

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

In the Matter of:
MacDonald Industries Corporation

Enforcement Document Number:
00003451
Issuing Bureau: BAW
Issuing Region/Office: SERO
Issuing Program: SW
Primary Program Cited: SW
Subpgm(s) Cited: BWSC
FMF/Program ID # 40000

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. MacDonald Industries Corporation is a Massachusetts corporation, doing business as Marilyn's Landing, with its principal offices located at 645 Walnut Street, Bridgewater, Massachusetts, 02324.
3. MacDonald Industries Corporation 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 40.0000; 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. 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 a release or threat of release as well as 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 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 a release or threat of a release.

6. 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.

7. 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").

8. 310 CMR 40.0032(3), known as the "anti-degradation" 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.

9. 310 CMR 40.0006 contains the following useful 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 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.

10. 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.

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.

11. 310 CMR 19.006 contains the following useful definitions:

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*.

12. 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.

13. 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.

14. On October 2, 2013, MassDEP issued the "Similar Soils Provision Guidance" (WSC#-13-500 or "Similar Soils Policy"). 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, and the management of soils considered Remediation Wastes 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 this Project or other similar projects, including any local, state or federal permit or approvals that must be obtained before placing soil at a receiving location.

15. 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 OHM.

16. The following facts and allegations have led MassDEP to issue this Administrative Consent Order:

- A. Respondent is the owner of an approximately 7.65 acre site assigned property known as Marilyn's Landing, located on Plymouth Street, Bridgewater, Massachusetts, 02324 (or "Site"). On November 14, 1988, the Site was Site Assigned by the Town of Bridgewater Board of Health for a sanitary landfill and/or a solid waste transfer station.
- B. The Site was historically used for sand and gravel mining to provide daily cover and other uses related to the adjoining Halifax Sanitary Landfill located to the east of the Site in the Town of Halifax. The municipal boundary between the Town of Bridgewater and the Town of Halifax runs along the eastern property boundary of the Site. The Site was not used for disposal of solid waste and there is no evidence of unauthorized dumping, tanks, or other unauthorized use on the Site.
- C. The Site is zoned industrial as shown on the Bridgewater Zoning Map (February 6, 2007) and is bound by; undeveloped industrial-zone land to the north, undeveloped industrial-zoned land to the south and wetlands to the west which are situated on the Respondent's property. A Zone II Aquifer Protection District area is located approximately 2,500 feet to the west of the Site.
- D. The wetlands to the west include two parcels of land zoned residential that are within 500 feet of the Site. These two parcels include Parcel 10 and 17 of Map 40 as identified by the Bridgewater Assessors Office. While this zoning classification would meet the definition of Reporting Category RCS-1 under 310 CMR 40.0361(1)(a), no residences are allowed to be built within these wetlands pursuant to the Massachusetts Wetlands Protection Act. Furthermore, the Respondent, who owns the property, has agreed to record a deed restriction in the Plymouth County Registry of Deeds prohibiting residential development of the parcel of land.
- E. Soil and groundwater Reporting Categories RCs applicable to the Site include Reporting Category RCS-2 for soil and Reporting Category RCGW-2 for groundwater.
- F. On January 20, 2012, the Respondent contacted MassDEP with a proposal to fill the Site with an estimated 500,000 tons of soils with documented concentrations of contaminants below Reporting Category RCS-1 concentrations to create a 65-foot high soil mound for the installation of a solar array. On that same date, MassDEP advised the Respondent to submit a soil management plan describing the project, including a stormwater management plan. On June 24, 2013, the Respondent submitted a Soil Re-use Management Plan ("SRMP") to MassDEP for a proposed soils management fill project at the Site.

