

### Transportation

The NPC indicates that trip generation for the project change was derived from the Institute of Transportation Engineers (ITE) Trip Generation manual using Land Use Code (LUC) 030 (Truck Terminal) which was applied to the 2.4 acres of impervious surface at the site. Comments from MassDEP and MassDOT request additional information to support the trip generation calculations. The DEIR should include a traffic study, or at a minimum, it should provide supporting calculations and data to support the trip generation numbers. The estimated trip generation should be based on the proposed use and tonnage to demonstrate the project won't impair existing conditions or level-of-service along Route 102, a state-jurisdictional roadway. This information should also address the requirements of 310 CMR 16.40(4)(b). The DEIR should address vehicle queuing and idling and include figures that identify on-site truck circulation and flow patterns for the proposed facility and RCC facility. The DEIR should clarify whether the project will improve or modify the access driveway to Route 102. If proposed, the Proponent should consult with MassDOT to determine if a new or modified Access Permit is required.

### Greenhouse Gas Emissions

The project is subject to review under the May 5, 2010 MEPA Greenhouse Gas Emissions Policy and Protocol ("the Policy") because it requires an EIR. The DEIR should include an analysis of GHG emissions and mitigation measures in accordance with the standard requirements of this Policy. The Policy requires projects to quantify carbon dioxide (CO<sub>2</sub>) emissions and identify measures to avoid,

minimize, or mitigate such emissions. The analysis should quantify the direct and indirect CO<sub>2</sub> emissions associated with the project's energy use (stationary sources) and transportation-related emissions (mobile sources). Direct stationary source CO<sub>2</sub> emissions include those emissions from the facility itself, such as boilers, heaters, and internal combustion engines. Indirect stationary source CO<sub>2</sub> emissions result from the consumption of electricity, heat, or other cooling from off-site sources, such as electrical utility or district heating and cooling systems. Mobile CO<sub>2</sub> emissions include those emissions associated with vehicle use by employees, vendors, visitors, and others. The DEIR should identify and commit to mitigation measures to reduce GHG emissions. The Proponent should refer to the Policy for additional guidance on the GHG analysis.

The project will facilitate the reuse and recycling of C&D materials. I note that a general benefit of diverting waste from landfills and re-use of material would provide a reduction in CO<sub>2</sub> emissions.

### *Stationary Sources*

The DEIR should include a GHG analysis that calculates and compares GHG emissions associated with 1) a Base Case corresponding to the 8<sup>th</sup> Edition of the Massachusetts Building Code with amendments and 2) a Preferred Alternative that achieves greater reductions in energy use and GHG emissions than required by the Building Code. The 8<sup>th</sup> Edition of the Building Code incorporates the building energy provisions of the International Energy Conservation Code (IECC) 2015, which references the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) 90.1-2013 standards. MEPA, and the Department of Energy Resources (DOER) staff are available to assist with these efforts and the Proponent should consult with them regarding the analysis prior to submission of the DEIR. The GHG analysis should model energy use, emissions, and mitigation measures associated with the project in accordance with the GHG Policy and the DOER comment letter.

The GHG analysis should clearly demonstrate consistency with the objectives of MEPA review, one of which is to document the means by which Damage to the Environment can be avoided, minimized, and mitigated to the maximum extent feasible. The Proponent should identify the model used to analyze GHG emissions, clearly state modeling assumptions, explicitly note which GHG reduction measures have been modeled, and identify whether certain building design or operational GHG reduction measures will be mandated by the Proponent to future occupants or merely encouraged for adoption and implementation. The DEIR should include the modeling printout for each alternative and emission tables that compare base case emissions in tons per year (tpy) with the Preferred Alternative showing the anticipated reduction in tpy and percentage by emissions source (direct, indirect and transportation). The DEIR should identify conditioned and unconditioned spaces within the structure.

The DEIR should present an evaluation of mitigation measures outlined in the comments from the Department of Energy Resources (DOER). In particular, the feasibility of each of the mitigation measures outlined below should be assessed for the proposed structure and, if feasible, GHG emissions reduction potential associated with major mitigation elements should be evaluated to assess the relative benefits of each measure. The GHG evaluation should be based on the proposed tonnage (249 tpd) and anticipated hours of operation and recycling/processing equipment run-times. Separate calculations and documentation should be provided to demonstrate the GHG reductions for those measures which cannot be incorporated into the model (such as recycling and processing equipment).

- Install high-efficiency HVAC systems;
- Install energy efficient lighting, both exterior and interior, and incorporate reduced lighting power density (LPD);
- High efficiency motors and variable frequency drives (VFD) or soft-start motor drives on recycling and processing equipment;
- Translucent wall panels and skylights to maximize natural/day lighting;
- Lighting controls to reduce electricity use during daylight conditions;
- Use of infrared heating system in any semi-heated process areas;
- Energy Star rated appliances in office/kitchen areas;
- Use of high-albedo roofing materials; and
- Purchase of green power.

The DEIR should explain, in reasonable detail, why certain measures, which could provide significant GHG reductions, were not selected – either because it is not applicable to the project or is considered technically or financially infeasible.

