COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

Route 44 Development, LLC

File No.: ACO-SE-16-4002

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts 02347.

2. Route 44 Development, LLC ("Route 44 Development" or the "owner") is a Massachusetts Limited Liability Corporation with its offices located at 500 Harrison Avenue, Suite 4R, Boston, Massachusetts 02108. Route 44 Development's mailing address for purposes of this Consent Order is 500 Harrison Avenue, Suite 4R, Boston, Massachusetts 02108.

3. Route 44 Development is hereafter referred to herein as the Respondent.

II. STATEMENT OF FACTS AND LAW

4. MassDEP is responsible for the implementation and enforcement of M.G.L. c 111, §§ 142A-142O and the associated Air Pollution Control Regulations at 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00; M.G.L. c. 131 §40 and the associated Wetlands Regulations at 310 CMR 10.00; M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00; M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.000; and Section 277 of Chapter 165 of the Acts of 2014. MassDEP has authority under M.G.L. c. 21E, §6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases. MassDEP also has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

5. The Respondent is the current owner and operator of the property commonly known as the Former Route 44 Sand and Gravel Property located at 3-4 Park Avenue in Carver, Massachusetts 02330 ("Property" or "Site"), at which reclamation and restoration activities ("Site Reclamation Activities") are being proposed to prepare the Site for a future commercial development ("Project"). The entire Property owned by the Respondent encompasses approximately 127 acres as shown on lot 2 of Map number 20 of the Town of Carver’s Assessor’s Map. To implement this future development Project, the Respondent needs to remediate the historic issues at the Site including piles of debris and waste, an inactive stump dump, a large stockpile of logs and stumps and potentially surcharge an area of buried peat. Project implementation also requires importing fill soils to develop the grades necessary for the larger buildings that the Site area can accommodate.
6. The following facts and allegations have led MassDEP to issue this Administrative Consent Order:

   A. The Respondent and MassDEP are entering into this Administrative Consent Order to establish the requirements for the Respondent to reclaim the Site and prepare it for its future development in accordance with the “Interim Policy on the Re-Use of Soil for Large Reclamation Projects” (COMM-15-01 or “Reclamation Soil Policy”). These activities include, but are not limited to, an enforceable schedule and stipulated penalties for noncompliance with the requirements of this Consent Order. MassDEP and the Respondent are not entering into this Consent Order as the result of any existing non-compliance by the Respondent.

   B. The Respondent is proposing to conduct sand and gravel-pit Reclamation Activities on the Property to support the Project. The Respondent proposes to re-grade the Site with imported soils. The Project’s development of the large buildings and parking areas required for the proposed final use of the Site will require significant quantities of structural fill and gravel materials. The Respondent proposes to either create some of these necessary materials by processing both the on-site piles of concrete and debris and importing Asphalt, Brick, and Concrete Rubble (“ABC”) materials or receiving and stockpiling ABC materials that were processed off-site.

   C. A total of approximately 732,000 cubic yards (cy) of soil is proposed to be imported to the Site in two phases. The Respondent is proposing to import approximately 82,000 cy of soil during Phase I and the remaining 650,000 cy during Phase II operations to complete grading activities. During both Phase I and II, up to 61,500 cy (processed volume) of ABC materials are proposed to be imported and processed at the Site. It is estimated that Phase I will take approximately six active months to complete from the effective date of this Consent Order and Phase II will take an additional 18 to 24 months to complete.

   D. Significant stockpiles of ABC, woodwaste, (e.g. stumps and logs) and other miscellaneous debris currently exist at the Site. Approximately 2,500 cy of ABC is located on the southern and central portion of the Site, 5,000 cy of wood including a log and stump pile is located on the southern portion of the Site and within a wetlands buffer zone, and 1,000 cy of miscellaneous debris exists throughout the Site.

   E. The Respondent is proposing to process and re-use the approximately 2,500 cy of existing ABC and up to 61,500 cy of imported ABC at the Site as necessary to complete the grading and construction activities. The Respondent is proposing to handle and/or dispose of the approximately 1,000 cy of debris. The Respondent will take appropriate corrective actions for all wood material and the active Woodwaste Landfill (Phase II) that exists at the Site as required by MassDEP regulations and guidance documents.