- G. The Respondent has represented to MassDEP that since 2013 it has been accepting soils with concentrations up to the Reporting Category RCS-1 concentrations for fill at the Site to establish a suitable platform for a proposed solar array ("Phase I Activities"). The Respondent has represented to MassDEP that it has accepted and used (or "reused") approximately 400,000 tons (approximately 267,000 cubic yards) of soils at the Site, which corresponds to an elevation of approximately 65 feet (NAVD).
- H. On December 10, 2013, the Town of Bridgewater Conservation Commission issued an Order of Conditions to the Respondent allowing the construction of drainage improvements and placement of fill at the Site. On July 14, 2015, the Town of Bridgewater Conservation Commission issued a new Order of Conditions to the Respondent to address the placement of fill soils at the Site to an elevation of 88 feet (NAVD).
- I. Project: The Respondent reportedly needs to obtain certain elevation grades at the Site to facilitate development of the solar array project referenced in Section II.16.F. To accomplish this, the Respondent has proposed to conduct additional "phased" soil fill activities at the Site that include Phase II and III Activities. For Phase II Activities, the Respondent has proposed to import quantities of soils necessary to obtain an elevation of 88 feet. The Respondent has estimated that approximately 400,000 additional tons of soil is needed to obtain these elevations as depicted on the Site plan entitled, "Grading & Drainage Plan" stamped on October 24, 2017 by EBI Consulting. Phase II Activities will be followed by a third phase, Phase III Activities, which will include filling the swale between the Site and the neighboring closed Halifax Landfill and increasing the final elevation of both properties with soil that meets the Soil Acceptance Criteria contained in the attached SRMP up to an elevation of 144 feet ("Phase III Activities"). Upon reaching final grades, a solar farm is proposed across both facilities ("Phase IV Activities" or "Project").
- J. This Consent Order covers only Phase II Activities (or "Soil Fill Activities") as described above in Section II.16.I.
- K. This Consent Order does not cover Phase I Activities which includes the 400,000 tons of soil that has already been imported and used at the Site prior to the effective date of this Consent Order as referenced in Section II.16.G.
- L. Further details for each phase of the proposed Project include the following:

<u>Phase</u>	<u>Quantity of Fill Soils (Tons)</u>	<u>Corresponding Elev. (NAVD)</u>	<u>Completion Date</u>
Phase II	400,000	From 65 to 88 feet	January 2020
Phase III	2,000,000	From 88 to 144 feet	TBD
Phase IV	Not Applicable	Not Applicable	TBD

- M. The Respondent and MassDEP are entering into this Consent Order to establish the requirements for the Respondent to conduct Phase II Activities as defined in Section II.16.I. The Respondent has proposed to accept large quantities of soil as fill material on an area of land site-assigned under 310 CMR 16.00. The Department has determined it is appropriate to incorporate elements of COMM-15-01 into this Consent Order to ensure that the reuse of large volumes of soil for this Project does not result in a condition that is above a level of No Significant Risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of release of oil or hazardous materials. 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.

17. The SRMP (i.e., Fill Management Plan) 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; a communication plan for the public; a process for inspections and oversight by a Qualified Environmental Professional; and acknowledgement of the intention to comply with all applicable local, state and federal laws and regulations; and stipulated penalties for noncompliance.
18. The SRMP also establishes the criteria for the acceptance of soil at a soil receiving facility and describes the protocol for monitoring and recording environmental conditions before, during and after Site activities. The SRMP for the Site has been periodically revised to address comments raised by the MassDEP during the review process.
19. On March 31, 2017, the MassDEP received a letter from the Town of Bridgewater indicating their support for the Project. The Project was included for discussion in a duly noticed agenda for the January 24, 2017 Town Council Meeting during which Council members voted unanimously to approve the Project.
20. On April 5, 2017, the MassDEP received a letter from the Town of Halifax indicating their support for the Project. The Halifax Board of Health held several public meetings (February 1, 2017, March 1, 2017, and March 15, 2017) to discuss the Project and on March 15, 2017 voted unanimously to support the proposed Project.
21. The MassDEP approved a site-specific SAC (i.e., SAC – Revision 2) for Soil Fill Activities at the Site on August 18, 2017 that contains elements of both RCS-1 and RCS-2 criteria and required the Respondent to provide letters of approval from both the Town of Bridgewater Board of Health and Chief Municipal Officer indicating their acceptance of the SAC.
22. The SAC was included in the Respondent's recently revised SRMP that was submitted to the Department on September 8, 2017 for MassDEP review and approval.
23. On September 1, 2017, the MassDEP received a letter from the Town of Bridgewater, Board of Health indicating their approval of the SAC. Similarly, on September 21, 2017, the MassDEP received a letter from the Town Manager for the Town of Bridgewater indicating his approval of the recently revised SAC.
24. The SRMP was approved and finalized on November 17, 2017, and is attached to this Consent Order by reference. All modifications to the SRMP must be approved in writing by the Department.