The project may lend itself to implementation of renewable energy technologies to reduce project-related GHG emissions. As recommended by DOER, at a minimum, the DEIR should analyze the use of rooftop solar photovoltaics (PV). The solar feasibility analysis should consider the benefits of varying ownership structures (i.e., outright ownership or third party lease). The Proponent should contact the MEPA office or DOER for recently updated information on solar installation costs and a solar financial modeling spreadsheet to develop this analysis. The analysis should:

- Include a cost analysis (based on a solar PV system sized for the maximum available usable roof area) to determine the overall financial feasibility of installation of solar, including potential payback periods;
- Propose an installation that can be supported by the maximum available usable roof area (excluding areas dedicated for mechanical equipment) on the building;
- State the assumed panel efficiency;
- Estimate electrical or thermal output of the potential system; and
- Estimate annual GHG reductions due to the use of renewable energy versus electricity or natural gas.

If the Proponent determines that implementation of solar PV is not feasible the analysis should include:

- A commitment to construct the project as “solar-ready”. At a minimum, this commitment should include design of a structure capable of supporting solar-related infrastructure. Such a commitment may also include provision of interconnection and inverter equipment, or other design features to facilitate future solar installations.
- Completion of cost analysis to determine the overall financial feasibility of installation of solar, including potential payback periods.
- Discussion of environmental constraints (shading, presence of wetlands, etc.) limiting the application of solar on-site.



I encourage the Proponent to consider design options that will allow for cost-effective integration of efficiency or renewable energy measures in the future when such measures may become more financially or technically feasible.

As recommended by DOER, the DEIR should also thoroughly analyze the feasibility and benefits of incorporating cold climate air source heat pumps (ccASHP) with variable refrigerant flow (VRF) and should document the expected energy savings and reduction in GHG emissions from this technology. The analysis should include a narrative and data to support the Proponent's adoption (or dismissal) of ccASHPs as a feasible measure to avoid, minimize or mitigate project-related GHG emissions and Damage to the Environment. The DEIR should also include an analysis of Alternative Energy Credits (AEC), MassCEC grants (MCEC), and other incentives for implementing on-site renewable energy generation and evaluate the applicability of the incentive programs to the project.

### *Mobile Sources*

The GHG analysis should include an evaluation of the potential GHG emissions of the project's mobile emissions sources using the EPA MOVES emissions model. The DEIR should follow the guidance provided in the Policy for Indirect Emissions from Transportation and use data gathered as part of the traffic study to determine mobile emissions for Existing Conditions, and Future Conditions.

### Rare Species

The project site is located within mapped Priority Habitat for rare species. NHESP issued a CMP for the project (as described in the ENF) on March 22, 2012. The project changes must comply with the conditions of the existing CMP. The CMP required that a NHESP-approved permanent fence be installed around the perimeter of the 4.98-acre developable area. The NPC indicates that all work associated with the project change will occur within this fenced area. The DEIR should identify and address compliance with any other applicable conditions of the existing CMP and Conservation Restriction conditions. As requested by MassDEP, the Proponent should consult with NHESP to determine whether the project changes will require a new or modified CMP. The DEIR should identify any changes to the CMP that may be necessary to address the proposed change in land use to a solid waste processing and transfer station facility.

### Wetlands/Stormwater

According to the NPC, the project will not directly impact wetland resource areas. The NPC indicated that the project requires a Negative Determination of Applicability from the Lee Conservation Commission. The DEIR should provide an update on this process, clarify how wetland resource areas were identified, and provide plans that depict wetland resource areas on existing and proposed conditions plans. The DEIR indicated that leachate and/or surface runoff will not enter ground or surface waters. The DEIR should describe how leachate collected in the facility will be kept separate from the stormwater management system. The DEIR should clarify whether the project will result in changes to site drainage or topography. Given the site's proximity to the Housatonic River, the DEIR should describe the existing and proposed stormwater management plan, including connection points to off-site stormwater conveyance infrastructure and Best Management Practices (BMPs).

### Hazardous Waste

I refer the Proponent to MassDEP's comment letter which indicates the site may contain polychlorinated biphenyls (PBCs) due to its proximity to the Housatonic River. The DEIR should include an update on sampling or site assessment activities that have occurred since the NPC was filed and should propose mitigation measures as appropriate. As requested by MassDEP, the Proponent should consult with the US EPA to determine whether the project site is located within the area subject to Resource Conservation & Recovery Act (RCRA) Corrective Action for the GE/Housatonic River site pursuant to a final Consent Decree. The DEIR should provide an update on this consultation. I refer the Proponent to MassDEP's comment letter for additional guidance on these issues.

### Construction Period Impacts

The DEIR should describe proposed construction management components including site preparation and staging, hazardous and solid waste management, and implementation of measures to control construction traffic, noise, and air quality impacts. The Proponent should commit to emission controls that will be used for all on-site construction vehicles and should provide a discussion on using construction equipment with engines manufactured to Tier 4 federal emission standards or best available control technology (BACT). I remind the Proponent that US EPA has mandated that Ultra Low Sulfur Diesel (ULSD) fuel be used in all off-road construction equipment. and include this as a mitigation measure in its Section 61 findings. The DEIR should also address how the project will comply with the Massachusetts Idling regulation at 310 CMR 7.11.

