

For Office Use Only Executive Office of Environmental Affairs MEPA Analyst: <i>Beiony Angus</i> Phone: 617-626-1029
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NPC

Notice of Project Change

The information requested on this form must be completed to begin MEPA Review of a NPC in accordance with the provisions of the Massachusetts Environmental Policy Act and its implementing regulations (see 301 CMR 11.10(1)).

Project Name: <i>Chadwick Lead Mills Remediation Project</i>		EOEA #: <i>13726*</i>
Street: <i>485 Lafayette Street</i>		(*Also refer to EOEA #13725)
Municipality: <i>Marblehead and Salem, MA</i>	Watershed: <i>North Coastal</i>	
Universal Transverse Mercator Coordinates: <i>19T 345027 mE, 4706738 mN</i>	Latitude: <i>42.5069 N</i>	Longitude: <i>-70.8878 W</i>
Status of project construction: <i>0 %complete</i>		
Proponent: <i>NL Industries, Inc.</i>		
Street: <i>Three Lincoln Centre, 5430 LBJ Freeway, Suite 1700</i>		
Municipality: <i>Dallas</i>	State: <i>TX</i>	Zip Code: <i>75240-2697</i>
Name of Contact Person From Whom Copies of this NPC May Be Obtained: <i>Patricia Wenskevich</i>		
Firm/Agency: <i>Woodard & Curran</i>	Street: <i>980 Washington Street, Suite 325N</i>	
Municipality: <i>Dedham</i>	State: <i>MA</i>	Zip Code: <i>02026</i>
Phone: <i>781-251-0200</i>	Fax: <i>781-251-0847</i>	E-mail: <i>pwenskevich@woodardcurran.com</i>

In 25 words or less, what is the project change? *Project change involves new proponent seeking Waiver allowing Remediation Project to proceed to obtain state, federal, local permits to complete remedial activities under the MCP.*
 See full project change description beginning on page 3.

Date of ENF filing or publication in the Environmental Monitor:

Published in February 8, 2006 Environmental Monitor

Was an EIR required? Yes No; if yes,
 was a Draft EIR filed? Yes (Date:) No
 was a Final EIR filed? Yes (Date:) No
 was a Single EIR filed? Yes (Date:) No

This ENPC contains the required EIR information and is submitted in lieu of an EIR.

Have other NPCs been filed? Yes (Date(s):) No

If this is a NPC solely for lapse of time (see 301 CMR 11.10(2)) proceed directly to
"ATTACHMENTS & SIGNATURES" on page 4.

PERMITS / FINANCIAL ASSISTANCE / LAND TRANSFER

List or describe all new or modified state permits, financial assistance, or land transfers not previously reviewed:

There has been no change to the permit requirements for the Remediation Project.

Are you requesting a finding that this project change is insignificant? (see 301 CMR 11.10(6))

Yes No; if yes, attach justification. *The requested change involves a new Proponent, NL Industries Inc., that is a co-Potentially Responsible Party (PRP) under MCP taking the lead in the Remediation Project based on its solely paying for remediation.*

Are you requesting that a Scope in a previously issued Certificate be rescinded?

Yes No; if yes, attach the Certificate

The full scope of EIR analysis pertaining to the Remediation Project has been addressed in this document.

Are you requesting a change to a Scope in a previously issued Certificate? Yes No; if

yes, attach Certificate and describe the change you are requesting: *Requesting a Phase One Waiver to allow project proponent for Remediation Project, NL Industries, Inc., to start remedial actions and site cleanup of coastal resources immediately to avoid unnecessary delays and increased costs due to Housing Development Project's separate schedule and decision to defer its EIR for housing project. Such delay will result in prolonged environmental impacts and public health risks from lead contamination.*

Summary of Project Size & Environmental Impacts	Previously reviewed	Net Change	Currently Proposed
LAND			
Total site acreage	6.62	0	6.62
Acres of land altered	4.0	+0.4	4.4 ⁽¹⁾
Acres of impervious area	0	0	0
Square feet of bordering vegetated wetlands alteration	0	+19,001	19,001 ⁽²⁾
Square feet of other wetland alteration	13,883 ⁽²⁾	-13,883	0
Acres of non-water dependent use of tidelands or waterways	1.5	-0.5	1.0 ⁽³⁾
STRUCTURES			
Gross square footage	0	0	0
Number of housing units	0	0	0
Maximum height (in feet)	0	0	0
TRANSPORTATION			
Vehicle trips per day	0	0	0
Parking spaces	0	0	0
WATER/WASTEWATER			
Gallons/day (GPD) of water use	0	0	0
GPD water withdrawal	0	0	0
GPD wastewater generation/ treatment	0	0	0
Length of water/sewer mains (in miles)	0	0	0

(1) Additional remediation areas identified on adjoining properties on Robert Road

(2) Further field verification identified additional salt marsh area of 5,118 sq. ft. This salt marsh was previously listed on the original ENF as "other wetland alteration" and is now listed as "bordering vegetated wetlands alteration."