III. DISPOSITION AND ORDER

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

25. 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.

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

27. 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 Soil Fill 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, and all other applicable local, state and federal laws and regulations.
- B. **Within seven (7) days** of the effective date of this Consent Order, Respondent shall conduct a survey to prepare an updated Existing Conditions Plan showing the lateral and vertical extent of fill placed at the Site.
- C. **Within fourteen (14) days** of the effective date of this Consent Order, Respondent shall submit to MassDEP an Updated Existing Conditions Plan showing the lateral and vertical extent of fill placed at the Site that is stamped by a Massachusetts Registered Professional Engineer or Registered Land Surveyor.
- D. Upon the effective date of this Consent Order, Respondent shall perform any and all activities described herein in compliance with the SRMP, as amended from time to time with the written consent of all parties.
- E. Respondent shall ensure that Soil Fill Activities do not result in a Condition of Air Pollution with respect to dust, noise and odors pursuant to 310 CMR 7.01.
- F. Respondent shall ensure that the Soil Fill 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 Bridgewater Conservation Commission.
- G. Respondent shall implement a groundwater monitoring program ("monitoring program") at the Site to monitor groundwater quality and assess potential changes to environmental conditions at the Site during and after Soil Fill Activities. This shall include at a minimum, an initial baseline groundwater sampling event, followed by semi-annual (i.e., twice per year) monitoring throughout the duration of Phase II Activities, and annual monitoring for four (4) years following completion of Phase II Activities. The Respondent shall implement the monitoring program outlined in the SRMP as approved by the Department. As such, the Respondent is required to comply with the following:

- i. **Within fourteen (14) days** of the effective date of the Consent Order, the Respondent shall submit to the Department a Scope of Work for the installation of a monitoring network for MassDEP's review and approval that includes:
 - a) A monitoring network which includes at a minimum, one up-gradient monitoring well and a sufficient number of appropriately screened down-gradient monitoring wells that are capable of being used to monitor any contaminant releases that may occur within the entire fill area at the Site;
 - b) Pertinent information on each monitoring well (i.e., well screen interval, depth to water, etc.);
 - c) A map that includes the locations of the proposed monitoring well network and direction of groundwater flow at the Site; and
 - d) The list of analytes and proposed analytical test methods.
 - ii. **Within ninety (90) days** of receiving MassDEP approval for the proposed Scope of Work in Section III.27.G.i, the Respondent shall perform the initial baseline groundwater sampling at all monitoring locations and submit the analytical results to the Department for review. The sampling shall be representative of all contaminants of concern as approved by MassDEP.
- H. Respondent shall accept only soils that have been adequately characterized pursuant to the SRMP prior to transport to the Site. Soil 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 SRMP. 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 SRMP.
- I. All soil utilized by the Respondent as part of Soil Fill Activities shall meet the soil acceptance criteria specified in the SRMP and future modifications of the SRMP as amended and approved in writing by MassDEP.
- J. The Respondent shall notify the MassDEP within **ninety (90) days** prior to completion of the Phase II Activities.
- K. Prior to initiating Phase III Activities, the Respondent shall:
- i. Notify the Town of Bridgewater, Town of Halifax, and the MassDEP of its intentions to initiate Phase III Activities as referenced in Section II.16.I.
 - ii. Submit a Post Closure Use Permit application or other applicable permit application, as appropriate for Phase III activities for MassDEP review and approval in accordance with Massachusetts Solid Waste regulations, 310 CMR 16.000 and 310 CMR 19.000 and copy the Towns of Bridgewater and Halifax;
 - iii. Submit letters of approval from the Town of Halifax, Board of Health and Chief Municipal Officer indicating their acceptance of the SAC that has been approved for the Phase III Activities; and