### Mitigation and Draft Section 61 Findings

The DEIR should provide a separate chapter summarizing proposed mitigation measures including draft Section 61 Findings for each anticipated State Agency Action. The DEIR should contain clear commitments to implement these mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and include a schedule for implementation.

In order to ensure that all GHG emissions reduction measures adopted by the Proponent are actually constructed or performed by the Proponent, the Secretary requires proponents to provide a self-certification signed by an appropriate professional (e.g., engineer, architect, transportation planner, general contractor) to the MEPA Office indicating that all of the required mitigation measures, or their equivalent, have been completed. The certification should be supported by plans that clearly illustrate where GHG mitigation measures have been incorporated. For those measures that are operational in nature (i.e. TDM, recycling), the Proponent should provide an updated plan identifying the measures, the schedule for implementation and how progress towards achieving the measures will be obtained. The DEIR should indicate whether this Certification will be provided in phases upon completion of each landfill expansion area. The commitment to provide this self-certification in the manner outlined above should be incorporated into the draft Section 61 Findings included in the DEIR.

Response to Comments

The DEIR should contain a copy of this Certificate and a copy of each comment letter received. In order to ensure that the issues raised by commenters are addressed, the DEIR should include direct responses to comments to the extent that they are within MEPA jurisdiction. This directive is not intended to, and shall not be construed to enlarge the scope of the DEIR beyond what has been expressly identified in this certificate. I recommend that the Proponent use either an indexed response to comments format, or a direct narrative response.

Circulation

In accordance with Section 11.16 of the MEPA Regulations and as modified by this Certificate, the Proponent should circulate a copy of the DEIR to each State and Municipal Agency from which the Proponent will seek permits and to all other parties that submitted individual written comments on the NPC. A CD-ROM copy of the filing should also be provided to the MEPA Office. A copy of the DEIR should be made available for review at the Lee Public Library.

October 6, 2017  
Date

  
Matthew A. Beaton

Comments received:

- 09/21/2017 Massachusetts Department of Environmental Protection (MassDEP)
- 09/22/2017 Lenox Valley WTF, LLC
- 09/25/2017 Berkshire Regional Planning Commission (BRPC)
- 09/26/2017 Massachusetts Department of Transportation (MassDOT)
- 10/03/2017 Department of Energy Resources (DOER)

MAB/PRC/prc



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

September 21, 2017

Matthew A. Beaton, Secretary  
Executive Office of Energy & Environmental Affairs  
Massachusetts Environmental Policy Act Office  
Page Czepiga, EEA No. 14764  
100 Cambridge Street, 9<sup>th</sup> Floor  
Boston, MA 02114-2524

Re: Daley Development NPC  
Lee, MA

Dear Secretary Beaton,

The Massachusetts Department of Environmental Protection (MassDEP), Western Regional Office (WERO) appreciates the opportunity to comment on the Notice of Project Change (NPC) submitted for the proposed Daley Development (EEA #14764) in Lee. Applicable MassDEP regulatory and permitting considerations regarding wetlands, air pollution, hazardous waste, waste site cleanup and solid waste are discussed.

### I. Project Description

The proposed project change consists of the construction of a transfer station that will accept Municipal Solid Waste (MSW) and Construction and Demolition (C&D) waste. The proposed transfer station would be "co-located" with the existing Recycling, Composting or Conversion (RCC) facility that currently accepts asphalt, brick, and concrete (ABC) waste. The proposed facility would receive a total of 249 tons per day (tpd) of combined waste. Proposed C&D materials received would be processed in the transfer station building. Metal and wood materials will be sorted from the C&D waste stream. Non-recyclable C&D materials and MSW are proposed to be transferred to a properly permitted offsite disposal facility.

### II. Required Mass DEP Permits and/or Applicable Regulations

#### Wetlands

310 CMR 10.000

#### Wastewater

314 CMR 7.00 and 12.000

#### Drinking Water

310 CMR 10.00

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)

Printed on Recycled Paper

Air Pollution  
310 CMR 7.00  
Hazardous Waste  
310 CMR 30.0000  
Solid Waste  
310 CMR 19.00  
Bureau of Waste Site Cleanup  
310 CMR 40.0000

III. **Permit Discussion**

**Bureau of Water Resources**

MassDEP has no additional comments; all previous comments regarding Wetlands and Drinking Water remain valid.

**Bureau of Air and Waste**

**Air Pollution Control**

The NPC states that the proponent will implement measures to mitigate dust, noise, and odors that may be generated during the operation of the facility. The proponent should consider the installation of an air handling and odor control system for the Solid Waste Processing building.