   F. The majority of the Site was site assigned on September 30, 1986 under M.G.L. Chapter 111, Section 150A by the Town of Carver Board of Health for the disposal of stumps (i.e., “Woodwaste Landfill”). According to MassDEP records, on May 18, 1987, MassDEP issued an approval for the operation and disposal of stumps on a portion of the Site. MassDEP approved a plan entitled “Stump Disposal Plan and Operational Report for Nemasket Sand and Gravel, Inc., Montello Street, North Carver”. The Woodwaste Landfill encompasses approximately 3 acres of the Site and has not been closed in accordance with Massachusetts Solid Waste Regulations, 310 CMR 19.120.

   G. All ABC is required to be managed in accordance with MassDEP’s Solid Waste Management Regulations, 310 CMR 16.03(2)(b)5c.

   H. All wood is required to be handled in accordance with MassDEP’s Solid Waste Management Regulations, 310 CMR 19.017(3).
I. 310 CMR 16.02 contains the following useful definitions:

**Asphalt Pavement, Brick, and Concrete Rubble** means rubble that contains only weathered (cured) asphalt pavement, clay bricks and attached mortar normally used in construction, or concrete that may contain rebar. The rubble shall not be painted, coated or impregnated with any substance. The rubble shall not be mixed with or contaminated by any other wastes or debris.

**Clean Wood** means discarded material consisting of trees, stumps, brush, including but not limited to sawdust, chips, shavings, bark, and new or used lumber. Clean wood does not include:

(a) Wood from commingled construction and demolition waste;

(b) Engineered wood products; and

(c) Wood containing or likely to contain:

1. Asbestos;
2. Chemical preservatives such as, but not limited to, chromate copper arsenate (CCA), creosote or pentachlorophenol; or
3. Paints, stains or other coatings, or adhesives.

**Construction and Demolition Waste** means the 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, asphalt pavement, masonry, plaster, gypsum wallboard, metal, lumber, and wood.

**Handling** means processing, storing, transferring or treating a material or solid waste.

**Landfill** means a facility or part of a facility established in accordance with a valid site assignment and Department-issued permit for the disposal of solid waste into or on land.

**Processing** means the use of any method, technique or process to alter the physical characteristics of a material or solid waste through any means, including, without limitation, separating, baling, shredding, crushing or reworking. Storage alone does not constitute processing.

**Residual** means all waste remaining after treatment or processing. Residual remaining after treatment or processing is not pre-sorted material. Air and water discharges managed in accordance with applicable regulations are not residuals.

**Site Assignment** means a determination by a board of health or by the Department as specified in M.G.L. c. 111, § 150A which:

(a) Designates an area of land for one or more solid waste uses subject to conditions with respect to the extent, character and nature of the facility that may be imposed by the assigning agency after a public hearing in accordance with M.G.L. c. 111, § 150 A; or

(b) Establishes that an area of land was utilized as a site for the disposal onto land of solid waste or as a site for a refuse disposal incinerator prior to July 25, 1955 as provided in St. 1955, c. 310, § 2. The area of land site assigned under 310 CMR 16.02: *Site Assignment* shall be limited to the lateral limits of the waste deposition area ("the footprint"), or the area occupied by the incinerator, as they existed on July 25, 1955, except as otherwise approved by the Department in approved plans. Said assignment shall apply only to uninterrupted solid waste disposal activities within the footprint or plan-approved area and shall have no legal force or effect at any time after cessation of disposal activities except as otherwise provided at 310 CMR 16.21.
J. 310 CMR 19.006 contains the following useful definitions:

- **Wood** means treated and untreated wood, including woodwaste.
- **Solid Waste or waste** means, any useless, unwanted or discarded solid, liquid or contained gaseous material resulting from industrial, commercial, mining, agricultural, municipal or household activities that is disposed or is stored, treated, processed or transferred pending such disposal, but does not include:
  - (a) hazardous waste as defined and regulated pursuant to 310 CMR 30.000: *Hazardous Waste*;
  - (b) sludge or septage which is land applied in compliance with 310 CMR 32.00: *Land Application of Sludge and Septage*;
  - (c) waste-water treatment facility residuals and sludge ash from either publicly or privately owned waste-water treatment facilities that treat only sewage and which is treated and/or disposed at a site regulated pursuant to M.G.L. c.83, §§ 6 and 7 and/or M.G.L. c.21, §§ 26 through 53 and the regulations promulgated there under, 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; *Ground Water Discharge Permit Program*, and regulated pursuant to M.G.L. c.21, §§ 26 through 53 or 310 CMR 15.00: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and/or for the Transport and Disposal of Septage*, provided that 310 CMR 16.00 does not 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;
  - (h) materials and by-products generated from and reused within an original manufacturing process;
  - (i) materials which are recycled, composted, or converted in compliance with 310 CMR 16.03, 16.04 or 16.05; and
  - (j) organic material when handled at a Publicly Owned Treatment Works as defined in 314 CMR 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers* and as approved by the Department pursuant to 314 CMR 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers*.