- iv. Notify MassDEP whether the proposed Phase III Activities will require and, if required, submit to MassDEP suggested amendments to this Consent Order and SRMP. 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 SRMP.
 - v. The Respondent shall continue dialogue with the Department throughout implementation of the Project and when necessary notify the Department in advance of any proposed modifications to the Project to ensure the appropriate Departmental permitting/approval pathways are followed and adhered to.
- L. Respondent shall ensure that soils imported to the Site during the Soil Fill Activities, with the exception of loads quarantined or rejected in accordance with the quality control measures in the SRMP, shall not be removed from the Site either during or at any time after completion of the Soil Fill Activities unless otherwise approved by MassDEP.
- M. Respondent shall cease accepting soil from a sending site (i.e. source site) when any load from such a 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 Section III.27.U below, until Respondent receives a written explanation and assurance from the sending site that no additional similar loads will be transported to the Site.
- N. Respondent shall ensure that soils quarantined for QA/QC testing by the Third Party Inspector are either accepted and reused, or rejected and removed from the Site, within thirty (30) days of deposition for proper management. Loads of soil that are rejected as a result of field screening, or visual or olfactory QA/QC inspection by Respondent, shall be removed from the Site within seven (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 Section III.27.T:
- 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.
- O. 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 SRMP and to (i) review soil packages as that term is used in the SRMP and (ii) conduct monthly inspections, sampling, and analysis pursuant to the SRMP. 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 this Consent Order, 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 SRMP and provide recommendations for corrective actions to Respondent;
- ii. Review all Soil Profile Packages, as that term is used in the SRMP, and provide written recommendations for acceptance or denial to Respondent;
- iii. Conduct the on-site quality control procedures pursuant to the SRMP; and
- iv. Perform the periodic collection and analysis of groundwater samples pursuant to the SRMP. 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.

P. Respondent shall comply with the following restrictions:

- i. Soils approved for use at the Site shall contain no more than 5% asphalt, brick and concrete ("ABC") material. Any such ABC material must measure less than six (6) inches in any dimension.
- ii. Soils approved for use at the Site may contain only incidental, randomly dispersed, *de minimis* quantities of ash and/or solid waste (e.g., municipal solid waste and/or construction and demolition waste) as defined in 310 CMR 16.000 and 310 CMR 19.000, which collectively shall comprise less than 1% by volume of the soil and fill materials.
- iii. The acceptance of Remediation Waste, as defined at 310 CMR 40.0006, is prohibited.

Q. 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 SRMP.

R. Respondent shall obtain all applicable local, state and federal permits or approvals that may be required by the Soil Fill Activities.

S. Respondent shall submit to MassDEP and Town of Bridgewater an initial Construction Status Report within thirty (30) days of the effective date of this Consent Order. The initial Construction Status Report shall include, without limitation:

- i. The projected schedule for the Soil Fill 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. A copy of the deed notice for the parcels identified in Section II.16.D recorded with the Plymouth County Registry of Deeds prohibiting residential development of the residentially zone property that is located within 500 feet of the Site.
- T. After submittal of the initial Construction Status Report, the Respondent shall submit quarterly Construction Status Reports to MassDEP and the Town of Bridgewater Board of Health 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 Site during the prior 3-month reporting period, including a tabulated list of source locations, quantity of material(tons) from each source location since the last report, cumulative quantity of material(tons) 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 Soil Fill 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 reason(s) 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.

- U. 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 Site for compliance with the requirements of this Consent Order including, but not limited to, the SRMP, SWPPP and Grading and Drainage 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 soils at the Site, to the extent that such activities are occurring;
 - b) Inspect the soils that are being unloaded and/or placed during the inspection, if any, and inspect all areas of the Site where soils have been placed since the previous inspection;
 - c) Collect grab soil samples from a minimum of one load of soil being delivered to the Site (if any arrive during the inspection) and submit the collected samples to a Massachusetts certified laboratory for the soil profile analyses specified in the SRMP 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 ("BOL") 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 (2) samples shall be collected per calendar quarter during the active operation of the Site Project Activities;
 - d) Collect a minimum of six (6) spot elevation measurements within the fill area 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 SRMP and/or Consent Order;
 - b) Observations of solid or hazardous waste, stained soils, odors and sheens;
 - c) A tabular summary of quantities of soil received and placed at the Site 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 Soil Acceptance Criteria identified in the SRMP;
 - 3. A clear statement regarding whether any of the analytical results equal or exceed any applicable Reportable Concentration or Soil 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 received and placed at the Site 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.