**Solid Waste Management**

The NPC proposes to construct and operate a solid waste processing and transfer station (the "Facility") onsite which would accept, store, process, handle and transfer MSW and C&D waste. The NPC proposes that the total permitted daily solid waste tonnage limit (i.e., the total of MSW and C&D waste) for the Facility would be 249 tpd. The proposed 249 tpd appears to be new capacity, as there is no existing, approved solid waste capacity at the site. The proposed Facility appears to be a solid waste handling facility, as defined by MassDEP regulations at 310 CMR 16.02. The NPC correctly states that a Site Assignment (BWPSW01) and an Authorization to Construct a Large Handling Facility (BWPSW05) will be required. In addition, an Authorization-to-Operate a Large Handling Facility (BWPSW06) permit will be required.

The proposed Facility must meet the criteria contained in the Massachusetts Solid Waste regulations, i.e. the Site Assignment review criteria at 310 CMR 16.40(3)(d) – Criteria for Solid Waste Handling Facilities and 310 CMR 16.40(4) – General Site Suitability Criteria; as well as the Authorization-to-Construct (ATC) review criteria at 310 CMR 19.038. MassDEP has identified the following issues which need to be resolved prior to the submittal of any permit application for Site Assignment or a Facility Permit.

1. **Agricultural Land:** The NPC states on page 7 that the area of solid waste transfer is not classified as agricultural land. MassDEP site assignment criteria (stated in MassDEP regulations at 310 CMR 16.40(4)(a)(1)) require that MassDEP, when reviewing a site assignment application, consider whether the "land is classified as Prime, Unique, or of State and Local Importance by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS)... and whether a 100-

foot buffer would ... be present between the facility and those lands [so] classified." Based on the NRCS web soil survey, it appears that a majority of the proposed area is in fact classified as "Farmland of Statewide Importance." The applicant would need to submit information about the soil for review and analysis during the MassDEP site assignment process. The Proponent would need to either apply for a waiver of this criteria, as outlined at 310 16.40(6), or provide sufficient documentation for MassDEP to determine the NRCS soil classification.

2. **Property Line Setback:** The NPC states that the proposed solid waste handling area will be within 40 feet of the property line. This would require a waiver of the criteria at 310 CMR 16.40(4)(h), which requires a 100-foot setback from the proposed solid waste handling area to the property line.
3. **Waivers:** The Proponent will need to evaluate the availability of alternative suitable sites in the municipality and/or facility design modifications which would eliminate the need for the waivers as outlined above.
4. **Endangered Species:** The NPC states that the Facility will not have an impact on Endangered Species. MassDEP notes that the Facility must comply with the Conservation Restriction in place for the property (Book 4930, page 223 at the Berkshire County Registry of Deeds) and the Massachusetts Division of Fisheries & Wildlife (DFW) Conservation & Management permit, dated May 22, 2012. The DFW permit requires that, for any proposed changes at the property, the permittee must submit a written request to DFW as to whether the proposed changes are significant enough to require the filing of a new Conservation & Management permit.
5. **Traffic:** The NPC states that traffic impacts will meet the requirements of 310 CMR 16.40(4)(b). A more thorough evaluation of traffic impacts should be conducted prior to the submittal of any application.
6. **Nuisance odors and dust:** The Proponent has proposed to install building doors, and a building ventilation system. As part of permitting, MassDEP may require installation and operation of an odor control system as part of the building ventilation system, and may require submittal of an Air Quality Permit application for the Facility.
7. **Wastewater/Stormwater:** MassDEP will require that all water which comes into contact with solid waste be collected as wastewater and directed to the sanitary sewer system. MassDEP will require that the stormwater control system for the facility meets the requirements of 314 CMR 18.00.
8. **Waste Ban Compliance:** Daley will need to demonstrate as part of the Operations & Maintenance (O&M) plan for the Facility, that the waste ban plan for the facility will ensure that waste ban procedures for C&D and MSW loads are followed in accordance with current MassDEP regulations, policies and guidance.
9. **Facility Building:** MassDEP will require that the Operations & Maintenance Plan for the Facility describe how the Facility will effectively manage C&D and MSW within the Facility building.



**Bureau of Waste Site Cleanup**

There are no new identified disposal sites governed by the Massachusetts Contingency Plan (M.G.L. c. 21E; CMR 310 40.0000) within the area of the project site since MassDEP's comments on the Environmental Notification Form, dated September 12, 2011. However, because of the project's location in close proximity to the Housatonic River, the Proponent should evaluate whether soil contaminants, particularly polychlorinated biphenyls (PCBs), are present within the project area. The detection of soil contaminants may be subject to the Massachusetts Contingency Plan (MCP) or RCRA Corrective Action for the GE/Housatonic River site pursuant to a final Consent Decree (United States et al. v. General Electric Company). The Proponent is responsible to comply with all applicable provisions of the MCP, including release notification. MassDEP staff are available for guidance.

In addition, prior to project initiation, the proponent should consult with the United States Environmental Protection Agency (USEPA) to confirm that the project is not within the area subject to RCRA Corrective Action for the GE/Housatonic River site pursuant to a final Consent Decree (United States et al. v. General Electric Company). USEPA's contact for the GE/Housatonic River site is Dean Tagliaferro, U.S. Environmental Protection Agency, EPA New England, 5 Post Office Square Suite 100, Boston, MA 02109-3912, tagliaferro.dean@epamail.epa.gov, (617) 918-1282 or (413) 236-0969..