K. The placement, dumping, disposing or reuse of soil containing oil and hazardous material ("OHM") into the environment at concentrations equal to or greater than the applicable reportable concentrations is a release as that term is defined in M.G.L. c.21E § 2. Depending on the site-specific conditions and the nature of the OHM present in the soil, such releases may have significant adverse human health and environmental effects.

L. MassDEP has authority under Section 277 of Chapter 165 of the Acts of 2014 to establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for the reclamation of quarries, sand pits and gravel pits. The regulations, standards or procedures shall ensure that the reuse of soil poses no significant risk of harm to health, safety, public welfare or the environment considering the transport, filling operations and the foreseeable future use of the filled land.
M. MassDEP has authority under M.G.L. c. 21E, §6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of OHM, to prevent and control and to counter the effects of such releases to the environment.

N. MassDEP has authority under M.G.L. c. 21E, §9 to order potentially responsible parties ("PRPs") to conduct assessment, containment and removal actions, or to require the production or analysis of samples or records, consistent with the requirements of the MCP and as MassDEP reasonably deems necessary. Issuance of an order pursuant to § 9 does not preclude MassDEP from recovering damages, costs, civil penalties, criminal fines and sanctions, injunctive relief, or any action authorized by M.G.L. c. 21E, § 4.

O. M.G.L. c. 21E, §5 sets out liability for the release or any threat of release of oil or hazardous material. This liability includes the owner or operator of a site from or at which there is or has been a release or threat of release; any person who at the time of storage or disposal of any hazardous material owned or operated the site at or on which such hazardous material is stored or disposed of and from which there is a or has been a release or threat of release; and any person who contracts to arrange for the transport, disposal, storage or treatment of hazardous material to or in a site from or at which there is or has been a release or threat of a release.

P. Pursuant to M.G.L. c. 21E, §3, MassDEP promulgated the regulations found at 310 CMR 40.0000, commonly known as the Massachusetts Contingency Plan ("MCP").

Q. 310 CMR 40.0032(3), known as the “similar soils” section of the MCP, states:

Soils containing oil or waste oil at concentrations less than an otherwise applicable Reportable Concentration and that are not otherwise a hazardous waste, and soils that contain one or more hazardous materials at concentrations less than an otherwise applicable Reportable Concentration and that are not a hazardous waste, may be transported from a disposal site without notice to or approval from the Department under the provisions of...[the MCP], provided that such soils:

(a) are not disposed or reused at locations where the concentrations of oil or hazardous materials in the soil would be in excess of a release notification threshold applicable at the receiving site, as delineated in 310 CMR 40.0300 and 40.1600; and

(b) are not disposed or reused at locations where existing concentrations of oil and/or hazardous material at the receiving site are significantly lower than the levels of those oil and/or hazardous materials present in the soil being disposed or reused.

R. 310 CMR 40.0006 contains the following definitions:

Contaminated soil means soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Hazardous Material means material, including, but not limited to, any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall also include, but is not limited to, material regulated as hazardous waste or recyclable material under 310 CMR 30.000.

No Significant Risk means a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time.
Oil means insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, crude oil or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble derivatives of mineral, animal or vegetable oils and white oil. The term shall not include waste oil, and shall not include those substances which are included in 42 U.S.C. §9601(14).

Reportable Concentration and RC each means the concentration of oil or hazardous material in soil or groundwater which requires notification to the Department under MGL c. 21E, § 7 and/or 310 CMR 40.0360 through 310 CMR 40.0362.

S. On October 2, 2013, MassDEP issued the “Similar Soils Provision Guidance” (WSC#-13-500 or “Similar Soils Policy”) and this policy was revised on September 4, 2014. The Similar Soils Policy addresses the specific requirements of 310 CMR 40.0032(3) and the criteria by which a Licensed Site Professional (“LSP”) may determine that soil may be moved without prior notice to, or approval from, the Department. The Similar Soils Policy is not applicable to the excavation and movement of soil from locations other than Disposal Sites as defined in M.G.L. c. 21E § 2, nor to the management of soils considered Remediation Waste as defined in the MCP at 310 CMR 40.0006. Moreover, nothing in the Similar Soils Policy eliminates, supersedes or otherwise modifies any local, state or federal requirements that may also apply to the movement or management of soil, for the proposed activities at the Site or other similar projects, including any local, state or federal permit or approvals that must be obtained before placing soil at a receiving location.