- V. Respondent shall not exceed the maximum elevations shown in the SRMP.
- W. As part of completing Phase II Activities, the Respondent shall cover all fill soils with a minimum of three (3) feet of RCS-1 soils. The combined placement of fill soils and RCS-1 cover soils shall not exceed an elevation of 88 feet. Respondent shall retain all soil packages associated with the RCS-1 cover soils and make them available for review by the Department when requested.
- X. The final stabilization of the top of the fill and all slopes shall be stabilized as described in the SRMP and in accordance with any Order of Conditions and other local, state (i.e., Wetlands Protection Act), and federal regulations (i.e., National Pollutant Discharge Elimination System) to prevent the discharge of pollutants (e.g., sediment, etc.) into the stormwater conveyance systems and nearby wetlands.
- Y. Respondent shall notify MassDEP, in writing, if Respondent intends to terminate Phase II Activities before achieving the maximum finish grading shown in the SRMP. Respondent's failure to perform SRMP-related filling activities for any contiguous 6-month period shall be deemed by MassDEP to be Respondent's termination of the Phase II Activities.
- Z. Respondent shall perform the following closure activities upon achieving the proposed fill sub-grade elevations, or upon Respondent's termination of the Soil Fill Activities before achieving the proposed fill sub-grade elevations:
 - i. Within sixty (60) days of achieving the proposed fill sub-grade elevations or terminating the Soil Fill Activities, Respondent shall address all outstanding recommendations made by the Project LSP/QEP and/or Independent Third Party Inspector;
 - ii. Within ninety (90) days of achieving the approved fill subgrade elevations or terminating the Soil Fill Activities, Respondent shall stabilize all slopes by applying suitable materials and establishing a vegetative cover or other cover specified in the SRMP (refer to Section III.27.W);
 - iii. Within one hundred and eighty (180) days of achieving the approved fill subgrade elevations or terminating the Soil Fill 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 Site and any permanent stormwater management features; and
 - iv. Respondent shall continue groundwater monitoring in accordance with the SRMP.
- AA. 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 (7) 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.

28. MassDEP reserves the right to rescind, suspend, or modify the SRMP and environmental monitoring requirements or require additional assessment and/or action, as deemed necessary, to protect and maintain the environment free from objectionable nuisance conditions, dangers or threats to public health, safety or the environment.

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

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

Solid Waste Section Chief
Bureau of Air and Waste
MassDEP-Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

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

31. 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.

32. 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.

33. 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.

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

35. 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.

36. 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.

37. 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.

38. 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.

39. 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 directors, officers, 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.

40. 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: For each day, or portion thereof, of each violation, Respondent shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 st through 15 th days	\$250 per day
16 th through 30 th days	\$500 per day
31 st day and thereafter	\$1000 per day

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.

41. 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.

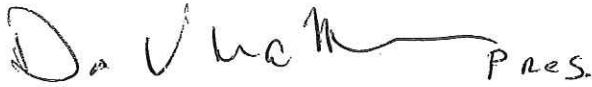
42. Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Site for purposes of conducting any activity related to its oversight of this Consent Order, including the collection of groundwater and/or soil for analysis. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

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

44. 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.

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

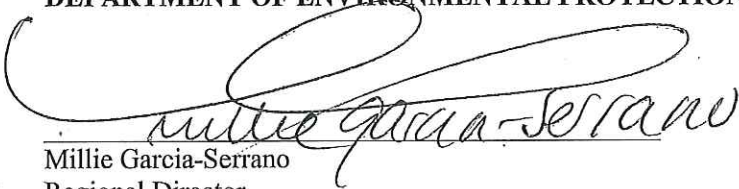
Consented To By:
MacDonald Industries Corporation

 P r e s.

David MacDonald
MacDonald Industries Corporation
645 Walnut Street
Bridgewater, MA 02324
Federal Employer Identification No.: 04-2925422

Date: 11-21-17

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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

Date: 11-30-17