**IV. Other Comments/Guidance**

MassDEP staff are available to provide guidance to the Proponent to discuss all pre-permitting aspects and as the project moves forward, MassDEP recommends pre-permitting be conducted prior to submittals. These discussions will facilitate efficient permitting, solid waste management, site management and compliance with the MCP. If you have any questions regarding this comment letter, please do not hesitate to contact Caprice Shaw at (413) 755-2222.

Sincerely,

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

Michael Gorski  
Regional Director

cc: MEPA File  
Catherine Skiba

## Czepiga, Page (EEA)

---

**From:** Ormond, Paul (ENE)  
**Sent:** Tuesday, October 03, 2017 3:21 PM  
**To:** Czepiga, Page (EEA)  
**Subject:** Daley Development; C&D Facility; MEPA number 14764

Page:

This email provides our comments for the proposed, approximately 30,000 sf C&D facility in Lee, Massachusetts.

Additional information is recommended to describe the building program. Specifically, we recommend the proponent clarify if any of the building will be office-space use. We recommend that the proponent also clarify whether the C&D portion of the facility will follow the "semi-heated" building code pathway; or, the "nonresidential" code pathway. We recommend all code trade-offs be avoided.

We recommend the following measure be evaluated:

- PV on roof; minimize obstructions on roof; consolidate any roof top equipment to single area
- Investigate SMART plan for solar <http://www.mass.gov/eea/docs/doer/rps-aps/final-program-design-1-31-17.pdf>
- LED lighting throughout, interior and exterior
- Investigate above code heating, ventilation and air conditioning (HVAC) throughout.
- Investigate cold climate air source heat pumps (and variable frequency flow, vrf) for heating and cooling. Qualifying systems are supported by Alternative Energy Credits and MCEC grants
  - MCEC grant information: <http://www.masscec.com/ground-source-heat-pumps> and <http://www.masscec.com/air-source-heat-pumps>
  - AEC information : <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/renewable-thermal/eligible-technologies-alternative-portfolio-std-rulemaking.html>
- High efficiency and VFD motors for processing equipment
- Translucent wall panels and overhead skylights in the recycling area to allow for and maximize natural/day lighting.
- Consider heating for any semi-heated process area with infrared heating system at the sorting stations for workers during cold months.
- Energy management systems will be installed for lighting and HVAC within office areas.
- Appliances in the kitchen and office areas will be Energy Star-rated.
- Bathroom water flow will be conserved by sensor-activated toilets and faucets and one-gallon flush limits.

**Paul F. Ormond, P.E.**  
Massachusetts Department of Energy Resources  
100 Cambridge Street, Suite 1020, Boston, MA 02114  
O: 617.626.7349



***Creating a Clean, Affordable and Resilient Energy Future for the Commonwealth***

Follow DOER on Twitter: [www.twitter.com/MassDOER](http://www.twitter.com/MassDOER)

Visit the Energy Smarts blog: [www.mass.gov/blog/energy](http://www.mass.gov/blog/energy)

Sign up for [email updates](#) on policy, prices, programs and more.



Charles D. Baker, Governor  
Karyn E. Polito, Lieutenant Governor  
Stephanie Pollack, MassDOT Secretary & CEO

**massDOT**  
Massachusetts Department of Transportation

September 26, 2017

Matthew Beaton, Secretary  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114-2150

RE: Lee: Daley Development – NPC  
(EEA #14764)

ATTN: MEPA Unit  
Page Czepiga

Dear Secretary Beaton:

On behalf of the Massachusetts Department of Transportation, I am submitting comments on the Notice of Project Change (NPC) for the Daley Development project in Lee, as prepared by the Office of Transportation Planning. If you have any questions regarding these comments, please contact J. Lionel Lucien, P.E., Manager of the Public/Private Development Unit, at (857) 368-8862.

Sincerely,

David J. Mohler  
Executive Director  
Office of Transportation Planning

DJM/jll

cc: Jonathan Gulliver, Acting Administrator, Highway Division  
Patricia Leavenworth, P.E., Chief Engineer, Highway Division  
Francisca Heming, P.E., District 1 Highway Director  
Neil Boudreau, State Traffic Engineer  
Town of Lee, Planning Board  
Berkshire Regional Transit Authority  
PPDU Files





Charles D. Baker, Governor  
Karyn E. Polito, Lieutenant Governor  
Stephanie Pollack, MassDOT Secretary & CEO

**massDOT**  
Massachusetts Department of Transportation

TO: David J. Mohler, Executive Director  
Office of Transportation Planning

FROM: J. Lionel Lucien, P.E., Manager  
Public/Private Development Unit

DATE: September 26, 2017

RE: Lee: Daley Development– NPC  
EEA #14764

The Public/Private Development Unit has reviewed the Notice of Project Change (NPC) for the Daley Development project in Lee. The development program described in the ENF involved the development of four industrial structures. The site was also to be subdivided into four lots, with one building on each lot. Since the initial ENF filing in 2011, one structure has been constructed and the site has not been subdivided. The existing structure is a 10,800 square foot Recycling, Composting, and Conversion (RCC) facility. The undeveloped portion of the lot is used for the storage and stockpiling of waste to be processed at the RCC facility.