T. On August 28, 2015, MassDEP issued the “Interim Policy on the Re-Use of Soil for Large Reclamation Projects” (COMM-15-01 or “Reclamation Soil Policy”) pursuant to Section 277 of Chapter 165 of the Acts of 2014. The Reclamation Soil Policy describes MassDEP’s intent to issue site-specific approvals, in the form of an Administrative Consent Order, to ensure that the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of releases of oil or hazardous materials.

U. On November 16, 2015, the Respondent submitted to MassDEP a Draft Fill Management Plan (“FMP”), entitled, “Fill Management Plan Former Route 44 Sand & Gravel Property Carver, Massachusetts” prepared by Langdon Environmental LLC (“the Consultant”). The FMP has been periodically revised to address comments raised by MassDEP during the review process. The FMP was finalized on June 23, 2016 and is attached to this Consent Order (Attachment A) and is incorporated herein by reference. The FMP establishes the criteria for the acceptance of soil and other fill materials at the Property. The FMP also describes the protocol for monitoring and recording environmental conditions before, during and after Site activities. All modifications of the FMP must be approved in writing by the Department.

V. The entire Property encompasses approximately 127 acres as shown on lot 2 of Map number 20 of the Town of Carver’s Assessor’s Map. Approximately 80 acres of the Site are proposed to be used for placement of soils that meet Acceptance Criteria established in the FMP.

W. The development components of the Project are required to file an Environmental Notification Form (ENF) under the requirements of the Massachusetts Environmental Policy Act (MEPA, 301CMR 11.00) and is categorically required to file an Environmental Impact Report (EIR) under the MEPA Regulations.

X. In order to conduct Reclamation Activities at the Site, the Town of Carver Planning Board (the “Town”) is requiring the Respondent to submit a Special Permit Application for review and approval for each Phase (Phase I and II).

Y. Through issuance of an approval dated September 29, 2015, the Town of Carver Planning Board through the Office of Planning & Community Development unanimously approved the Special Permit for Phase I activities. The Special Permit was approved by the Planning Board on September
22, 2015 and provides for the allowable hours of operation, soil deliveries, ABC processing and designated truck routes. A copy of the September 29, 2015 letter is included in Appendix A of the FMP. A Phase II Special Permit Application for continuing Site Reclamation Activities will be submitted to the Town of Carver Planning Board for review and approval.

Z. The Reclamation Soil Policy requires project proponents to submit a Fill Management Plan ("FMP") that includes a detailed plan of how materials will be managed to prevent nuisance conditions such as noise, litter, odor and dust; a detailed storm-water management plan to prevent impacts to sensitive receptors; a detailed wetland impact provisions approved by the local Conservation Commission; communication plan for the public; process for inspections and oversight by a Qualified Environmental Professional; and acknowledgement of the intention to comply with all applicable laws and regulations; and stipulated penalties for noncompliance. This Administrative Consent Order and referenced documents outlines the requirements for the Reclamation Activities at the Site.

AA. This Administrative Consent Order addresses activities proposed to be conducted under Phase I and Phase II of the Site Reclamation Activities as described in the FMP.

BB. As of May 1, 2016, the Respondent has completed the site preparation activities including initial access roadways, consolidation and handling of debris piles, installation of a truck-weighing scale and office trailer, and installation of stormwater controls and erosion controls as described in the FMP for the Phase I portion of the site reclamation work.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

7. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

8. MassDEP’s authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

9. The Respondent shall perform the following actions:

A. Upon the effective date of this Consent Order, Respondent shall perform any and all activities related to the Site Reclamation Activities in compliance with M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00; M.G. L. c.21E, the MCP, the Similar Soils Policy, the Reclamation Soil Policy, and all other applicable local, state and federal laws and regulations.

B. Upon the effective date of this Consent Order, Respondent shall perform any and all activities described herein in compliance with the FMP, as amended from time to time with the written consent of all parties.