(3) The original ENF assumed that remediation activities would require a Ch.91 license. We now believe that remediation alone may not require a license since only earth-moving and soil treatment are involved. The reduction in area is due to the property (Lot # 234) in Salem no longer requiring remediation.

Does the project change involve any new or modified:

1. conversion of public parkland or other Article 97 public natural resources to any purpose not in accordance with Article 97? Yes No

2. release of any conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction? Yes No

3. impacts on Estimated Habitat of Rare Species, Vernal Pools, Priority Sites of Rare Species, or Exemplary Natural Communities? Yes No

4. impact on any structure, site or district listed in the State Register of Historic Place or the inventory of Historic and Archaeological Assets of the Commonwealth?

Yes No; if yes, does the project involve any demolition or destruction of any listed or inventoried historic or archaeological resources? Yes No

5. impact upon an Area of Critical Environmental Concern? Yes No

If you answered 'Yes' to any of these 5 questions, explain below:

PROJECT CHANGE DESCRIPTION (attach additional pages as necessary). The project change description should include:

(a) a brief description of the project as most recently reviewed

(b) a description of material changes to the project as previously reviewed,

(c) the significance of the proposed changes, with specific reference to the factors listed 301 CMR 11.10(6), and

(d) measures that the project is taking to avoid damage to the environment or to minimize and mitigate unavoidable environmental impacts. If the change will involve modification of any previously issued Section 61 Finding, include a proposed modification of the Section 61 Finding (or it will be required in a Supplemental EIR).

(a) The "project" for purposes of this MEPA submittal is defined as remediation of those parcels encompassing the former lead mills site plus adjoining parcels owned by other public and private parties in Marblehead and Salem that together have been designated by the MassDEP as a Tier IC cleanup site ("the Site") under the MCP. In addition to the parcels owned by Glover Estates, LLC, other parcel owners include the Town of Marblehead, City of Salem, and private residential abutters along Robert Road in Marblehead. The Site is located adjacent to the Forest River and Salem Harbor on land straddling the town boundary of Marblehead and Salem, MA.

(b) The material change to the project is four-fold, 1) the proponent of the Remediation Project and the entity solely paying for remedial actions under the MCP is NL Industries, Inc., not Glover Estates LLC; 2) the conditions surrounding the separate Housing Development Project proposed to occur on the same site as the Remediation Project, but at a future time and phase, have changed. The proponents of the housing project (EOEA #13725) have informed NL Industries, Inc. that they are not ready to proceed with the MEPA process at this time. 3) a Notice of Noncompliance (NON) has been issued by the MassDEP for cleanup of the Site under the MCP. The NON includes deadlines that cannot be met if completion of the MEPA process for the Remediation Project is tied to the EIR review for housing development. Although this deadline of June 2009 appears to be sufficient, this is misleading because the remediation activities must commence in the contaminated coastal beach area and work can only be done there between October and February of each year. If the work along beach is delayed until

October 2008 (as Glover Estates, LLC proposes) it would result in more costly and piecemeal construction phasing (due to winter interruptions) as well as potential delays due to opposition to and appeals of the Housing Project. Most importantly, if the Remediation Project is not able to begin pre-mobilization in summer 2007 and start of work in fall 2007, as would occur if remediation were to be "put on hold" until October 2008, this would lose an entire construction season and will prolong the ongoing lead contamination to the environment and risk of exposure from lead sources to the public that is present now; and 4) the Remediation Project, alone, does not include any aspects or design elements of the Housing Project that will require a Chapter 91 License for construction of non-water dependent uses and activities in the former tidelands area along the Forest River, nor does Remediation require separate local permitting of either a Chapter 40b subsidized housing project or Town Meeting approval of a market rate housing project.

(c) This document is filed with the MEPA Office as an Expanded Notice of Project Change and a Request for a Phase One Waiver ("ENPC/Phase One Waiver") for the Remediation Project under MEPA regulations 301 CMR 11.10(b)(c) and (f) and 11.11 (1) and (4). As such, it presents information pertaining to the remedial actions to be performed and assessment of existing conditions, impacts, alternatives and mitigation that are comparable to what would be required in an EIR. In this case, however, the analyses presented focus only on the Remediation Project without inclusion of the future Housing Development Project, which must submit an EIR for its proposed development. This is done for two reasons: First, the Remediation Project is an independent undertaking by NL Industries, Inc. that is separate from the Housing Project. The housing proposal is being developed by Glover Estates, LLC and its development partner KSS Realty Partners, Inc. NL Industries, Inc. is an independent legal and financial entity that is the sole party paying for remedial actions described in this ENPC/Phase One Waiver request. Secondly, this ENPC/Phase One Waiver request is necessary because the Housing proponents have stated that they are not prepared to proceed at this time with a combined EIR for both activities. This is based on the Housing Project having its own separate and distinct project purpose, independent schedule, and unconnected sequence of work beginning only after the Remediation Project is completed. As a result of the Housing Project's schedule and its unique local permitting requirements (also unrelated to and independent from the Remediation Project) the Housing proponents are seeking local approvals for a Chapter 40B affordable housing project, currently under review by the Marblehead Zoning Board of Appeals, and a Town Meeting approval in May 2007 for a zoning change that would allow building a market rate housing project on the same site. Either of these development scenarios will delay the Remediation Project remedial actions in the beach until October 2008. Such delay is unnecessary and unacceptable to the Remediation Proponent because it will prolong environmental contamination to shoreline resource areas and public health risks, increase costs of remediation, and expose the Remediation Project to further delays from expected appeals of the Housing Development.