Subsequent to the ENF Certificate issued on September 16, 2011, the Proponent decided to develop a 20,000 square foot transfer station for municipal solid waste, construction waste, and demolition waste. This structure is proposed to be built instead of the three previously approved structures that were never constructed. The transfer station will function under the current RCC permit provided by MassDEP and subdivision of the site will no longer occur. The total site buildout will be 30,800 square feet instead of the originally proposed 35,100 square feet. Based on information in the ENF, there is also a net change of 93 fewer vehicle trips per day and 38 fewer parking spaces proposed at the site as a result of the project change. MassDOT notes that ITE Land Use Code (LUC) – 120, General Heavy Industrial, could have represented a more accurate picture of the project's transportation impact given the use of the site for waste disposal. This would have added an additional 94 vehicles to the site's trip generation, remaining well below MEPA thresholds.

MassDOT recommends that no further environmental review be required based on transportation issues. If you have any questions regarding these comments, please contact me at (857) 368-8862 or Michael Clark at (857) 368-8867.



**BERKSHIRE REGIONAL PLANNING COMMISSION**  
**1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201**

TELEPHONE (413) 442-1521 · FAX (413) 442-1523

Massachusetts Relay Service: TTY: 771 or 1-800-439-2370

[www.berkshireplanning.org](http://www.berkshireplanning.org)

KYLE HANLON, Chair  
SHEILA IRVIN, Vice-Chair  
MARIE RAFTERY, Clerk  
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

September 25, 2017

Matthew Beaton, Secretary  
Executive Office of Energy and Environmental Affairs  
Attn: Holly Johnson  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: Daley Development Waste Facility NPC, EEA# 14764

Dear Secretary Beaton:

The Berkshire Regional Planning Commission (BRPC) hereby submits comments on the proposed Daley Development Waste Facility (EEA # 14764) in the town of Lee. For reasons detailed below, we recommend that an Environmental Impact Report (EIR) be required for the project.

BRPC first reviewed a development project at this site in 2011, which was for the siting of up to four light industrial buildings within a five-acre area of disturbance. Proposed use would be the site of a trucking company that hauls waste and rents dumpsters. At that time the MEPA threshold was for disturbance of greater than two acres of rare species habitat for a state-listed Species of Special Concern. State permits for the project included an access permit from MassDOT, wetlands permit and 401 Water Quality Certification, and possibly a Conservation and Management Permit from Natural Heritage. The Secretary determined that the ENF adequately disclosed the potential impacts of the project and did not require the filing of an EIR. Subsequently, the proponent agreed to protect 10.45 acres of rare species habitat with a permanent conservation deed restriction and worked with the Natural Heritage & Endangered Species Program to develop a conservation management plan for the 15-acre site.

According to the Notice of Project Change (NPC), the site is currently the location of a waste handling facility that is permitted by the DEP to stockpile and grind/process Asphalt, Brick and Concrete (ABC) waste, and includes one building. A wildlife exclusion fence has been installed to keep the species of concern from entering the industrial area of the property. The NPC is being filed because of an increase in waste handling capacity, from the current 50 tons per day (tpd) to 249 tpd; it states that the threshold for MEPA review is the new capacity or expansion of 50 or more tpd of solid or hazardous waste per 301 CMR 11.03(9)(b)1.

BRPC respectfully requests that the Secretary require the filing of an EIR for the proposed project per the MEPA Mandatory EIR threshold for Solid and Hazardous Waste at 301 CMR 11.03(9)(a): “New Capacity or Expansion in Capacity of 150 or more tpd for storage, treatment, processing, combustion or disposal of solid waste, unless the Project is a transfer station, is an Expansion of an existing facility within a validly site assigned area for the proposed use, or is exempt from site assignment requirements which is 150 or more tpd.”

BRPC’s major concerns involve nuisance and public health impacts from receiving and handling municipal solid waste (MSW) and construction & debris waste (C&D), including odor, dispersal/flying of waste, attraction of scavengers, and potential contamination from leachate. Additional activities that include sorting and composting of food waste and the baling of recyclable paper are sources of additional nuisance and public health concerns. C&D has the potential for asbestos and other construction contaminants. BRPC also has concerns on scale, noting that the proposed facility will take in and process more waste than the Pittsfield Resource Recovery Facility, a 240-tpd facility that includes MSW combustion and residential recycling.<sup>1</sup>

Before making recommendations on the EIR’s scope, we note an issue in interpreting MEPA regulations that arose during our Environmental Review Committee’s discussion of the project. The additional 199 tpd is over the EIR threshold of 150 tpd. Benjamin Naylor of Berkshire Engineering, Inc., representing the proponent, attended the meeting of the Environmental Review Committee (ERC) on September 11, 2017. He agreed the increase in tons per day is over the EIR threshold, but offered the opinion that the proposed use is exempt from the EIR requirement because the site is a transfer station. He and the proponent agreed that processing will occur. However, the proponent’s contention is that the facility will be a transfer station – with waste coming in and being transported out. Mr. Naylor pointed out that the definition of transfer station in the DEP solid waste regulations does not prohibit processing from taking place at a transfer station. As a transfer station, the site is exempt from the MEPA EIR threshold. Mr. Naylor quoted a DEP regulation that defines a transfer station as:

“A transfer station means a handling facility where solid waste is brought, stored or transferred from one vehicle container to another vehicle container for transport off site to a solid waste treatment processing disposal facility.”