C. The Respondent may process (crush) the existing ABC materials on Site and imported ABC materials provided that the Respondent:

1. Only process ABC that is not mixed with or contaminated by painted or treated materials or other solid waste;

2. Process ABC so that the maximum length of the largest dimension of any piece of rubble is less than six inches;
3. Remove all rebar from the ABC and transport offsite for proper recycling. In accordance with the Solid Waste Management Regulations at 310 CMR 19.017 metals shall not be disposed of at a landfill or transfer station facility; and

4. Use best management practices to prevent the unpermitted discharge of pollutants to air, water or other natural resources of the commonwealth; and the processing causes no public nuisance and no significant risk to public health, safety and the environment (refer to Department’s Guidance on ABC re-use entitled, Using or Processing Asphalt Pavement, Brick, and Concrete Rubble).

D. **Within three hundred sixty-five (365) days** of the effective date of this Consent Order, the Respondent shall complete processing of the approximately 2,500 cubic yards of stockpiled ABC material that exists at the Site.

E. **Within five hundred forty-eight (548) days** of the effective date of this Consent Order the Respondent shall submit a Corrective Actions Design (CAD) Permit Application for the closure of the Woodwaste Landfill at the Site to MassDEP for review and approval.

F. **Within three hundred sixty-five (365) days** of receiving a CAD Permit approval from MassDEP, the Respondent shall complete the corrective actions of the Woodwaste Landfill as approved by MassDEP.
   1. Complete the excavation and processing or removal of all 5,000 cy of stockpiled wood from the site; and
   2. Complete the excavation and processing or removal of the 1,000 cy of miscellaneous debris and solid waste from the Site.

G. **Within ninety (90) days** of completing the required closure work under the CAD Permit Approval, the Respondent shall submit a BWP SW-43 “Closure Certification Report” for MassDEP review and approval as documentation that the corrective actions for the Woodwaste Landfill have been completed.

H. Respondent shall ensure that Site Reclamation Activities do not result in a Condition of Air Pollution with respect to dust, noise and odors pursuant to 310 CMR 7.01.

I. Respondent shall ensure that the Site Reclamation Activities do not result in the alteration of any Areas Subject to Protection under M.G.L. c 131, § 40 unless approved by the Town of Carver Conservation Commission.

J. Respondent shall implement a groundwater monitoring program at the Site to monitor groundwater quality and assess potential changes to environmental conditions at the Site during and after Site Reclamation Activities. The Respondent shall implement the monitoring program outlined in the FMP.

K. Respondent shall accept only soil and fill materials that have been adequately characterized pursuant to the FMP prior to transport to the Site. Soil and fill materials shall be subject to a suite of required field screening methods and laboratory analyses to demonstrate that chemical constituents in the soil are within the site-specific Soil Acceptance Criteria identified in the FMP. Chemical characterization shall be completed by collection of soil samples and analysis by a Massachusetts state-certified laboratory. Averaging of soil concentrations shall not be allowed. The analytical suite with appropriate laboratory methods required for soil acceptance, and frequency of sampling requirements, are specified in the FMP.

L. All soil utilized by the Respondent in the Site Reclamation Activities shall meet the soil acceptance criteria specified in the FMP and future modifications of the FMP as amended and approved in writing by MassDEP.
M. The implementation of Site Reclamation Activities under the FMP shall be conducted in two phases. Phase I shall be conducted in accordance with the Special Permit Application approved by the Town of Carver Planning Board dated September 29, 2015 allowing for up to 82,000 cy of soils and up to 61,500 cy of ABC being imported onto the Site.

N. Prior to initiating Phase II, the Respondent shall:
   i. Submit to the Town of Carver and copy MassDEP a Special Permit Application for Phase II activities as referenced in Section II, Paragraph 6Y;
   ii. Submit to MassDEP a copy of the approved Special Permit issued by the Town of Carver Planning Board for Phase II;
   iii. Submit to MassDEP a revised FMP for review pursuant to Section III, and
   iv. Notify MassDEP whether the proposed Phase II activities will require and, if required, submit to MassDEP suggested amendments to this Consent Order. Upon the effective date of this Consent Order, the Respondent shall ensure that any and all activities it undertakes related to the proposal discussed above are performed in compliance with the Stormwater Pollution Prevention Plan ("SWPPP") outlined in the FMP.

O. Respondent shall ensure that soils and fill materials imported to the Site during the Site Reclamation Activities, with the exception of loads quarantined or rejected in accordance with the quality control measures in the FMP shall not be removed from the Site either during or at any time after completion of the Site Reclamation Activities.

P. Respondent shall cease accepting soil from a sending site when any load from such site is rejected as a result of field screening; visual or olfactory Quality Assurance/Quality Control ("QA/QC") inspection by Respondent; or the QA/QC testing conducted by the Independent Third Party Inspector, as specified in paragraph 9.X below, until Respondent receives a written explanation and assurance from the sending site that no additional similar loads will be transported to the Site.