This request for an ENPC/Phase One Waiver meets the standards established in the regulations at 301 CMR 11.11(1) based on finding that: (i) without a Waiver, the Remediation Project Proponent will be subject to undue hardship in its ability to conduct the remedial activities in a timely manner due to obstacles and delays imposed by linking it with the Housing Development

Project; and (ii) strict compliance with the EIR provisions of MEPA regulations for the Remediation portion of site activities (Phase One) will not serve to avoid or minimize damage to the environment, but in fact will likely increase adverse impacts to the environment and risks to public health due to delay of necessary remediation of lead contamination. We submit that the Remediation Project should be granted a Waiver allowing it to proceed directly to obtaining the permits allowing site cleanup to commence because it meets the standards for a Phase One Waiver in accordance with 301 CMR 11.11(4) as follows: (i) it will result in significant environmental benefits to coastal resource areas by allowing remedial actions to proceed in a timely manner to remove sources of lead contamination from coastal bank, beach, salt marsh and harbor sediment areas, as well as upland and buffer zone areas; (ii) there exists ample and unconstrained infrastructure facilities and services to support the remedial activities proposed under Phase One; (iii) the Remediation Project is severable from the housing development such that Phase One remedial activities do not require the implementation of any future phases of the project and the Phase One Remediation Project will not restrict the means that any other future development phases could apply to avoid, minimize or mitigate potential impacts of that development; and (iv) the agency action(s) in Phase One involving permit approvals to undertake remedial actions will have full federal, state and local agency reviews and permit conditions applied to ensure compliance with MEPA regulations, as well as applicable environmental protection standards including those of the MassDEP Bureau of Waste Site Cleanup under the MCP. In fact, it is noted that MassDEP will maintain its oversight authority over the Site following the completion of remedial activities and site closure by the LSP. Moreover, to maintain the two projects as connected, for purposes of MEPA EIR review, would delay the Remediation Project for over one year or longer thereby delaying the start of remedial activities and increasing adverse impacts of lead contamination to the environment and coastal resources, while prolonging the risk of exposure from lead sources to the public.

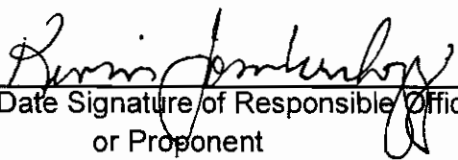
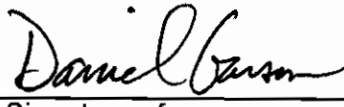
(d) Temporary impacts at the Site from remedial actions include removal and excavation of contaminated soil, sediment and vegetation in coastal resource areas and uplands. These activities and impacts are necessary and unavoidable; impacts will be mitigated through implementation of construction methods (dust control and particulate monitoring) and staging of activities and materials (use of uplands for storage and soil mixing and treatment) as well as "best management practices" (BMPs) for remediation under the MCP to minimize the potential for erosion by water and wind forces, thereby minimizing the potential for the materials to migrate from the Site. These measures will, likewise, minimize impacts of sedimentation or contamination to off-site areas or waterways. The Remediation Project has been designed and will be completed in a manner that avoids and minimizes damage to the environment to the greatest extent practicable; however, because the extent of lead contamination and lead source material is pervasive and widespread in soil, sediment and wetlands, only full excavation of all contaminated materials to an average depth of 1 to 3 feet will achieve a "permanent solution" under the MCP, thereby alleviating the present exposure risk to public health and adverse impacts to the environment. Full restoration of resource areas, including coastal bank, beach, salt marsh and harbor sediment will be implemented (see Appendix E) to achieve mitigation of unavoidable and necessary disturbance returning the coastal resources to their natural condition prior to the operations of the lead mills. A Draft Section 61 Finding is presented in Section 8 of this document.

ATTACHMENTS & SIGNATURES

Attachments:

1. Secretary's most recent Certificate on this project
2. Plan showing most recent previously-reviewed proposed build condition
3. Plan showing currently proposed build condition
4. Original U.S.G.S. map or good quality color copy (8-1/2 x 11 inches or larger) indicating the project location and boundaries
5. List of all agencies and persons to whom the proponent circulated the NPC, in accordance with 301 CMR 11.10(7)

Signatures:

 Date Signature of Responsible Officer or Proponent	3/26/07 Date	 Signature of person preparing NPC (if different from above)	3/28/07 Date
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Kevin Lombardozzi	Daniel Garson
Name (print or type)	Name (print or type)
NL Industries, Inc.	Woodard & Curran
Firm/Agency	Firm/Agency
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