We do not agree with the proponent’s position. In requiring an EIR, the MEPA regulation at 301 CMR 11.03(9)(a) is clear in its intent that “New Capacity or Expansion in Capacity of 150 or more tpd for storage, treatment, processing, combustion or disposal of solid waste” has the potential to cause significant environmental impacts, and as such should be clearly evaluated through the MEPA EIR process. We note that the proposed facility will operate at up to 249 tons, a volume 66% greater than the EIR threshold.

#### SCOPE OF THE EIR

BRPC requests that the EIR address the following concerns:

- 1) In Table 3.2 Summary Table of the NPC, the proponent states that the facility currently accepts municipal solid waste. But according to the DEP permit found in the DEP appendix, current uses are limited to single stream recyclables, recyclable cardboard, scrap metal, and clean ABC. The EIR should clarify exactly what type of waste and what volumes are allowed at the site through

---

<sup>1</sup> [http://www.energyanswers.com/our\\_company/history/](http://www.energyanswers.com/our_company/history/)

the existing DEP permit and clearly describe all proposed processing activities, including the possible baling of recyclable paper.

- 2) The EIR should explain how the proponent will limit the total volume of incoming waste to a maximum of 249 tpd. If the limit is reached will personnel turn away loaded trucks? If so, how will traffic be managed to turn trucks away safely and allow them to exit the property on to Route 102?
- 3) Handling and temporary storage of C&D, MSW, recyclable materials, and compostable food wastes, and possibly the baling of recyclable paper, are new uses at the site. The EIR should describe how the proponent will avoid nuisance and public health conditions, including but not limited to:
  - Odor
  - Rodents, insects and other scavengers
  - Flying pieces of refuse - particularly the ubiquitous plastic bags or pieces of paper so often found in areas surrounding MSW and composting facilities
  - Safe handling, storage and reporting of hazardous materials that are found in municipal and C&D waste during processing
  - Contamination to soil, groundwater or surface waters due to leachate
- 4) Will there be any overnight storage of unprocessed waste? What procedures will be used to avoid nuisance and public health conditions or leachate contamination?
- 5) The EIR should explain how the proponent's operational procedures will prohibit the import of contaminated or hazardous materials to the site. On page 16 the NPC states, "RCC-related activities would be unlikely to be associated with pollution, as there is no reason to suspect that any materials being taken into the RCC facility is contaminated." We disagree that it is unlikely that contaminated materials would be transported to the site. Commercial MSW and C&D containers being delivered from demolition and building construction sites could improperly contain asbestos, oil/solvents, and other hazardous materials.
- 6) The EIR should describe how the facility's existing operations and maintenance procedures have maintained an orderly facility and avoided the creation of nuisance conditions to neighboring properties. It should include a discussion of any complaints or enforcement orders that have been issued against the facility, with an explanation of how the complaints/enforcement orders were addressed. Has the facility complied with all conditions in its current DEP Recycling, Composting or Conversion Permit?
- 7) The EIR should quantify the environmental benefits of the proposed facility. The NPC states that it will fill a niche in the region because it will be the only facility that will divert and process recyclables and compostable waste from commercial haulers of MSW, and process ABC and C&D waste. How many tons of ABC, C&D, recyclables and food waste that are now being combusted or landfilled could be reclaimed for beneficial reuse? What are the transportation costs and benefits of having commercial haulers utilize the proposed facility versus where they haul to presently, including the Lenox Valley Waste Transfer Station that utilizes rail to ship its waste?
- 8) The EIR should better explain how the number of truck trips was calculated. It should include an estimate of how many trucks are likely to visit the site per day to deliver the 249 tpd of waste.
- 9) The NPC hints that future activities may include baling of recyclable paper. The EIR should explain this possible additional use, describing how papers will be processed and stored to avoid littering and pollution.

- 10) The NPC states that there are no dwellings within 500 feet of the proposed facility. However, a quick review on Google Earth indicates that at least three residences located across the street from the site will be within 500 feet of the new processing building. The EIR should document more clearly exactly how many residences and businesses are within 500 feet of the facility, giving the exact measurements for each.
- 11) On pages 10 and 11 the NPC states that the “apparent conserved land” a quarter mile away from the site does not meet the Site Suitability Criteria for Protection of Open Space criteria of 310 CMR 16.00. We disagree. The property referred to is owned by the Berkshire Natural Resources Council and is under a permanent Conservation Restriction, thus meeting the criteria of “conservation land owned by private non-profit land conservation organizations and open to the public.” The EIR should mention this fact.
- 12) The EIR should identify any potential impacts on nearby natural resources, tourist sites, residences or businesses, and measures that the proponent will take to avoid or minimize those impacts. At the ERC meeting on September 11, local residents noted that while the location of the site is likely within an industrial zone, it is close to residential properties within the neighboring residential zone.
- 13) The EIR should overlay on the site plan of the proposed facility sensitive environments, including rare species habitats, the area covered by the conservation restriction, and all wetland resource areas.
- 14) The EIR should describe how the proponent is complying with the existing Conservation Management Plan and Conservation Restriction conditions. It should also describe what, if any, changes may be required to the Conservation Management Plan due to the expansion of the waste facility activities.
- 15) Due to the significant changes proposed since the original filing of the ENF, we respectfully request that a MEPA site visit be conducted as part of the EIR public review process.