Q. Respondent shall ensure that soil and fill materials quarantined for QA/QC testing by the Third Party Inspector are either accepted and reused, or rejected and removed from the Property, within thirty (30) days of deposition for proper management. Loads of soil or fill materials that are rejected as a result of field screening, or visual or olfactory QA/QC inspection by Respondent, shall be removed from the Property within 7 days of deposition. For each rejected load, Respondent shall report the following information to MassDEP in the next Construction Status Report, as specified in paragraph 9.W. below:
   i. the reasons the load was rejected;
   ii. the name and address of the hauler;
   iii. the license plate number of the truck/tractor;
   iv. the name and address of the generator; and
   v. the corrective actions taken by Respondent.

R. The activities agreed to in this Consent Order shall be conducted under the overall supervision of a Licensed Site Professional ("LSP") or Qualified Environmental Professional ("QEP") to provide oversight of the work described in the FMP and to (i) review soil packages as that term is used in the FMP and (ii) conduct monthly inspections, sampling, and analysis pursuant to the FMP. LSP means a hazardous waste site cleanup professional, as defined in M. G. L. 21A, § 19, holding a valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals pursuant to M. G. L. 21A, §§ 19 through 19J. QEP means an individual who is knowledgeable about the procedures and methods for characterizing wastes and contaminated media; is familiar with Massachusetts and
Federal regulations applicable to the management of such materials; performs or oversees the management of Contaminated Soil as an integral part of his or her professional duties; and is professionally licensed or certified in a discipline related to environmental assessment (i.e., engineering, geology, soil science or environmental science) by a state or recognized professional organization. The QEP/LSP shall, at a minimum:

i. Observe the work for compliance with the FMP and provide recommendations for corrective actions to Respondent;

ii. Review all Soil Profile Packages, as that term is used in the FMP, and provide written recommendations for acceptance or denial to Respondent;

iii. Conduct the on-site quality control procedures pursuant to the FMP; and

iv. Perform the periodic collection and analysis of groundwater samples pursuant to the FMP. Any contractual relationship between Respondent and the Project LSP/QEP for work required hereunder shall require the Project LSP/QEP, as a condition of the contract, to implement work consistent with the provisions of this Consent Order.

S. Respondent shall comply with the following restrictions:

i. Soil and fill materials approved for use at the Site shall contain no more than 5% ABC material. Any such ABC material must measure less than 6 inches in any dimension.

ii. Fill soils shall not contain solid waste: No wood, metal, wire, plastic, ceramic, ash, tires, pipe, potential asbestos containing material, or other debris shall be accepted.

iii. The acceptance of Remediation Waste, as defined at 310 CMR 40.0006, is prohibited.

T. Respondent shall have an authorized representative on-site on a full time basis to observe off-loading of trucks and perform visual inspections of the soil and fill materials to ensure compliance with visual, olfactory and screening criteria in the FMP.

U. Respondent shall obtain all applicable local, state and federal permits or approvals that may be required by the Site Reclamation Activities.

V. Respondent shall submit to MassDEP and Town of Carver the initial Construction Status Report within thirty (30) days of the issuance of this Consent Order but not later than seven days before the date Respondent starts the receipt of imported soils at the Property. The initial Construction Status Report shall include, without limitation:

i. The projected schedule for the Site Reclamation Activities, including, but not limited to:
   a) Commencement of construction,
   b) Major construction milestones, and
   c) Completion of construction;

ii. The name and contact information for an on-call Site contact; and

iii. The results of the pre-construction groundwater monitoring, including boring and well construction logs for all of the monitoring wells, well elevations, groundwater gauging measurements, tabulated analytical results and laboratory analysis reports with chains of custody.
W. After submittal of the initial Construction Status Report, the Respondent shall submit quarterly Construction Status Reports to MassDEP and the Town of Carver Planning Board by the 15th of the following month. Each Construction Status Report shall include the following items:

i. A summary of the filling activities conducted at the Property during the prior 3-month reporting period, including a tabulated list of source locations, tons of material from each source location since the last report, cumulative tons of material from each source;

ii. Identification of the major activities anticipated to be performed during the next thirty (30) days;

iii. Identify any changes to the design of the Site Reclamation Activities, the schedule, and the Site contact information;

iv. Actions Respondent have taken or a schedule for actions Respondent intends to take in response to recommendations for corrective actions made by the Independent Third Party Inspector, if any;

v. Actions taken in response to the QA/QC results reported by the Independent Third Party Inspector, if any;

vi. A summary of the loads rejected as a result of visual or olfactory QA/QC inspection by Respondent, or the QA/QC testing conducted by the Independent Third Party Inspector, including but not limited to: the reasons the load was rejected, the name and address of the hauler, the license plate number of the truck/tractor, the name and address of the generator, and the corrective actions taken by Respondent; and

vii. The analytical results of the groundwater sample(s) collected during the inspections in a tabular format with the laboratory analytical reports and chain-of-custody documents as attachments, provided that analytical results for a given inspection may be submitted to MassDEP separately no later than forty-five (45) days after the date of such inspection, if not available for submittal with the inspection report.

viii. The Construction Status Report shall be signed by the Project LSP/QEP and shall include the following certification signed by Respondent:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

X. Independent Third Party Inspections: Respondent shall engage the services of a qualified, independent individual (the "Independent Third Party Inspector") to perform monthly inspections of the Property for compliance with the requirements of this Consent Order including, but not limited to, the FMP, SWPPP and Grading Plan. The Independent Third Party Inspector must be approved, in writing, by MassDEP and hold certification as a Massachusetts Registered Professional Engineer or as an LSP. The Independent Third Party Inspector may be the same individual as the Project LSP/QEP. Respondent shall be responsible for the timely performance of the activities required of the Independent Third Party in this Consent Order:
i. The Independent Third Party inspections shall be unannounced and randomly timed during normal operating hours.

ii. During each inspection, the Independent Third Party Inspector shall, at a minimum:

   a) Observe the practices involved in the receipt and/or placement of soil and fill materials at the Site, to the extent that such activities are occurring;

   b) Inspect the soil and fill materials that are being unloaded and/or placed during the inspection, if any, and inspect all areas of the Site where soil and fill materials have been placed since the previous inspection;

   c) Collect grab soil samples from a minimum of one load of soil being delivered to the Property (if any arrive during the inspection) and submit the collected samples to a Massachusetts certified laboratory for the soil profile analyses specified in the FMP for QA/QC purposes. Respondent shall stockpile this load in a designated quarantine area pending the results of the analyses and provide the Independent Third Party Inspector a copy of the Material Shipping Record or Bill of Lading for the load. If no loads arrive during the inspection, the sampling may be omitted for that month, or postponed to another date that month. A minimum of two samples shall be collected per calendar quarter during the active operation of the Site Reclamation Activities;

   d) Collect a minimum of six spot elevation measurements within each of the two filled areas of the Site with respect to established benchmarks; and,

   e) Inspect all erosion control measures including but not limited to, silt fence, hay bales, temporary basins and swales.

iii. The Independent Third Party Inspector shall have the authority to immediately stop work and notify MassDEP and the Conservation Commission upon observing any violation of the Wetlands Protection Act.

iv. The Independent Third Party Inspector shall prepare an inspection report documenting the findings for each inspection and shall submit such report to Respondent and MassDEP on or before the 15th of each month. Each inspection report shall include, but not be limited to:

   a) Observations of practices that are not compliant with the FMP and/or Consent Order;

   b) Observations of solid or hazardous waste, stained soils, odors and sheens;

   c) A tabular summary of quantities of soil, other fill materials, and ABC received and placed at the property and the number of truck loads and quantity of materials rejected at the Site, since the last inspection;

   d) The results of the QA/QC testing of the soil samples collected during the inspection, including, but not limited to the following, providing that the QA/QC
results for a given inspection may be submitted in the next monthly report if not available for submittal with the inspection report:

1. A copy of the Material Shipping Record or Bill of Lading for the load of soil that was sampled during the inspection, if any;

2. The analytical results in a tabular format comparing the results to the applicable RCS-1 Reportable Concentrations and Acceptance Criteria identified in the FMP;

3. A clear statement regarding whether any of the analytical results equal or exceed any applicable Reportable Concentration or Acceptance Criteria; and

4. The laboratory analytical reports and chain of custody documents;

e) Observations of airborne dust and dust control measures employed;

f) A plan showing spot elevation measurements and locations using the Grading Plan as a base plan, and a statement regarding whether the measured elevations comply with the Grading Plan;

g) Specific recommendations for repairs, replacement or changes to erosion control measures at the Site;

h) Status updates of the actions taken by Respondent to implement the recommendations made in prior inspection reports, if any;

i) Actions the Respondent has taken or intends to take to correct such deviations with a schedule for completing such actions; and

j) A tabular summary of quantities of soil, other fill materials, and ABC received and placed at the property and the number of truck loads and quantity of materials rejected at the Site, since the last inspection.