On September 7, 2017 the BRPC Executive Committee authorized the Environmental Review Committee to submit comments to MEPA. On September 11, 2017 the Environmental Review Committee approved the draft comments as amended, authorizing Chairman Roger Bolton to approve final amended comments for submission to MEPA.



# Lenox Valley WTF, LLC

---

64 - 68 Willow Creek Road  
Lenox, MA 01240  
Phone: 413-637-1101  
Fax: 413-637-1102

Remit To Address: P.O. Box 243  
Lee, MA 01238

Secretary of Energy and Environmental Affairs  
Executive Office of Energy and Environmental Affairs (EEA)  
Attn: MEPA Office  
Page Czepiga, EEA No. 14764  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Sept. 22, 2017

**Re: Comments for EEA #14764  
Notice of Project Change  
Daley Development  
1185 Pleasant Street, Lee MA**

Dear Secretary Beaton,

As president of Lenox Valley WTF, I respectfully submit these comments for the MEPA review of the proposed Daley Development project, EEA #14764. The following comments/concerns were generated following review of the Notice of Project Change Narrative prepared by Berkshire Engineering, Inc. (BEI), dated June 13, 2017:

1. Page 5 of 30, section 3.1

BEI states "Combined waste tonnage to be processed daily at the facility is 250 tons per day (tpd). This exceeds the MEPA review threshold 301 CMR 11.03 (9)(b)1., "New Capacity or Expansion in Capacity for...storage, tratment or processing of 50 or more tpd of solid waste." **It is my understanding that a mandatory EIR for a new capacity or expansion in Capacity of 150 or more tpd for storage, treatment, processing, combustion or disposal of solid waste, unless the project is a transfer station, is an Expansion of an existing facility within a validly site assigned area for the purpose use, or is exempt from site assignment requirements. BEI clearly states that processing of waste will occur at 250 tpd. In addition, the proposed project location has not been Site Assigned per 310 CMR 16.000 and is not exempt from Site**

**Assignment requirements. Therefore, an EIR should be required for this proposed project.**

2. Page 7 of 30, Section 4.1(6.)

BEI States "The proposed waste handling area is not to be located within Riverfront Area". **Upon review of the Request for Determination of Applicability provided in the narrative appendices, the Determination expired in June of 2017, therefore a new filing (RDA or NOI) will be required to be reviewed by the Lee conservation Commission to determine if resource areas and associated buffers may alter the proposed project.**

3. Page 15 of 30, Section 4.1(4)(j).1.

BEI states "the former (referring to our facility Lenox Valley WTF) waste stream only involves manual separation of metals. Any non-metallic waste tipped by commercial waste hauler fleet vehicles is transported by rail outside of the region, with no further separation or diversion at this facility, except as required by Waste Ban regulations. ABC materials, which could be processed at the Proponent's RCC-permitted facility, are included in this waste exported from the Region by rail, due to insufficient separation and diversion at the Lenox facility. **I am concerned as to where BEI gathered this information because the majority is false. At Lenox Valley WTF, not only are metals separated from the waste stream but glass, recyclable plastic, clean gypsum board, electronics and freon bearing units and clean wood are also sorted and recycled. Lenox Valley has also implemented a food waste/composting division in the past year. Lenox Valley also separates ABC material from the incoming waste stream for recycling. Being that this NPC is public record through MEPA the Environmental Monitor, I would like BEI to redact these false statements.**

4. Page 18 of 30, Section 4.2(2)(a)5

BEI states "No leachate or contaminated surface runoff shall enter ground or surface waters". **With the proposed stormwater basins being in such close proximity to the Housatonic River, will stormwater at the site be treated for TSS prior to discharge to the basins (ie. Oil grit separators, proprietary separator)?**

5. Pages 23-27, Section 7


**BEI fails to mention the proposed application for a waiver from the site assignment requirements at 310 CMR 16.000 in the alternative analysis**



**section.** BEI stated on page 21 of the narrative “the proposed waste handling area onsite is located 40 feet from the nearest edge of the property boundary, which necessitates a waiver application be submitted at the time of the Site Assignment application”. **For alternative analysis, BEI and the Proponent should consider a location for the proposed facility that meets all the Site Assignment requirements at 310 CMR 16.00 eliminating the need for a waiver.**

Thank you for the opportunity to comment on the proposed Daley Development project. If you have any additional questions or concerns, please contact my office at 413-637-1101.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Garrity".

Thomas M Garrity  
Sole Member