v. The Inspection Report shall be signed by the Project LSP/QEP and shall include the following certification signed by Respondent:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

Y. Respondent shall not exceed the maximum elevations shown in the FMP.

Z. The final stabilization of the top of the fill and all slopes shall be stabilized as described in the FMP.
AA. Respondent shall notify MassDEP, in writing, if Respondent intends to terminate the Site Reclamation Activities before achieving the maximum finish grading shown in the FMP. Respondent’s failure to perform FMP-related filling activities for any contiguous 6-month period shall be deemed by MassDEP to be Respondent’s termination of the Site Reclamation Activities.

BB. Respondent shall perform the following closure activities upon achieving the proposed fill sub-grade elevations, or upon Respondent’s termination of the Site Reclamation Activities before achieving the proposed fill sub-grade elevations:

   i. Within 60 days of achieving the proposed fill sub-grade elevations or terminating the Site Reclamation Activities, Respondent shall address all outstanding recommendations made by the Project LSP/QEP and/or Independent Third Party Inspector;

   ii. Within 90 days of achieving the approved fill subgrade elevations or terminating the Site Reclamation Activities, Respondent shall stabilize all slopes by applying suitable materials and establishing a vegetative cover or other cover specified in the FMP;

   iii. Within 180 days of achieving the approved fill subgrade elevations or terminating the Site Reclamation Activities, Respondent shall submit to MassDEP an As-Built Plan prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer. The As-Built Plan shall show the final elevations at the Property and any permanent stormwater management features; and

   iv. Respondent shall continue monitoring the groundwater in accordance with the FMP.

CC. Respondent shall maintain records of all soil accepted at the Site, including but not limited to Generator Applications, Soil Submittal Packages, soil profiles, Project LSP/QEP Recommendations and Acceptance/Approval documents, for a minimum of seven years after the completion of the work. Any and all records, including records in electronic and paper form, shall be made available to MassDEP for inspection and reproduction upon request.

10. MassDEP reserves the right to require Respondent to take any and all actions necessary to ensure that activities conducted at the Property do not cause any nuisance conditions including, but not limited to, dust, noise, odor or wetland impacts.

11. Unless submitted via eDEP or except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

   Millie Garcia-Serrano
   Regional Director
   MassDEP-Southeast Regional Office
   20 Riverside Drive
   Lakeville, MA 02346

   Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.
12. Force Majeure

A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent’s employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent’s employees, agents, consultants, and contractors.

B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent’s right to request an extension based on the event.

D. If MassDEP determines that Respondent’s failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent’s failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent’s failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

13. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

14. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

15. This Consent Order may be modified only by written agreement of the parties hereto.

16. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.
17. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

18. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.

Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP’s authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.

19. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

20. This Consent Order shall be binding upon Respondent and upon Respondent’s successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent’s members, managers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

21. Respondent shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondent violates any provision of Section III of this Consent Order:

<table>
<thead>
<tr>
<th>Period of Violation</th>
<th>Penalty per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st through 15th days</td>
<td>$250 per day</td>
</tr>
<tr>
<td>16th through 30th days</td>
<td>$500 per day</td>
</tr>
<tr>
<td>31st day and thereafter</td>
<td>$1000 per day</td>
</tr>
</tbody>
</table>

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent’s obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil
and criminal penalties which may be available by reason of Respondent’s failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP’s determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP’s calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. To the extent authorized by the current owner, Respondent agree to provide MassDEP, and MassDEP employees, representatives and contractors, access at all reasonable times to the Property for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

24. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

25. The undersigned certify that they are full authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

26. This Consent Order shall become effective on the date that it is executed by MassDEP.

[The remainder of this page is intentionally blank.]
In the matter of: Route 44 Development LLC  
ACO No. ACO-SE-16-4002  
Page 18  

Consented To By:  
Route 44 Development, LLC  

Robert L. Delhomme  
Manager  

500 Harrison Avenue, Suite 4R  
Boston, MA 02118  

Federal Employer Identification No.: 46-2634018  

Date: June 27, 2016  

Issued By:  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  

Millie Garcia-Serrano  
Regional Director  
MassDEP – Southeast Regional Office  
20 Riverside Drive  
Lakeville, MA 02347  

June 27, 2016